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21st Century Slavery
The Various Forms of Human Enslavement
in Today's World

Edited by Oluwatoyin Olatundun Ilesanmi



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IntechOpen Book Series

Sustainable Development

Volume 10

Aims and Scope of the Series

Transforming our World: the 2030 Agenda for Sustainable Development endorsed by United Nations and 193 Member States, came into effect on Jan 1, 2016, to guide decision making and actions to the year 2030 and beyond. Central to this Agenda are 17 Goals, 169 associated targets and over 230 indicators that are reviewed annually. The vision envisaged in the implementation of the SDGs is centered on the five Ps: People, Planet, Prosperity, Peace and Partnership. This call for renewed focused efforts ensure we have a safe and healthy planet for current and future generations.

This Series focuses on covering research and applied research involving the five Ps through the following topics:

1. Sustainable Economy and Fair Society that relates to SDG 1 on No Poverty, SDG 2 on Zero Hunger, SDG 8 on Decent Work and Economic Growth, SDG 10 on Reduced Inequalities, SDG 12 on Responsible Consumption and Production, and SDG 17 Partnership for the Goals
2. Health and Wellbeing focusing on SDG 3 on Good Health and Wellbeing and SDG 6 on Clean Water and Sanitation
3. Inclusivity and Social Equality involving SDG 4 on Quality Education, SDG 5 on Gender Equality, and SDG 16 on Peace, Justice and Strong Institutions
4. Climate Change and Environmental Sustainability comprising SDG 13 on Climate Action, SDG 14 on Life Below Water, and SDG 15 on Life on Land
5. Urban Planning and Environmental Management embracing SDG 7 on Affordable Clean Energy, SDG 9 on Industry, Innovation and Infrastructure, and SDG 11 on Sustainable Cities and Communities.

The series also seeks to support the use of cross cutting SDGs, as many of the goals listed above, targets and indicators are all interconnected to impact our lives and the decisions we make on a daily basis, making them impossible to tie to a single topic.

Meet the Series Editor



Usha Iyer-Raniga is a professor in the School of Property and Construction Management at RMIT University. Usha co-leads the One Planet Network's Sustainable Buildings and Construction Programme (SBC), a United Nations 10 Year Framework of Programmes on Sustainable Consumption and Production (UN 10FYP SCP) aligned with Sustainable Development Goal 12. The work also directly impacts SDG 11 on Sustainable Cities and Communities. She completed her undergraduate degree as an architect before obtaining her Masters degree from Canada and her Doctorate in Australia. Usha has been a keynote speaker as well as an invited speaker at national and international conferences, seminars and workshops. Her teaching experience includes teaching in Asian countries. She has advised Austrade, APEC, national, state and local governments. She serves as a reviewer and a member of the scientific committee for national and international refereed journals and refereed conferences. She is on the editorial board for refereed journals and has worked on Special Issues. Usha has served and continues to serve on the Boards of several not-for-profit organisations and she has also served as panel judge for a number of awards including the Premiers Sustainability Award in Victoria and the International Green Gown Awards. Usha has published over 100 publications, including research and consulting reports. Her publications cover a wide range of scientific and technical research publications that include edited books, book chapters, refereed journals, refereed conference papers and reports for local, state and federal government clients. She has also produced podcasts for various organisations and participated in media interviews. She has received state, national and international funding worth over USD \$25 million. Usha has been awarded the Quarterly Franklin Membership by London Journals Press (UK). Her biography has been included in the Marquis Who's Who in the World® 2018, 2016 (33rd Edition), along with approximately 55,000 of the most accomplished men and women from around the world, including luminaries as U.N. Secretary-General Ban Ki-moon. In 2017, Usha was awarded the Marquis Who's Who Lifetime Achiever Award.

Meet the Volume Editor



Dr. Oluwatoyin Olatundun Ilesanmi obtained a Ph.D. in Clinical Psychology and an MEd in Guidance Counselling from the University of Ibadan, Nigeria, in 2005 and 1999, respectively. She is an associate professor at the Centre for Gender, Humanitarian and Development Studies, Redeemer's University, Nigeria. Dr. Ilesanmi is a clinical humanitarian psychologist, a genetic counsellor, and a gender and development expert with core competencies in research, evidence-based programming, policy analysis and guidelines development, psychosocial management of sickle cell disorders, gender equality and socially inclusive research, consultancies and initiatives related to SH/GBV, multi-sectoral GESI-inclusive programming and strategic planning, and mainstreaming gender equality and empowerment of women and girls (GEEWG) into the humanitarian system.

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Preface

Contrary to what many think, slavery did not end in the 19th century, or even in the 20th century. Though legally abolished for more than 200 years by the British Empire and condemned universally by international treaties such as the Supplementary Convention on the Abolition of Slavery and local laws, more than 46 million people are currently victims of 21st-century slavery globally. This includes about 25 million in forced labour and about 15 million in forced marriage, according to estimates from the United Nations. One in four victims are children, and women and girls account for 71 percent of the victims.

Slavery in the 21st century is often referred to as the modern slave trade, contemporary slavery, neo-slavery, institutional slavery, trafficking in persons, and human trafficking, which is a violation of human rights and a primary global public health concern. It has caught up millions of women, children, and men in forced prostitution, servitude, bonded labour, domestic servitude, sexual exploitation, or forced marriage. The victims, who are mostly women and children, are often enslaved in Libya, in the gulags of North Korea, on the battlefields of Iraq and Syria, in the brothels of Eastern Europe, in Brazil's brutal charcoal industry, and in Pakistan's feudal brick kilns.

This book, *21st Century Slavery – The Various Forms of Human Enslavement in Today's World* highlights that about 24.9 million people are in forced labour, 16 million of whom are exploited in the private sector for domestic work, construction, agriculture, and so on. It also points out that more than 4.8 million persons are in forced sexual exploitation, 4 million persons are in forced labour imposed by state authorities, and 15.4 million people are in forced marriages.

The book exposes that 21st century slaves, regardless of the type of slavery to which they are submitted, are cheap and disposable, as when one becomes ill, they can be easily replaced by another. It notes that in addition to the cost of slaves in the 19th century, the practice was legal (which does not mean that it was acceptable), but today it is an international crime.

Spanning eight chapters, this book further shows that trafficking in persons and human trafficking are umbrella terms used in explaining the act of recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion.

The book highlights “involuntary servitude,” “slavery,” or “practices similar to slavery,” “debt bondage,” and “forced labour.” It further highlights the fact that 21st century enslavement no longer revolves around legal ownership but rather around illegal control, with a fundamental shift away from the forward purchase of slave labour, and the existence of slaves as an employment category.

Chapters in this book suggest that even though the “market” for exploitative labour is booming, the notion that humans are purposefully sold and bought from an existing pool is outdated. While such basic transactions do still occur, in contemporary cases people become trapped in slavery-like conditions in various ways, including as a byproduct of poverty. In countries that lack education and the rule of law, poor societal structures foster acceptance and propagation of modern-day slavery.

This book is highly relevant to today’s global burning discourse on 21st century slavery and the humanitarian crisis. It offers deep insight into the core of slavery during the transatlantic slave trade and into “modern-day slavery,” which is often referred to as “human trafficking.”

Emphasizes of this book is on the fact that slavery is not a thing of the past but a reality for more than 40 million people around the globe. Modern slavery transgresses borders, affecting people in countries across the world.

The recruitment, transportation, harbouring, and receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labour or sexual exploitation are explored in this book.

The world must not accept slavery in the 21st century. I therefore wholeheartedly recommend this book as a reference on modern slavery to all academics interested in humanitarian and development studies across the globe and to all policymakers and governments of nations who are pushing for the elimination of all forms of slavery in their nationhood.

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Section 1

Exploring the
Conceptualization of and
Strategies for Combating
21st Century Slavery

Chapter 1

Twenty-First Century Slavery: A Psychosocial Exploration of Human Trafficking, Migrant Smuggling, and Enslavement in Africa

Oluwatoyin Olatundun Ilesanmi

Abstract

This paper seeks to investigate human trafficking, migrant smuggling, and enslavement as global phenomena, public health concerns, gross violations of human rights, and crimes against humanity and the state. The twenty-first century slavery revolves around illegal control, including forced labor, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking. Thus, SDG Targets 5.2 and 8.7 stipulated that immediate and effective measures should be taken by all concerns to eradicate forced labor- end modern slavery, human trafficking, sexual and other types of exploitation, as well as to secure the prohibition and elimination of the worst forms of child labor among others. The desktop approach was used to identify the varied forms of these menaces and their perpetrators. A wide range of secondary sources of data in peer-reviewed and edited conference proceedings, workshop proceedings, and published articles in local and international journals were consulted to obtain an in-depth appreciation of the problem being investigated. The paper further highlighted the psychosocial effects of human trafficking, migrant smuggling, and enslavement. The article concludes with recommendations for ending all forms of slavery in the global community in line with the Vienna Declaration and Programme of Action.

Keywords: human trafficking, migrant smuggling, enslavement, slavery, psychosocial effects

1. Introduction

Human trafficking, migrant smuggling, and enslavement are global phenomena, public health concerns, gross violations of human rights, and crimes against humanity and the state [1, 2]. These criminal activities seriously violate the fundamental human rights of victims as enshrined in international laws and the EU Charter on Fundamental Rights.

Human trafficking, migrant smuggling, and enslavement are widespread and fastest-growing global criminal industries that sell and use men, women, and children for profit [3, 4]. They have been linked with a host of other crimes, including gang activity, drug operations, property crimes, organized criminal operations, and other violations of state, federal, and international law [5].

Human trafficking, migrant smuggling, and enslavement undermine labor relations, health, safety, and security of all nations serving as sources of victims, transit points, or final destinations. In contemporary times, enslavement is often perpetrated against kidnapped or coerced vulnerable men, boys, women, girls, and children [6]. The victims are often subjected to unimaginable human rights violations, including loss of freedom, control, involuntary actions, and exploitation for personal or commercial gains. The traffickers treat their victims such as commodities and animals, trampling on their fundamental human rights to decision-making, freedom of movement, and choice to work wherever and for whom they choose [7].

In spite of these realities about these phenomena, the literature appears to be sparse on the psychosocial dimension of twenty-first century slavery in Africa. Minimal scholarly attention seems to be paid to these even in the global north [2, 8–10]. For example, Lazzarino, Wright [8] in a scoping analysis of the characteristics of provision and types of mental health support available to survivors globally, reported that most of the service providers for the female population were located in Asia and South America and could be categorized as Christian faith based. They further noted that little information on evidence-based interventions and monitoring and evaluation was found in Asia and South America. More so, Quirk and Broome [11] and Weitzer [12] claimed that the hidden nature of these phenomena made it difficult to obtain an accurate picture of how many people are enslaved in global or African communities.

Thus, no systematic literature review has been conducted on the psychosocial exploration of human trafficking, migrant smuggling, and enslavement in Africa to date. Therefore, the aim of this study is to analyze the existing literature on the psychosocial effects of twenty-first century slavery in Africa.

2. Conceptualization of terms related to slavery and enslavement

The following concepts are defined as used in this study:

- *Enslavement*: This is a form of crime against humanity as stipulated in Article 7.1.c of the Rome Statute (1998). According to the Rome Statute (Article 7.2.c), enslavement is “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”
- *Human trafficking*: This is a contemporary form of slavery, and its victims are predominantly women and children. It involves the involuntary and forceful movement of persons within a country or across an international border to a destination to be exploited for cheap labor or other services. Approximately, 700,000 persons (majorly v) are trafficked annually within or across international borders into the international sex trade, often by force, fraud, or coercion.
- According to Article 3(a) of the Trafficking in Persons Protocol, trafficking in persons is the recruitment, transportation, transfer, harboring, or receipt of

persons, by means of the threat or use of force or other forms of coercion, of abduction, 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 [13].

- *Migrant smuggling*: This criminal act involves an agreement made by a person to pay smugglers who would assist him/her to illegally and voluntarily cross over an international border.
- *Slavery*: The 1926 Slavery Convention in article 1(1) defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised [14]. This definition encompasses both *de jure* slavery (slavery. Established by law) and *de facto* slavery (slavery in fact) [15, 16], In line with legal parameters, slavery entails a power relationship based on ownership, possession, control, and deprivation of a person's individual liberty, with the intent of exploitation through the use, management, profit, transfer, or disposal of that person. [16, 17] With slavery, women, men, and children were legally owned as chattel. The sexual enslavement of white women during the nineteenth and early twentieth centuries was referred to as "white slavery" [18].
- *Slave trade*: This is the buying and selling of human beings as slaves and sexual trafficking.

2.1 Research questions

RQ1: What is the nature of Modern-Day Slavery?

RQ2: What is the status of Africans in Modern-Day Slavery and elements of human trafficking?

RQ3: What are the Sources, Transit, or Destination Points of Slavery in Africa?

RQ4: What are the Nature and Forms of Sexual Slavery and Reproductive Exploitation of Enslaved Women?

RQ5: What are the Procurement Methods of Slavery and Enslavement?

RQ6: Who are the Perpetrators of Human Trafficking, Migrant smuggling, and Human Enslavement?

RQ7: What are the existing International and Regional Tools on Human Trafficking?

RQ8: What are the Gender Dimensions of Human Enslavement and Slave Trade?

RQ9: What are the drivers of the Help-Seeking Behavior of the Enslaved?

RQ10: What are the Psychosocial Effects of Human Trafficking, Migrant Smuggling, and Enslavement?

2.2 Objectives

1. Highlight the nature of Modern-Day Slavery, the status of Africans in Modern-Day Slavery, and elements of human trafficking

2. Identify the Sources, Transit, or Destination Points of Slavery in Africa

3. Highlight the Nature and Forms of Sexual Slavery and Reproductive Exploitation of Enslaved Women

4. Identify the Procurement Methods of Slavery and Enslavement
5. Identify the Perpetrators of Human Trafficking, Migrant smuggling, and Human Enslavement
6. Identify the International and Regional Tools for Human Trafficking
7. Identify the Gender Dimensions of Human Enslavement and Slave Trade
8. Identify the drivers of the Help-Seeking Behavior of the Enslaved
9. Identify the Psychosocial Effects of Human Trafficking, Migrant Smuggling, and Enslavement

2.3 Study methodology

2.3.1 Search methodology and article selection

This study adopted a scoping and narrative analysis of existing literature on human trafficking, migrant smuggling, and enslavement. The purpose was to unravel and make sense of the complex literature and to identify the varied forms of these menaces and their perpetrators.

A search of the Google Scholar articles was undertaken using the search terms “twenty-first century slavery”, “human trafficking”, “migrant smuggling,” and “enslavement” in various permutations and combinations. A wide range of citations were retrieved using this method from peer-reviewed and edited conference proceedings, workshop proceedings, and published articles in local and international journals to obtain an in-depth appreciation of the problem being investigated.

2.3.2 Methodological and thematic analysis of selected articles

A total of 84 articles (published between 1995 and 2023) were included in this review. The study adopted a narrative review, giving priority to the few observational studies available, and briefly summarizing the salient themes from the other publication types. The broad themes identified across these publications were used to organize this review on the psychosocial exploration of human trafficking, migrant smuggling, and slavery in the twenty-first century.

3. Results

3.1 RQ1: What is the nature of modern-day slavery?

In modern times, more than 50 million people are trapped in slavery and enslaved globally [19, 20]. The index [20] specifically reported that about 40.3 million people are enslaved worldwide. Rafferty [21] and Langier, Johnson [22] claimed that the risk of sexual exploitation and abuse among minors and vulnerable migrants are great. While Quirk and Broome [11] and Weitzer [12] and Fouts [23] reported that the majority of them, who are working as cloth designers, cooks, farm laborers, factory workers, domestic servants, cleaners, or nannies, are hidden from plain sight, human

trafficking, migrant smuggling, and enslavement are prevalent in under-regulated industries that depend on cheap, low-skilled, or unskilled labor.

3.2 RQ2: What is the status of Africans in modern-day slavery and elements of human trafficking?

Internationally, many Africans have been trapped in the modern slave markets while trying to escape poverty or insecurity, improve their socioeconomic status, and support their families [24, 25]. Many of the trapped victims often experience violent threats, rape, forced and inescapable debt, withholding of their travel documents (international passport), and the threat of deportation. Human trafficking, migrant smuggling, and enslavement violate the rights to life, equality, dignity, and security; the right to health; the right to freedom of movement; freedom from violence and abuse; and the right to be recognized as a person before the law. The basic elements of human trafficking as identified by Winterdyk J, Perrin and Reichel [26] are highlighted in the table below. This is in line with the National Human Trafficking Resource Center (NHTRC), International Organization for Migration (IOM) and the TVPA’s Action-Means-Purpose or A-M-P Model which help to determine whether force, fraud, or coercion was present, and indicating non-consensual encounter (**Table 1**).

3.3 RQ3: What are the Sources, Transit, or Destination Points of Slavery in Africa?

A. Sources and destination points of slavery

Sources of the slave trade imply the avenues through which traffickers obtain their supply of human beings for slavery or enslavement. Many of the enslaved people transported to the New World (United States, Brazil, and many Caribbean islands) originated from Africa, specifically from Senegal, Gambia, Guinea-Bissau, Mali; West-Central Africa, including Angola, Congo, the Democratic Republic of Congo and Gabon; and West African nations - Ghana, Ivory Coast, the Bight of Biafra (including parts of present-day eastern Nigeria and Cameroon), an inlet of the Atlantic on Africa’s western coast that was a hub of extensive slave-dealing operations.

A summary of the sources and destination points include the following:

Act	Means	Purpose
The trafficker must commit one or more of the following acts: <ul style="list-style-type: none"> • recruit • transport • transfer • harbor • receive • give/receive benefit • control 	Using one or more of the following means: <ul style="list-style-type: none"> • violence • threat of violence • coercion • abduction • fraud • deception • abuse of power or position of vulnerability 	For the purpose of exploitation in one or more of the following forms: <ul style="list-style-type: none"> • sexual exploitation • forced labor • slavery • servitude • organ removal • forced labor or services

Table 1.
Elements of human trafficking.

- *International human trafficking*: This occurs when a trafficker transports the citizen of one country into another country with valid documents or clandestinely or using fraudulent documents for the purpose of exploitation. Forms of international human trafficking include:
 - i. From developing nations/continents to industrialized nations/continents: This is usually from developing nations; they are transported and harbored through a variety of places to ultimately get them to the destination point and then sell them into servitude in industrialized nations. The slave trades out of Africa to Europe and the United States represent one of the most significant forced migrations and enslavement in history [27]. The main destination points for traditional slave trading were Brazil (45%), the Caribbean (22%), the British and French (10%), the Spanish Americas (12%), and North America (<4%) [27, 28]. Italy and Arabian nations are mostly the destination points for modern-day slavery [29, 30].
 - ii. *Poor Country to another poor country*:
- *Domestic human trafficking*: This is trafficking within countries. The trafficked person may be a citizen, permanent resident, visitor, temporary worker, or student within the country. Some nations are all in one point, serving as sources, transit, and destination points. The UN Global Report on human trafficking states affirmed that domestic human trafficking accounted for more than 25% of the total number of victims detected globally [31].

B. Slaves' embarkment, transportation routes, and disembarkation

Table 2 presents the embarkment points during the slave trade era' in Africa, especially from West-Central Africa (45%), Benin (16%), Biafra (13%), the Gold Coast (10%), and Senegambia (6%) as obtained from the slave voyages website and culled from Bertocchi [27].

The transportation routes for slave movement between 1400 and 1900 were the trans-Saharan, Indian Ocean, Red Sea, and trans-Atlantic slave trades.

i. *The Indian ocean slave trade*

This entails the embarkment of slaves from East Africa delivered to the Middle East and various parts of Asia — India and plantation islands in the Indian Ocean [32]. During this period, more women were embarked as slaves compared to their male counterparts [33–36].

ii. *The red sea slave trades*

The Red Sea slave trade was basically the embarkment of slaves from inland ethnic regions close to the Red Sea to the Middle East and India [32]. Some of the slaves captured from sub-Saharan Africa (mainly Zanj) and the Caucasus (mainly Circassians) were engaged as sex slaves in certain regions of the Middle East up until the twentieth century. About 1.25 million slaves were also captured and shipped from Western Europe by the Barbary Pirates between the sixteenth and nineteenth centuries [18].

	Senegambia	Sierra Leone	Windward Coast	Gold Coast	Bight of Benin	Bight of Biafra	West-Central Africa	South-East Africa	Totals
1501-1600	147,281	1405	2482	0	0	8459	117,878	0	277,505
1601-1700	136,104	6843	1350	108,679	269,812	186,322	1,134,807	31,715	1,875,632
1701-1800	363,187	201,985	289,583	1,014,529	1,284,585	904,616	2,365,204	70,930	6,494,619
1801-1900	108,941	178,537	43,454	86,114	444,662	495,164	2,076,685	440,022	3,873,579
Totals	755,513	388,770	336,869	1,209,322	1,999,059	1,594,561	5,694,574	542,667	12,521,335

Source: TAST Database—Voyages: <http://www.slavevoyages.org/>

Table 2.
 Embarkment points for slaves from Africa.

iii. *The trans-Saharan slave trades*

The trans-Saharan slave trade embarked slaves from the sub-Saharan desert to North Africa [32].

iv. *The trans-Atlantic slave trade*

Between 1529 and 1850, more than 12 million Africans (young men and women) were embarked, as slaves mostly from West, West-Central, and East African coasts to work in European colonies and plantations in the Americas. They were forced to undertake the Middle Passage journey across the Atlantic Ocean [37–39]. The ratio of males who embarked during this period was larger than their female counterparts [33–36].

Slave embarkment got to its peak between 1780 and 1790, with more than 80,000 slaves per year being transported from Africa [38]. This was further intensified during the nineteenth century with the embarkment of between three to four million people annually (**Table 3**) [40].

Table 4 shows that the largest proportion of enslaved persons instead of slaves shipped from Africa across the Atlantic was transported to the Eastern coast of Latin America and the Caribbean, especially Haiti and Jamaica.

v. *Sources and destination points of modern-day slavery*

Sources of trafficked persons in the modern-day slave trade are Thailand, China, Nigeria, Albania, Bulgaria, Belarus, Moldova, and Ukraine. With modern-day slavery, the most common destinations for victims of human trafficking are Thailand, Japan, Israel, Belgium, the Netherlands, Germany, Italy, Turkey, and the United States.

3.4 RQ4: What are the Nature, Forms, and Causes of Sexual Slavery and Reproductive Exploitation of Enslaved Women?

3.4.1 Nature of sexual slavery

Sexual slavery and the reproductive exploitation of enslaved women and girls are forms of human rights abuses. Some of the major societal and personal level factors sustaining these criminal activities are displacement (due to war and natural disaster), unstable family conditions or family rejection, insecurity, political instability, poverty, racism, and the legacy of colonialism, gender inequality, addictions, and mental health issues. Other factors include homelessness, being in the foster care system, the experience of neglect and domestic violence, previous experience of marginalization and discrimination, and identifying as LGBT.

The exploitation of enslaved persons includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices such as slavery, servitude or the removal of organs, lack of educational opportunities, high unemployment rate, lack of social and health care, as well as the lack of timely and effective protection of persons from violence and discrimination.

These could be categorized as traditional enslavement and modern-day slavery.

	EU	North America	British Caribbean	French Caribbean	Dutch Americas	Danish W. Indies	Spanish Americas	Brazil	Africa	Totals
1501-1600	640	0	0	0	0	0	169,370	29,275	0	199,285
1601-1700	2981	15,147	310,477	38,685	124,158	18,146	225,504	784,457	3122	1,522,677
1701-1800	5240	295,482	1,813,323	995,133	295,215	68,608	145,533	1,989,017	2317	5,609,868
1801-1900	0	78,117	194,452	86,397	25,355	22,244	752,505	2,061,625	150,130	3,370,825
Totals	8861	388,746	2,318,252	1,120,215	444,728	108,998	1,292,912	4,864,374	155,569	10,702,655

Sources: *The legacies of slavery in and out of Africa; & TAST Database—Voyages: <http://www.slavevoyages.org/>*

Table 3.
Slaves' disembarkation during the Trans-Atlantic slave trade.

Manner of enslavement	Percentage
Taken in a war	24.3%
Kidnapped or seized	40.3%
Sold/tricked by a relative, friend, etc.	19.4%
Through a judicial process	16.0%

Source: Data was culled from Stigismund Koelle’s Linguistic Inventory of 144 informants who were interviewed about the means of their enslavement.

Table 4.
Enslavement methods identified by Koelle’s informants [40].

3.5 Forms and causes of traditional enslavement

For Africans, the perpetuation of the traditional forms of exploitation of enslaved women, girls, boys, and children was fueled by the gun-slave cycle for centuries. The rationale for the Europeans’ engagement in slave trading was the need for manpower to work on their expanded plantation economies in South and Central America to satisfy the increasing taste in Europe for colonial goods, such as tobacco and sugar.

Forms of traditional slavery include the following:

- a. *Serfdom*: This connotes an obligatory condition that enforces “serf” to permanently live on another person’s property and render compulsory labor. Forms of modern-day serfdom include domestic servitude, the enslavement of small boys as herdsmen, recruitment of children as child soldiers, children’s inheritance of lifetime debt bondage, and sales of female infants at birth.
- b. *Sexual slavery and exploitation*: The sex industry involves the sexual exploitation of persons, predominantly women and girls. Sexual slavery is a particular form of enslavement that includes limitations on one’s autonomy, freedom of movement, and power to decide matters relating to one’s sexual activity. The sexual activities are related to prostitution, pornography, sex tourism, and other commercial sexual services. Article 7.1.g of the Rome Statue identifies sexual enslavement as any act committed as part of a widespread or systematic attack against any civilian population. These imply that the trapped victims are owned by their masters and mistress and could be forced or coerced to engage in nonconsensual sexual activities or forced prostitution, single-owner sexual slavery, commercial sex, forced marriage, and sex trafficking of persons. Ritual slavery is another form of sexual slavery. In Africa, sexual slavery is mostly associated with certain religious practices in Ghana, Togo, and Benin.

During World War II and the second Sino-Japanese War (1937–1945), the Japanese government needed soldiers, laborers, and “comfort women,” and they kidnapped approximately 200,000 Chinese, Korean, and Filipino women from impoverished backgrounds and coercively forced them into sexual slavery in Japanese military “comfort stations” [41, 42]. The comfort women were unpaid and forced to serve as many as 60 soldiers in 1 day. The “comfort women” who refused to have sex with the Japanese soldiers were raped and beaten. These women had syphilis, sexually transmitted diseases, post-traumatic stress disorders, and severe trauma [42–44].

- c. *Loss of bodily autonomy and reproductive abilities:* The slave woman or girl is voiceless and has lost total control of her personality, body, and reproduction to her master or mistress. The exploitation of a slave's reproductive ability dates back to the biblical account of Sarah's, Rachel's (Gen 30:3–7), and Leah's servants who were used as reproductive entities for their masters, Hagar, Bilhah (Gen 29:29; 46:25) and Zilpah (Genesis 30:9) were slaves given to their husbands to bear children. Hagar was an Egyptian slave of Sarah whom she as a wife to bear him a child. - Ishmael,

After Jacob had fathered six sons by his wife Leah, Rachel gave her servant Bilhah to Jacob as a wife, and Leah gave her servant Zilpah to be married to Jacob as well. Each servant bore Jacob two sons. Dan was Jacob's fifth son, and the first son born by Jacob to Rachel's servant Bilhah (see Gen. 30:1–6).

- d. *Slave breeding:* Enforcement of the 1808 international slave trade ban put a halt to the trafficking of persons from West Africa [45]. Slave breeding was adopted as a viable option to increase the enslaved population through “natural growth” for the internal market. During the pre-Civil War era in the US South, the American slave system and slave masters used enslaved women as both producers and reproducers of the next generation of enslaved labor within the plantation communities [46].
- e. *Forced reproduction:* Through forced breeding and reproduction, enslaved men and women increased the enslaved workforce. Forced reproduction manifested itself in the emphasis on what enslavers deemed “healthy” and “strong” infants absorbed into slavery. Slaveholders actively encouraged their enslaved “property” to reproduce by cajoling, threatening, and coercing them into intimate relationships [47, 48]. Enslavers then either sold or exploited the children born of these sexual relationships for labor, earning themselves a profit. This practice was promoted by the 1662 Virginia Law of *partus sequitur ventrem*, which stipulates those children followed the status of the mothers [49]. This implies that a child of a free mother would be free, while children of enslaved mothers would inherit the same status. Thus, enslavers coerced enslaved men and women to procreate, supervised their children's exercise and diet to control their growth, and raised them as laborers and commodities to be sold on the market.
- f. *Commodification and marketisation of breeding women:* The labor force perception of pregnant women leads to the categorization of full hands or half hands.

3.6 Forms and causes of modern-day slavery and enslavement

Modern-day slavery is a complex global health problem, an affront to human dignity, and a violation of core human rights [50, 51].

According to the latest global estimates of modern slavery by Walk Free [52], the International Labor Organization [53] and the International Organization for Migration [54, 55] about 49.6 million people are currently trapped in modern-day slavery. Africa accounts for about 9.2 million people trapped in modern-day slavery [56].

The victims of modern slavery are usually undocumented immigrants, runaway and homeless youth, victims of trauma and abuse, refugees, and impoverished individuals. Many of these people are in search of a better, better, happier life elsewhere in view of the lack of alternatives within their community. These sometimes make them easy targets of human trafficking, migrant smuggling, and enslavement.

Categories of modern-day slavery are diverse and entail the following:

- a. *Forced marriage and early marriage*: This is the enslavement of women and underage girls in marriage. It is a violation of their basic human rights to make an informed choice, decision, and consensual acceptance of the relationship. Nonconsensual forced marriage is a common phenomenon in many African states, including the Northern parts of Nigeria [54]. Other forms of forced marriage include the sale of a bride, transfer of a wife, and inheritance of a widow [56].
- b. *Debt bondage/bonded labor*: Debt is a key source of vulnerability to trafficking and a major tool used to force victims to work in exploitative or abusive conditions. Debt bondage was classified as forced labor [57] and as a type of servitude that could be classified as slavery if characteristics denoting ownership were present [58]. Article 1(a) of the 1956 Convention defines bonded labor as the “*status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.*” The 1956 convention further defines debt bondage as ... “the situation of workers trapped in debt bondage in systemic, archaic, feudal systems of slave-labor exploitation, as well as that of migrant workers from developing countries who leave their countries accruing debt to cover the costs associated with recruitment” ... (pp. 4–5).
- c. *Descent-based slavery*: This refers to people who are born or are being born into slavery.
- d. *Child slavery*: Delivery of children by their parents or guardians for exploitation.
- e. *Human trafficking*: The scourge of selling and buying human beings for profit has existed since the beginning of civilization but has exponentially increased due to globalization [59]. It is an obnoxious, despicable, and loathsome phenomenon involving coercive sexual exploitation, labor exploitation in conditions akin to slavery, exploitation in begging, and juvenile delinquency, as well as domestic servitude.

There are varied forms of human trafficking:

- i. *Organ trafficking*: Trafficking for the removal of organs.
- ii. *Trafficking for commercial sexual exploitation of adults and children (CSEA&C)*: The demand for commercial sex workers in countries, where prostitution is legalized is one of the major drivers of the growth and perpetuation of sex trafficking or global commercial sex trade in

contemporary times. The purpose of this form of human trafficking is the recruitment, transportation, transfer, harboring, or receipt of persons solely for sexual slavery through coercive abusive and violent means. Women and girls account for 99% of victims in the commercial sex industry. Types of CSEA&C include prostitution, child sex trafficking, child sex tourism, child pornography, or other forms of transactional sex with adults or children. Commercial sexual exploitation of children is a form of child sexual abuse by adults with remuneration in cash or in kind to the child or to a third person or persons. Trafficked children are treated as sexual and commercial objects.

- iii. *Trafficking for forced labor*: This treats human beings as objects and beasts of burden. There are over 24.9 million victims of forced labor [60]. Migrant workers, women and girls are disproportionately vulnerable to forced labor and criminal activities:
- iv. *Religious-based ideological sex slaves*: Kidnapped girls are offered to militants to increase their loyalty and adherence to religious ideologies ideology.

3.7 RQ5: What are the procurement methods of slavery and enslavement?

Human traffickers procure their victims in many ways, including

- a. *Allurement of women and girls*: Traffickers sometimes cajoled women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models.
- b. *Purchase of children from destitute parents*: Traffickers sometimes buy children from poor families and sell them into sexual or domestic servitude — prostitution or into various types of forced or bonded labor.
- c. *The kidnapping of targeted individuals*: This is the art of kidnapping local nationals in their home country as is the current state of insecurity in Nigeria. The victims are usually defenseless children, adolescent girls, travelers, schoolgirls, businessmen and women, journalists and aid workers, and families whose perceived wealth, employment, or social status are deemed by the kidnapppers to make them high-value assets in a ransom negotiation. Foreign nationals have also been targeted for abduction by kidnapppers in nations such as Nigeria, Syria, Yemen, Afghanistan, Pakistan, Iraq, the Philippines, Somalia, Kenya, and the DRC. There has been a surge in the spate of kidnappings (15.8%) globally since 2016 [53, 61]. Prior to this time, most especially between 1970 and 2010, kidnapping incidents represented a small portion of all terrorist attacks (6.9%) [62].

Forms of targeted kidnapping include kidnap for ransom/stranger kidnap, express kidnap, criminal vendetta kidnap, people smuggling kidnap, hoax/scam kidnap, child abduction, human trafficking kidnap, and tiger kidnap. Kidnapping and extortion have had negative long-term impacts on victims, survivors, and affected families.

- d. *Kidnapping through warfare*: This is also referred to as the “gun-slave cycle” [13]. It was an age-long method of capturing people for slavery and enslavement. Slaves were captured by kidnapping people from neighboring ethnic regions during raids and local wars among Africans and were later sold to foreign slave dealers in exchange for imported goods and weaponry/firearms. Koelle and Hair [63] claimed that approximately 40% of slaves were kidnapped in Sierra Leone. Captured people were then sold to slave merchants in return for imported goods and guns, which were used to capture more people as slaves to be sold.
- e. *Prey on vulnerable communities ridden with poverty*: This is perpetuated against members of such communities who are willing to flee poverty in search of greener pastures. The traffickers, through deception, presented offers of legitimate and decent work to the enslaved in another country.
- f. *Enslavement*: This was perpetrated by family, friends, and other people from the same ethnic group [64]. Koelle and Hair [63] reported that between 20 and 25% were enslaved in Sierra Leone by family and friends and 16% as a result of judicial processes.
- g. *Enslavement for debt recovery*: Enslavement of wives or children to pay off debt [34] is an age-long practice in Africa.
- h. *Pimps*: Traffickers also allure and coerce vulnerable girls into prostitution and the commercial sex trade.

3.8 RQ6: Who are the perpetrators of human trafficking, migrant smuggling, and human enslavement?

Human trafficking, migrant smuggling, and human enslavement are perpetrated by unregistered international organized networks of individuals, mafias, and organizations that generate substantial illicit proceeds, often laundered into licit markets, with a too-low risk of prosecution and confiscation. These illegal and criminal activities are lucrative crimes that take advantage of people who are vulnerable, desperate, or simply seeking a better life.

The perpetrators include:

- *Past slave dealers*: The perpetrators of slavery and enslavement globally were the Portuguese, British, French, Spaniards, Netherlands, and Americas. The Portuguese initiated the slave trade.
- *Contemporary human traffickers, migrant smugglers, and slave dealers*: The slave trades did not only cause contemporary inter- and intragroup mistrust but also mistrust of political leaders as slave traders were often chiefs and leaders within communities [64].

3.9 RQ7: What are the existing international and regional tools on human trafficking?

Since the abolition of the slave trade in 1888, the international community has repeatedly condemned slavery, human trafficking, and smuggling of migrants for

involuntary servitude and violence against women and girls. They have also initiated several declarations, treaties, United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children [65]; the Fourth World Conference on Women [66]; and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe [67].

The goals and focus of some of the international laws are specifically outlined below:

- a. *The brussels act*: The Act calls on the international community, including institutions at local, regional, and governmental levels, NGOs, IOs, IGOs, and the EU institutions to develop concrete measures, standards, best practices, and mechanisms to prevent and combat trafficking in human beings. The Acts seeks to intensify cooperation in the fields of prevention, victim protection and assistance, and police and judicial cooperation with a view to achieving a swift and sustainable reduction of trafficking in human beings.
- b. *1926 slavery convention (as amended in 1953)*: The United Nations Slavery Convention extended the work accomplished under the Brussels Act to address the slave trade and slavery by defining slavery and the responsibilities of countries to prevent slavery.
- c. *OCFS responding to commercially sexually exploited and trafficked youth*: This is a Blueprint for Systems of Care in New York State offers guidance to develop system interventions to meet the needs of trafficked and exploited youth.
- d. *The universal declaration of human rights*: It declares that all human beings are born free and equal in dignity and rights, no one shall be held in slavery or servitude, and no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
- e. *Victims of trafficking and violence protection Act of 2000*: This Act aims at combating trafficking in persons and ensuring just and effective punishment of traffickers and protecting their victims.
- f. *Trafficking Victims Protection Reauthorization Act of 2003*.
- g. *Recommended principles and guidelines on human rights and human trafficking, 2002*: The recommended principles placed human rights at the center of all efforts aimed at preventing and combating human trafficking; protecting, assisting, and providing redress for victims.
- h. *The protocol to prevent, suppress, and punish trafficking in Persons, especially women and children*: This was adopted by the United Nations in 2003.

- i. *The Trafficking in Persons Protocol*: The Protocol, which is also known as the Palermo Protocol, aims at protecting and assisting trafficked persons, with full respect for their human rights. It highlighted the following four Ps of Human Trafficking:
 - i. *Prevention*: This focuses on preventing and combating human trafficking through strategies such as public awareness and education campaigns, poverty reduction, and discouraging demand for the labor or services of trafficked persons.
 - ii. *Protection*: This aims at protecting and assisting trafficked persons with the provision of physical safety, legal information, and protection of their privacy and identity.
 - iii. *Prosecution*: This focuses on the prosecution of human traffickers by enacting laws that make trafficking human beings a crime, training law enforcement and other authorities on how to identify traffickers, and protecting the rights of trafficked persons.
 - iv. *Partnerships*: This aims at promoting cooperation and partnerships among countries to effectively meet the goals of protection, prevention, and prosecution.
- j. *The Vienna declaration and programme of action*
- k. *The United States trafficking victims protection act (TVPA)*: The Act was enacted in 2000 and reauthorized in 2008 as the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018. The Act identifies five major forms of trafficking: Commercial Sex Act, Slavery, Involuntary Servitude, Peonage, and Debt Bondage. The TVPA provided measures to prevent and deter trafficking. It also provided increased protection for trafficking victims in the United States. The Act further equipped the U.S. Government with new tools and resources to mount a comprehensive and coordinated campaign for eliminating all forms of modern slavery domestically and internationally.

3.10 RQ8: What are the gender dimensions of human enslavement and slave trade?

- a. *Plantation workers*: Between the seventeenth and nineteenth centuries, the transatlantic slave traders exported more male slaves to the Americas to work in plantations, which required strength and resulted in a decrease in the male-to-female ratio in ethnic regions. Lovejoy [35] and Manning [36] asserted that the ratio of men to women exported in the transatlantic trade was 181:100, that is two men for every woman.
- b. *Domestic servants and sex trafficking*: The Indian Ocean slave trade on the Eastern coast of Africa involved trafficking mostly women to serve as slaves, domestic servants, entertainers, and concubines in the Middle East and India [33, 34, 36].

3.11 RQ9: What are the drivers of help-seeking behavior of the enslaved?

The following are some of the reasons why trafficked persons find it hard to seek help in some countries:

- a. *Illegal immigration*: With victims of human trafficking being mostly illegal immigrants in the destination country, they are often unable to seek legal help because of fear of being incarcerated, fined, or otherwise penalized harshly than the traffickers for comital of unlawful acts consequential to their being trafficked with either false documents, or entering the host country without documentation, or working without documentation.
- b. *Traffickers' control tactics*: Bracy, Lul [68], Rafferty [69], and Hepburn and Simon [70] noted that the majority of the enslaved persons find it difficult to leave their captors, seek help from law enforcement officers, or run to a safe shelter because of the control tactics employed by the traffickers and their accomplices. The most common control tactics include physical and emotional abuse, death threats, severe injuries and threats, psychological torture, isolation from friends and family, and economic abuse.
- c. *Inadequate legislation*: Atak and Simeon [71] and Kruger and Oosthuizen [72] reported that lack of comprehensive laws to penalize the range of offenses involved in the trafficking scheme and to bring traffickers to justice.
- d. *Weak enforcement of laws*: King [73] and Lobasz [74] claimed that enforcement of existing laws against traffickers to deter trafficking is sometimes hindered by official indifference, corruption, and official participation in human trafficking, migrant smuggling, and the slave trade.
- e. *Weak sanctions*: Reid, Jones [75], and Ntlatlapa [76] noted that poor reflection of the seriousness of human trafficking and its components as crimes against humanity in existing laws and current sentencing guidelines often results in weak penalties for convicted traffickers.
- f. *Inadequate services and facilities*: Rafferty [21], Miller-Perrin and Wurtele [77], and Muraya and Fry [78] reported that inadequate services and facilities that address the practical and strategic needs of trafficked victims such as health care, housing, education, legal assistance, and safe reintegration into their home countries.
- g. *Exploitative angle through the financial lens*: Juyal and Chakravarthi [79] reported that traffickers also make promises aimed at addressing the needs of their target to impose control.
- h. *Financial difficulties*: Trafficked persons experience financial difficulties while trying to return home as voluntary returnees [80].
- i. *Language barriers and other difficulties*: Foreign victims may experience language barriers, difficulties navigating escape routes, and fear of the police in their host country [81, 82].

- j. *Lack of political will*: Inadequate legislation, weak enforcement tools, and lack of political will for handling reported cases, as well as for ending all forms of enslavement in the global community [83].
- k. *Economies of sex trafficking*: The economies of sex trafficking (selling and reselling of human beings) play a major role in the perpetuation of human rights violations and also inhibit victims from reporting [84].

3.12 RQ10: What are the psychosocial effects of human trafficking, migrant smuggling and enslavement?

The psychosocial impacts of kidnapping, human trafficking, migrant smuggling, and enslavement are a cause for concern among mental health practitioners, governments, law enforcement agencies, and communities around the world.

The methodologies, strategies, and tactics deployed by the organized networks of smugglers, kidnappers, and hostage-takers often involve the use of extreme violence and torture to subdue their victims. These include:

a. *Hostage*:

- Ransome to secure their release, the threat of being killed if the ransom is not paid on time or at all, and
- Inability of family and friends to contact the abductee.

b. *Migrant smuggling*:

- A huge sum of payment to an organized crime group to facilitate illegal entry into another country.
- Traffickers sometimes increase the anguish, grief, and despair of their victims and families through extortions and debt increase with forced demands on families to pay up the debt with threats of killing their victims if not paid.

c. *Human trafficking*:

- Forced prostitution in brothels to pay traffickers.
- “Sextortion,” or blackmail, is a growing threat.

d. *Enslavement*: The traffickers typically made use of physical and emotional control measures such as confiscation of the victims’ means of identification, mobile phones, and money, forbidding communication with family or friends and monitoring and restriction of their movement.

All these tactics and methods of violent torture have the following impacts on the enslaved:

- a. *Physical and mental health impacts*: Usage of sextortion, physical violence, starvation, beatings, rape, and gang rape to dominate, subdue, and control their

victims usually have long-term psychological trauma on the enslaved. Some of the physical injuries sustained by victims include broken bones, concussions, burns, and brain trauma. Those in forced prostitution and forced commercial sex acts often suffer from sexually transmitted diseases, menstrual pain and irregularities, miscarriages, and forced abortions, among other problems. Victims of sexual slavery sometimes report post-traumatic stress disorder (PTSD), depression, anxiety, panic disorder, suicidal ideation, Stockholm syndrome, substance abuse, and high levels of mortality.

- b. *Sociopolitical impact:* The traditional slave trade disrupted the peaceful and cohesive existence among families and within communities in African traditional city-states. It also constricted pre-existing institutions among and within ethnic regions and resulted in political instability and conflict [35].
- c. *Sociodemographic impact:* The transatlantic slave trade has been associated with an increased prevalence of polygyny and infidelity in Africa [9, 36, 37] with attendant poor health outcomes, such as higher HIV infection rates among women and child mortality [38].

4. Conclusion

Trafficking in persons, migrant smuggling, and enslavement are transnational crimes with national implications. To discourage international trafficking and bring its perpetrators to justice, the Vienna Declaration and Programme of Action demands nations take up policy actions against serious offenses. These should include prescribing appropriate punitive measures, paying priority attention to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses.

5. Recommendations

Human trafficking, migrant smuggling, and enslavement involve serious violations of human rights and are a matter of pressing international concern. The Vienna Declaration and Programme of Action demand urgent action to draw global attention to the need to eradicate human trafficking, smuggling of migrants, and all forms of enslavement, including sexual slavery and forced labor. Concerted and vigorous action is required by countries of origin, transit, or destination, and by international organizations to eliminate all forms of human trafficking, smuggling of migrants, and enslavement.

The following recommendations are made in favor of policy implementation and strategies for ending human trafficking, migrant smuggling, and slavery and securing freedom for everyone, everywhere, and always:

- A. Dismantle the criminal enterprises that trade in people and the conviction of the main perpetrators.
- B. Establishment of an interagency task force to monitor and combat human trafficking, migrant smuggling, and enslavement.


- C. Reduce demands for commercial sex.
- D. End business that profits from trafficking-related transactions.
- E. Establish and implement international initiatives to enhance economic opportunity for potential victims of trafficking as a method of deterring trafficking examples of such initiatives include microcredit lending programs, training in business development, skills training, and job counseling; programs promoting women's participation in leadership and economic decision-making; programs focusing on school retention and completion for girls and children in all educational levels; inclusion of the dangers of trafficking in educational curricula; development grants to nongovernmental organizations for the acceleration and advancement of women's participation in political, economic, social, and educational roles within their nation and communities.
- F. Safeguards trafficked persons from abuse, neglect, exploitation, or even death that is associated with these crimes.
- G. Design and carry out programs and initiatives that will assist in the safe integration, reintegration, or resettlement of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children.
- H. Establish a task force in every community for ending human trafficking, migrant smuggling, and enslavement.

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Perspective Chapter: Defining Forced Labour – A Real Challenge for the World in the Twenty-First Century

Zbigniew Lasocik

Abstract

Slavery is a social and economic phenomenon that sparked controversy even back when it was legal, whereas slavery in the twenty-first century is an obvious contradiction of everything that modern civilisation has brought. The abolition of slavery in the nineteenth century proved to be of little lasting value, as slavery returned in the form of human trafficking and forced labour. Consequently, the need for the eradication of all forms of slavery has become an imperative in the twenty-first century. Forced labour is the most dangerous form of modern slavery. It involves the violation of several human rights, and it is difficult to counteract due to its poor visibility. The legal definition of forced labour (1930) is not particularly helpful in effectively prosecuting this crime. This chapter presents the essence of forced labour in cultural rather than in legal terms. It conceptualizes forced labour as a component of modern civilisation that is heavily burdened with social taboo and concealed behind the façade of regular work, which is nowadays treated as the noblest form of human activity. This chapter concludes with a proposition of a new analytical model of forced labour as a social construct rather than a criminal and legal phenomenon.

Keywords: labour, forced labour, new definition of forced labour, counteracting forced labour, symbolic interactionism, cultural taboo

1. Introduction

In April 2013 a factory building collapsed in Dhaka, Bangladesh [1]. As a result of the disaster, approximately 1100 workers of several garment factories died, and 2500 sustained injuries. Amnesty International's Polish-language blog reprinted an article in which the event was described as the result of 'a callous alliance between business and politics in Bangladesh and around the world' [2]. Let us add only one, crucial piece of information: the workers did not want to enter the building after major cracks had been discovered on the walls, but they were forced to do so. Were they deprived of liberty, brutally intimidated or beaten? No, they were assured that everything was all right and that it was their duty to provide work. This was a fraud,

but also an instance of very subtle and sophisticated coercion, which resulted in a mass violation of these people's rights, the right to life included. The tragic accident and its circumstances bring into focus everything that needs to be considered when talking about forced labour at the beginning of the twenty-first century. Therefore, the event will be the starting point for the next considerations.

These ought to begin by emphasising that forced labour constitutes a social phenomenon that is difficult to acknowledge, difficult to fathom and difficult to accept, mainly due to its absolutely extraordinary character [3]. Forced labour entails the enslavement of a person in such a way that their intellectual potential, their physical strength or their sexuality can be used against their vital interest. In other words, it is a situation when one person treats another person like a thing that can be used, which—from the legal point of view—is called slavery. Are we ready to accept this situation in the twenty-first century?

On the level of intuitive reaction, a negative answer seems obvious. Yet it becomes less obvious when we look at the facts that will be discussed here at length. By way of a tentative hypothesis, let us say that our civilisation appears to ignore forced labour. This is chiefly because the modern human knows precious little about this phenomenon, fails to understand it and seems not ready to find out more and to comprehend. Precisely this will be the subject of the reflection presented in this chapter.

According to my research, every third Pole is aware of the phenomenon of human trafficking and forced labour [4]. The percentage is admittedly low, which gives rise to another question: why is that so? I believe that the Poles' (similarly as many others') social awareness of human trafficking and forced labour is low because these phenomena are not subject to public debate, enjoy negligible interest from public authorities, are hardly ever written and spoken about in the media, and are not subject of regular research. As a result, societies are not accustomed to this subject matter and hence find it difficult to learn about forced labour and modern slavery in general. That is not only because they do not want to, but because a phenomenon such as forced labour does not fit into the cognitive patterns of the contemporary human raised to follow humanistic values. The information 'forced labour exists and could occur somewhere around you' cannot find the right place in the recipient's mind, a place where it could be stored and internalised. And if so, then in order to avoid the discomfort caused by cognitive dissonance, it is only natural to suppress problematic facts.¹

Additionally, the relatively low level of awareness of human trafficking and forced labour may be a negative result of the language we use to describe these phenomena. Since both are crimes, we depict them as serious breaches of criminal law punishable by severe penalties, or as human rights violations, including with regard to the rights to life and freedom. No wonder, then, that we eagerly resort to language characteristic of law and criminal justice. On the other hand, both human trafficking and forced labour have an economic, a market dimension, which means that the language of economy, with concepts such as supply and demand, becomes appropriate. Moreover, this approach enables us to perceive forced labour from the perspective of the labour market, where the exploitation occurs [6]. Next, forced labour and other forms of enslavement are a negative consequence of mass migration movements. This dimension should likewise be taken into consideration because it is indisputable that the fundamental change of domicile and the accompanying phenomenon of severing one's cultural roots results in higher vulnerability to abuse [7]. In this case, we use concepts from the domains of politics, social geography and citizenship. And finally,

¹ Leon Festinger described this discomfort as cognitive dissonance, see [5].

yet another perspective places human trafficking and forced labour on the civilisation plane and depicts them as a denial of humanity and a defiance of the basic requirements of modern culture [8]. This approach requires us to use the language of sociology, anthropology and the humanities. Thus, in order to properly comprehend human trafficking and forced labour, we need to perceive these phenomena as very serious crimes, as violations of the main human rights, including the right to dignity, as a negative result of migration, as a pathological consequence of a faulty labour market regulation and finally, as a conduct that does not fit with the canons of civilisation, which has been erected for decades upon pillars such as humanistic values, equality or common safety [9]. Each of these points of view calls for a different language, each of which needs to be included in a new definition of forced labour.

In this chapter, I would like to draw attention to the need to draft a definition that will take into consideration the above. The purpose, however, is not to define for defining's sake, but to develop an operational definition that will enable us to look at the phenomenon in question from the perspective of the twenty-first century. To this end, I will attempt to demonstrate the weaknesses of the current understanding of human trafficking and forced labour as well as propose a new model of analysis. The essence of the new approach is to change the language we use to describe forced labour from the language of positivism and criminal law to language typical for the cultural variable, symbolic interactionism and humanistic approach.

2. Discussion of the theoretical foundations

Seeing the multitude of perspectives mentioned above, an approach limited to a legal definition that was phrased almost 100 years ago [10] and is relatively simple appears rather limited: *forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily* [10]. Since the adoption of the Convention, forced labour has become the subject of more than 10 global treaties and nearly 300 bilateral agreements [11], yet we are not much further along in terms of understanding the phenomenon. A legal definition is not enough [12] in times characterised by macro-phenomena such as globalisation, migration, dominance of capitalist theory and climate crisis on the one hand, and the attempts to revitalise the notions of human rights and civil society on the other [13]. Furthermore, it needs to be taken into account that, as a result of the intense political, economic and social processes of the past century, we have entered the next millennium in a situation where the traditional model of governance is being undermined and the social order—redefined. On the one hand, the state ceases to play the key role as a leader of change, abdicating in favour of global business. On the other hand, civil society is morphing from a crucial player in the political game for democratic values into society's nurse and provider of social services. The role of global religions is likewise undergoing a rather fundamental transformation [14–16].

These general observations make up the context of my remarks, yet I will stop here in order to focus on the central purpose of this chapter, which is to define forced labour. Following an analysis of the subject literature, it turns out that not only the definition of the phenomenon, but also the use of the term is in dispute. The opponents of the expression 'forced labour' look for solutions in two different directions: some propose that we use the somewhat broader category of 'modern slavery', while others suggest the rather narrow term 'servitude' [17]. Both groups invoke vital arguments to support their views, yet I will refrain from delving deeper into the details

of the dispute, as it is not essential to my considerations. What matters is that as a civilisation of the twenty-first century, even in a crucial issue such as the concept of forced labour, we are only at the beginning of the road.

And the problem is serious. According to the most recent estimates, the number of victims of various forms of enslavement amounts to 40 million people worldwide [18], while the number of identified victims is below 100,000 [19]. This is undoubtedly one of the most painful and pressing social issues of the twenty-first century, one with which our civilisation is simply incapable of dealing. Moreover, in all likelihood, the exploitation of human labour will not disappear any time soon, plus it will prevail over other forms of enslavement [20].

Amongst many characteristics of forced labour described in the subject literature, one that is relatively least discussed is that it is difficult to recognise [12]. Forced labour becomes socially invisible, and information about it is not socially welcome. In other words, people tend to reject information as 'bad' as this in order to avoid experiencing the discomfort we have mentioned above. This is why forced labour and human trafficking should be talked and written about as much as possible, so as to achieve the highest possible level of intellectual and mental readiness in society to accept the fact that these negative situations occur next to us. This level has been achieved with regard to ecological issues. Once we started to talk about the climate catastrophe, hardly anyone turns away from information about it.

At least this is a good reason to alter the language used to describe forced labour. Perhaps presenting this phenomenon in the political and criminal language does not guarantee wide social interest [21]. Perhaps the metaphor of 'modern slavery', which is used so widely in literature and politics, is not the best tool to communicate with a mass recipient [20, 22, 23]. It should be noted, for example, that Ricard-Guay and Hanley called one of the sub-chapters of their text: 'Labor Trafficking: Still Under-detected? Or Rather Called by Another Name?' [24]. Significant are the question marks included in the title—I interpret them as invitations for discussion. I join it eagerly, especially since the term 'modern slavery' is rather unclear and controversial [25].

The central issue here is not terminology, however, but the discrepancy between the estimated magnitude of the phenomenon of forced labour mentioned above (40,000,000 people) and the real interest in the problem. This discrepancy can be dissected into several questions, for example why does collecting data on forced labour, compared to sexual exploitation, proceed so slowly? Or, why has progress in eliminating forced labour, compared to sexual exploitation, been so negligible? Or, why is there no real interest in changing this situation in many countries?

It is far from easy to answer these questions, as modern slavery poses major challenges before the states and societies, irrespective of the level of the state's economic development or of society's legal culture.² And finding answers can have serious consequences for the practice of social life in individual countries and around the globe. It may therefore be worthwhile to take a moment's reflection and go somewhat deeper into the issue and broaden the area of analysis. This is my intention, albeit I limit my role to reporting the problem and proposing a debate on the subject, guided by the belief that we should all seek an answer.

For the purposes of this work, I propose to leave aside the legal definitions of human trafficking and forced labour that we know from the 1930 ILO Convention [10] or the United Nations' Palermo Protocol [27]. In order to overcome interpretative difficulties resulting from the character of these definitions, I further propose

² For more on that subject, see [26].

to set aside the established analytical pattern based on the AMP model: action, means and purposes [28]. The model works as a tool for the phenomenological description of events, especially for the purposes of criminal justice, including the determination of the perpetrators' culpability. However, this is probably not the language that can easily be used to reach politicians, let alone the average citizen, to make the issue of forced labour the subject of their sincere interest and the focus of social dialogue.

I am convinced that, precisely for this reason, the language of criminal justice should be complemented with a perspective that could be described as humanistic, in the sense given to the term by the sociology that emerged from the thought of F. Znaniecki, G. H. Mead, J. Devey or W. I. Thomas. I mean an approach that is strongly supported by the philosophical elements of social pragmatism [29], and the treatment of the individual characteristic of symbolic interactionism [30]. By rejecting idealism and behaviourism, pragmatism has created a great deal of room for knowledge, especially knowledge gathered in social experience. A person's actions are guided by not only ideas that organise their will, or only stimuli from their environment, to which they react. An individual's actions consist in solving problems in communication with other people based on gathered information. The proponents of this way of thinking argued that actions are more effective when the mind and knowledge operate together [31]. If that is true, then perhaps a lack of profound knowledge and full understanding of the essence of forced labour limits our possibilities of taking action. Therefore, in moving away from defining forced labour in the language of law, I emphasise the importance of interpreting social reality as seen through the lens of social interaction and the stock of popular knowledge [32].

In this perspective, it is useful to employ symbolic interactionism, which has redefined the social order and raised the social status of the individual as a free, active and creative subject. Human action is not merely reactive but is performed on the basis of the ongoing definition of the situation [33]. Thus, in describing this action, the point of view of the acting subject must also be taken into account. This, in turn, fundamentally changes the social role of communication, which serves not only the transmission of content, but also the construction of reality. This way of thinking rendered possible the fundamental breakthrough in the description of society and the genesis of crime brought about by the Chicago School [34]. Yet what is most significant about symbolic interactionism is the role of meanings in stimulating human action. To put it simply, people take certain actions on the basis of meanings they learn in the process of social communication [35]. This rule applies also to social behaviour and allows us to ask: does forced labour mean the same thing to everyone? Without going into details, let us just say that it does not, as evidenced by the fact that not all forms of human trafficking and forced labour receive the same attention from politicians, experts and the media [36].

By contrast, if we were to look for the place of forced labour on the map of the twenty-first-century social mentality, we would notice that it is marginal. The modern world pays most attention to sexual exploitation, even though its scale is much smaller [37, 38]. Certainly, there are authors who note that the situation is changing and forced labour is gaining wider attention from researchers and analysts [39], yet this alters little. The public perception of the scale of the phenomena discussed here, but also of policies to combat forced prostitution and forced labour [40], are consistent with the trend outlined above.

This marginalisation is also confirmed by the data. Let us recall the gigantic difference between the estimated number of victims of modern slavery (40,000,000)

and the number of victims, which we know by name, because they were identified by law enforcement (100,000). But that's not all: it turns out that the vast majority of these people are victims of sexual exploitation and not forced labour [18]. Explaining this fundamental discrepancy is not difficult, as a victim of forced prostitution is far easier to identify compared to an enslaved and exploited worker. All police forces in the world monitor the sex industry because it is a useful source of operational information, although sex workers try to avoid contact with the police and often do not even report, for example acts of violence [41]. Nevertheless, establishing details of the status of sex workers for the police is not a particularly difficult task. The matter is even easier in countries where prostitution is illegal, as it suffices to arrest such persons from time to time to gain useful information. Invariably, another source of information are pimps, who—in return for tolerating their activities—act as informants to the police.³ Under these circumstances, identifying a victim of sexual exploitation is not a problem for the police, as long as the police are willing to do so.

It is much harder to identify a victim of forced labour, unless they are, for example in a labour camp, since there is no operational control over the labour market. Furthermore, the specific interest arrangement means that no one is interested in leaking information. There is on the one side a socially vulnerable migrant who wishes to earn money, and on the other, a dishonest employer who wants the migrant's cheap labour. Additionally, various 'discomforts', such as enslavement, loss of independence or lack of influence on the working conditions are treated as a price the migrant has to pay [43]. And finally, it ought to be noted that identifying a victim of forced labour is difficult because the labour inspection services in many countries are ineffective.⁴

Albeit this explanation could be satisfactory, it remains incomplete in the sense that it ignores the essence of the behaviour that is the subject of our interest. In search for said essence, it is worth looking at the problem with the above-mentioned 'humanistic factor' in mind [45]. To that end, we should refrain from defining sexual services and forced labour from the structural and normative perspective and instead adopt an interpretative, semiotic approach [46]. Then, the key category of description becomes the 'symbolic visibility' of those phenomena, that is their social meanings established in the process of social communication. Let us try to explicate how this system works.

Commercial sex is not 'welcome'/well taken in the symbolic sense, as in a manner, it is subject to individual experience in two ways. Firstly, because offering or buying sexual services, especially when they are illegal, is an obvious breach of a law. Anyone who does that commits a criminal/administrative offence. Therefore, it is relatively easy to collectively establish the meanings of such conduct. From this point of view, it is in fact irrelevant whether the sex worker was forced to provide their services or not. Secondly, commercial sex is a social taboo and subject to moral condemnation, even when it is legal. In that case, it is likewise easy to ascertain its negative value, which is determined by this moral judgement. If we adopt W. I. Thomas's theory that opinions and actions are the consequence of an interpretation and definition of a situation [47], then we tend to think of the sex worker as a sinner rather than a victim of coercion. This is true also because we cannot imagine how brutal (drastic) methods need to be used to force someone to provide sexual services.

The case of forced labour is completely different because we are dealing with its 'double invisibility'. The difficulty in eradicating forced labour as a criminal act

³ For more on the special position and role of pimps, see, for example [42].

⁴ For more about said effectiveness, see, for example [44].

stems among others from the fact that it is hard to distinguish from, for example the exploitation of another's labour taking place in corporations [48]. Unlike paid sex, forced labour is well hidden behind the façade of work, which in turn is something legal, and even very noble and commendable. There were, however, periods in world history when work was deemed a shameful and degrading activity [49]. Nowadays, at the level of meaning, we have no doubt that work is something good and expected. Yet forced labour is invisible also because those who profit from it do everything in their power to conceal it by employing subtle and sophisticated methods of enslaving and taking control over their workers. This goes equally for working conditions as well as remuneration and the legality of employment. In turn, a worker who, for example, has no work permit or no visa will do all in their might not to appear conspicuous to the authorities, but also to be invisible, including in the symbolic sense.

3. A new model of analysis and an attempt at a definition

The starting point for the present considerations was the observation that the interest in forced labour continues to be low and the progress in eradicating it—negligible [50]. On the other hand, we have ascertained that forced labour, in contrast to sexual exploitation, is less visible and successfully avoids recognition. Next, it has turned out that the knowledge we collect translates into concrete actions and increased effectiveness of prosecuting perpetrators only to a limited degree.

In my opinion, the solution to this problem should be sought on the side of collecting data about the phenomenon and the absorption of knowledge by public services, which demonstrate either insufficient determination or incompetence. Possibly, we need to look at the other side, as well, and ask about the quality of forced labour's image that we have. Perhaps the description and interpretation of the phenomenon are faulty and therefore incapable of convincing the authorities to change the state policy. Perhaps what we know fails to motivate society to act so that it can better identify victims and successfully support them. Thus, we draw attention to issues such as the limits of scientific cognition, the reconciliation of meanings of social phenomena in the communication process, and the intensity and style of the public debate on forced labour.

In this sense, it is well founded to ask: is the situation of a corporate employee who, under the pressure of their environment, takes out a loan to buy a flat in a 'better neighbourhood' and then works for 12–13 hours a day to pay it back essentially different from that of a Vietnamese who arrives in Europe and is exploited by their compatriots? Certainly, a question like that has a purely scholarly value, because, from the legal perspective, the answer is obvious. Yet is the legal perspective sufficient? I argue that it is not, which is why I am taking the liberty to outline a new perspective and propose a model of analysis that might be helpful in further studies.

It will be a five-element model of description and analysis of forced labour, which will make it possible to deepen the reflection on this phenomenon. When developing this tool, I departed from classic, legal definitions [3, 5] in order to approach the issue from a theoretical perspective I outlined in the introduction to this chapter, which is referred to as the humanistic perspective. Thus, rather than examine whether specific conduct of the perpetrators was human trafficking within the meaning of the Palermo Protocol [27] or forced labour pursuant to the ILO Convention [10], we will define the situation of the victim based on established social meanings. We will bear in mind, however, that these meanings are modified in the course of interpretation carried out by individuals in specific social situations [35].

In order to test the diagnostic value of the model, I will again juxtapose forced labour and sexual exploitation, but I will add forced begging to expand the area of analysis. These are namely the most popular forms of modern slavery.

The construction of my model begins with specifying what we understand by 'exploitation'. Aware that this concept raises considerable doubts and controversies [51], for the purposes of this argumentation, I will limit the issue to answers to two questions. First is the goal of the perpetrators to exploit the vital forces, body or intellect of the victim for their own benefit? And second, do the perpetrators take into account the deterioration of the victim's health and physical condition? These two questions reflect the evaluation criteria with regard to a specific situation. Those who have children work in a quarry exploit them consciously, but also take into account that the work will ruin their frail health. The goal of a corporation which forces a young person to work 12 hours a day is not to wreck their health, but to maximise its own profits. Regarding all three tested forms of human trafficking (sexual exploitation, forced begging and forced labour), the answer to both questions is positive.

The second element of the model is the phenomenon I call the 'façade'. What I understand by that is the existence or non-existence of a cultural curtain that conceals the analysed conduct, and in practice, not the conduct itself, but its negative manifestations. No such façade exists in the case of sexual exploitation, because work in the sex industry is culturally rejected regardless of whether it is legal or not. As for forced begging, the situation is similar. Civilisation-wise, a level of destitution that forces people to beg is difficult to accept. In turn, forced labour effectively hides behind the curtain of labour as such. A forced labourer wears no symbolic attributes of their status. Furthermore, work is the most expected and pro-social activity of the modern human [52].

As the third element of the model, I propose to use the phenomenon of 'cultural taboo', which removes some types of behaviour from society's and authorities' line of sight and brings out others. In almost all cultures, regardless of the model of legal regulations, paid sexual services are taboo based on moral judgement and social norms [53]. Yet that was not always so. In antiquity, in countries, such as Babylon, Phoenicia, Persia, Greece and India, widely respected sacral prostitution existed [54–56]. In some cultures and mythologies (Egypt and Japan), it was treated as a form of hierogamy, that is, sacral marriage [57]. The contemporary moral taboo has the consequence that individuals who provide such services completely openly, treating it as a way of life, are in the minority.

Begging, in turn, has the hallmark of extreme poverty, of which modern society is ashamed, and perhaps even afraid. The taboo against begging is a mixture of shame, sympathy and rejection of deviation [58]. Even if according to some religions, people are obligated to give alms, a beggar remains an evident sign that something has gone wrong in the construction of social equality.⁵

Work is not only free from any taboo; it is something noble, and in many cultures perceived as the most commendable way to achieve financial success. In some periods, it was even considered a condition for full membership of society [60]. Yet that was not always the case. In antiquity, work was something shameful, and even disgraceful. As a result, people who worked professionally were at the bottom of the social ladder. In the period of slavery, labour—as a burden and hardship—was offloaded on the

⁵ This thought is excellently put in words by Sandra Martyres in the poem 'The Silent Beggar' since 2007, see [59].

slaves, who were treated in some cultures (Greece) like talking tools [49]. It is only recently that work became a noble activity.

The construction of the model is completed with a fourth element, one which I refer to as the 'symbolic visibility' of the behaviour. It means its accessibility to the common perception of others and a specific openness of the behaviour to giving it meanings. We could say that symbolic visibility is an aggregate of the 'façade' and the 'taboo', where a lack of a 'façade' paired with a strong 'taboo' renders a type of behaviour clearly visible. It is fairly easy to accurately interpret forced prostitution and begging as types of behaviour characterised by a high degree of visibility and at the same time burdened with a cultural taboo. As for forced labour, which at the level of behaviour is deceptively similar to work as such—that is not the case. In order for this situation to change, some serious modifications in the mechanisms of giving meanings would be needed, for example for some reasons we would decide that begging was socially beneficial. This would firstly require fundamental transformations in the communication model as the source of meanings. Are modern societies ready for that, though?

Finally, the fifth element of the model is a variable that I provisionally call the 'level of subtlety of control measures'. Parents who have to encourage their children to study have a wide array of measures at their disposal, but seldom employ the most drastic ones. An employer who wants to boost the effectiveness of work, first of all, considers instruments from the spectrum of financial incentives. It is extremely difficult to force another person to provide sexual services against their will, as the sphere of individual sexuality is the most protected area of human activity. The unwilling are ready to sacrifice their health and even life on the altar of their own autonomy. It is possible to force such persons into prostitution only when the construction of the pressure mechanism renders it effective. That is the case, for example when the person becomes addicted to drugs or when the perpetrators make real threats against their family members. I do not know how many women are able to refuse to 'cooperate' with human traffickers when their children are threatened with beating or rape.

The situation with forced begging is not necessarily any less drastic. There was a case of a criminal group in Poland that forced women to beg together with children who were not their own [61]. The brutality of the control methods consisted of the fact that children were taken away from their mothers and begged with someone else. Consequently, the control was fully effective. The situation is completely different in the case of forced labour. Employers who expect to continue to exploit the victim's labour for a long time do all in their power to ensure that the mechanisms of enslavement and the establishment of dependency are as subtle as possible. Beating, starving or depriving of sleep are counter-productive and increase the risk of social visibility. The system of enslavement works very efficiently when control is effective and the social business environment is not in a position to recognise the signs of pathology in the treatment of workers. Furthermore, the system works perfectly when the workers themselves believe that what happens to them is necessary, and even right. For instance, they are foreigners and have violated the visa rules, and the employer nevertheless shows them 'kindness'. This effect of humility and engagement in work can be achieved not with violence or threat of violence, but with very subtle manipulation, as a result of which the worker does not even know anymore when they begin to spiral down the so-called continuum of exploitation [44].

4. Conclusions

N. Chomsky suggests that each employee is in some sense exploited and that many working people become 'wage slaves' [62]. I do not go that far, as I consider this view overly radical, but it certainly does delineate an area of possible analysis and show the seriousness of the problem. Albeit for years overshadowed by sexual exploitation, forced labour is drawing public attention worldwide.⁶

If mentioned by politicians and experts, it is usually presented as a problem of 'migration' threatening the economic stability of a country [63]. As it is often illegal migration we are talking about, forced labour is sometimes identified, or rather confused, with human smuggling [64]. And if so, it is perceived as one of the chief challenges for state security [64]. This is particularly the case because 'smuggling' and exploitation of labour entail criminal activity of well-organised syndicates involved in human trafficking [65]. A rather late addition to the analyses and studies on forced labour is the issue of dire 'working conditions' [66], which are an inherent attribute of modern slavery. Yet it was even later that the experts looked at it from a purely 'economic' perspective [67], which covers, among others, studies on the negative consequences of slave labour for market mechanisms. Another dimension of the economic approach is the perspective of the 'labour market' [68], and even more from the perspective of the need to protect the market from slave labour or the market's reaction to its presence. Although forced labour is most often found in private business, some part of it remains the domain of states [69]. There is hope, however, that the extent of labour imposed by authoritarian and totalitarian regimes ('state-imposed forced labour') will continue to shrink as the issue will be subject to political debate [68, 69]. Furthermore, it should be noted that the 'gender' perspective is increasingly present [70]. Its inherent attribute is the focus on gender and the psychological effects of enslavement.

The range of points of view presented above is wide, yet not complete, as it lacks an approach that has been discussed here at length and that was called the 'humanistic coefficient' by Polish sociologist Florian Znaniecki [45]. Our knowledge of forced labour continues to grow when we introduce in the debate the element of symbolic meanings imparted on actions, which is the essence of communication between humans. Following this train of thought, we should try to perceive forced labour as a form of sophisticated manipulation, which is so intensely present in modern society (witness: social media). Certainly, for this approach to make sense, forced labour should be seen not as merely a 'modern form of old slavery', but rather as a new, and even very 'modern' social phenomenon. A phenomenon where even adult and well-educated people are ensnared by criminals trading in human lot because they want to improve their life, because they trust sources of information (advertisements) uncritically, and because they believe in others' good intentions.

Conflict of interest

The author declares no conflict of interest.

⁶ An example of the growing interest of state authorities could be the British Modern Slavery Act 2015, the Duty of Vigilance Law ('DOV Law') passed in France in February 2017 or the Australian Modern Slavery Act 2018.


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Chapter 3

Perspective Chapter: Legal Definition of Modern Slavery

Kahan Onur Arslan

Abstract

In this study, first of all, the basic elements of the slavery phenomenon in general and the paradigm of slavery were tried to be discussed in order to understand the slavery phenomenon correctly. Following these explanations, a definition proposal has been made for modern slavery, which has not yet been defined in any national or international law text. This definition includes four essential elements that must be included in the definition of modern slavery: control, continuity, voluntas and exploitation. Beside this definition On the axis of this definition, a brief critique of other slavery definitions in the literature has been made. The desired result with these discussions and explanations in the study is to present a generally accepted road map that can be applied in the fight against modern slavery.

Keywords: slavery, modern slavery, exploitation, human rights, elements of modern slavery

1. Introduction

It cannot be said that the concept of modern slavery is a technical term accepted in terms of international law for the time being. Of course, this fact does not mean that the concept is not included in any legal document. For example, while the expressions of “today’s forms of slavery” or “today’s slavery practices” have been used frequently in the legal regulations in the United States for many years, the concept of “modern slavery” has started to be used in some regulations that have entered into force since 2015. Also, laws enacted in the UK in 2015 and in Australia in 2018 use the concept of “modern slavery”. However, in order to express this phenomenon in both legal texts and scientific studies; although different concepts such as “human trafficking”, “forced labor”, “slavery-like practices”, “global slavery” or “new slavery” are used, “modern slavery” is the most widely used concept [1, 2]. Therefore, while there is no consensus on the concept used to express this phenomenon, which I think is the last stage in the evolution of slavery (for now); it is not easy to find a satisfactory definition for international actors. However, in order to develop an effective action at the national, regional and global level in terms of combating modern slavery, first of all, a clear and widely accepted definition of modern slavery must be made. The effort to define modern slavery in this study basically aims to meet this requirement. However, as it is known, the issue of defining any phenomenon in social sciences is not an easy one. In this context, three basic problems that can be seen at first glance draw attention to the effort to make a reference

to modern slavery. Firstly, the question of whether modern slavery, embodied in many different practices, can be addressed with a single concept. Latter the possibility that many victims of modern slavery practices would be left out if the possible definition to be put forward was too narrow, for example, on the basis of purely proprietary powers, as in classical slavery. Third, there is the danger of diluting modern anti-slavery efforts if the possible definition is over-expanded to include, for example, violations of rights resulting from various forms of social injustice and/or poor working conditions, as the definition becomes blurred and vague, thus rendering the phenomenon meaningless.

2. Basic elements of slavery phenomenon

Slavery was seen as a “useful and indispensable” element of social life as one of the cornerstones of the economy, starting from prehistoric times and continuing until the twentieth century, and it was continued by gaining legal legitimacy within the state society structure. Although slavery gained different appearances mostly due to the transformation in production styles, it continued to be a part of economic and social life for thousands of years.

The concepts of “slave” and “slavery” have been used many times in almost all legal systems, from cuneiform legal texts to the legal texts of other ancient civilizations, from Roman law texts, which are considered the basis of many contemporary legal systems, to religious-based legal texts and to the legal regulations of nation states, but have not been defined. It was only in the first quarter of the twentieth century that a widely accepted legal definition could be made for slavery, which has been applied for thousands of years with different appearances in all these legal systems and is described as “classical slavery” in this study. According to this definition, which is included in Article 1 of the Slavery Convention of 1926 and which is taken as a basis by many current international documents on the subject, “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

As it can be understood from this definition, in the classical slavery approach, the situation or status of the person can only be considered as slavery if the property-related powers are available. The details of these powers, which were codified in the Slavery Convention and defined as property, were listed in a report on slavery published by the United Nations Secretary-General in 1953. According to this:

1. An individual can be made an object of purchase.
2. The master can use the individual within his absolute capacity to work without any restrictions.
3. The products produced in exchange for the individual's labor become the property of the master with no compensation commensurate with the value of the labor.
4. Ownership of an individual may be transferred to another person.
5. These status and conditions are permanent. That is, this status cannot be terminated by the will of the person subject to it.
6. These status and conditions pass automatically (*ipso facto*) to the descendants of the person subject to such status [3].

These results, which emerged in the context of the definition of slavery in the Slavery Convention and the powers exercised on the slave on the basis of this definition, can be sufficient and useful in terms of understanding and making sense of classical slavery. However, it is insufficient in terms of understanding the practices of “modern slavery”, which we describe as the present view of slavery that has been transformed over time.

This inadequacy is characterized as institutions and practices similar to slavery with the Additional Slavery Convention; but it could not be eliminated by expanding the scope of the prohibition by re-arranging it to cover debt bondage, servitude, forms of slave marriage and the abuse of children themselves or their workforce.

So much so that both the definition and the results of the powers used on the slave, which is reached on the basis of the definition; the use of property-related powers over the person and the related elements are no longer the absolute elements of slavery, within the framework of the conditions and requirements of the time. However, when the new type of slavery, which we describe as modern slavery, is examined, it can be easily seen that the basic element of slavery is neither the subject of property nor the existence of a legal status recognized in this way. These elements, which have been accepted as the basic element of slavery for thousands of years, are actually the results of slavery that emerged within the framework of the needs of the periods. Because in the social reality of all ancient civilizations that included slavery regulations in their legal systems, there are also countless masters who treat their slaves well beyond oppressing them. These slaves, who are treated well, have no problem with being the subject of property in most cases. Because people experience the discomfort of what they feel the pressure of. Throughout history, there are many examples of obedient slaves who were not shackled, surrounded and prevented from escaping, but still did not abandon their master and the circumstances. It should come as no surprise that a person who is treated well by his master and who, although a slave, is seen as a member of the family, part of the household population or work environment, is not uncomfortable with his status. Because for this slave, the status he is in does not create any pressure in itself. For most slaves, the legal status they are in is not disturbing as long as their basic needs for security, shelter, subsistence and similar are met and they are not mistreated. This status is an accepted status that can be based on learned helplessness from a psychological point of view and legality and legitimacy from a legal point of view. At this point, the main issue, which is a problem for the slaves both in terms of their social and economic situation and human rights, is that the master uses the individual within his working capacity, the product that comes out is included in the master's property without any compensation in proportion to the individual's labor, and the person has no will to end the situation he is in. In other words, when the slave believes that he does not get what he deserves, he begins to see this situation as an exploitation. It does not matter what the slave's right is or whether it is more or less. The important thing is that the slave feels deprived in terms of what he believes he deserves, that is, he realizes that he is exploited. If it is not possible to end this process with his own will, it will have consequences that will mean the person's social death.

From this point of view, it is seen that “exploitation” is the first essential element that always expresses the existence of slavery in both classical and modern slavery in the evolution of slavery. Of course, it cannot be concluded from this that wherever there is exploitation, as in slavery, it would not be wrong to conclude that exploitation is inevitable wherever there is slavery, with a reverse reading.

The main elements of exploitation, which is a reference to a general definition of slavery to include classical and modern slavery; it is the ability of the individual (with his labor and/or body) to be used within his absolute working capacity without any restrictions, and the products that come out without obtaining a compensation proportional to the value of the individual's labor become the property of the person who uses them. At this point, exploitation, which can occur in many different forms in economic and social life, also needs to be embodied in terms of the definition of the concept of slavery.

The most common form of exploitation that comes to the fore in slavery practices is undoubtedly "economic exploitation of the individual".

Considering the different aspects of both classical slavery and modern slavery, the most common type of exploitation other than economic exploitation on the enslaved person is "sexual exploitation". The exploitation faced by concubines, which are frequently mentioned in legitimate and legal slavery practices, those who are forced into prostitution, the majority of whom are women and children, and those who are forced into marriage for money or on the axis of traditional rituals, are examples of sexual exploitation. In fact, for those forced into prostitution, both sexual exploitation and economic exploitation occur at the same time.

The exploitation of war slaves who are forced into military service by being used as soldiers in conflicts and in hot contact or behind the front, or sex slaves who are offered to militants to increase their loyalty to ideology and therefore authority, is another form of exploitation. This type of exploitation can be described as "ideological exploitation".

In addition to these types of exploitation, it is also possible that slavery is linked to religion and that exploitation is based on religious motives. "Exploitation based on religious motives" can be seen in both classical slavery and modern slavery practices, as in other types of exploitation. For example, in the Law of Manu according to Ancient Indian law, it is written that the Sudras, which are at the bottom of the caste, were created by the God Svayambhu as slaves of the Brahmins (Manu VIII, 413). It is for this reason that the Sudras, whose slavery is by nature, cannot escape from slavery even if they are freed by their masters (Manu VIII, 414) [4].

Thus, a Brahman who uses a Sudra as his slave acts in accordance with the order of God Svayambhu and in this way provides spiritual satisfaction. Today, thousands of girls and young women in Southeast Ghana, Togo, Benin and Southwest Nigeria are given as slaves by their families to the pagan priests of that region for the purpose of exploitation based on religious motives. In these instances, according to a tradition that will probably seem very strange to us, girls are enslaved as atonement for sins committed by their own family members (of which rape is the most common of these sins) [5]. As can be seen, in this example, exploitation based on religious motives and sexual exploitation come together and two different types of exploitation occur simultaneously.

With all these different forms of appearance, "exploitation is an absolute element in the definition of slavery, but it is not the only element". At this point, the second main element common to both classical slavery and modern slavery is "control of another person". This element expresses a relationship of domination arising from the lack of free will of the exploited in the formation of the conditions leading to the exploitation of the person or the termination of this exploitation process. While this domination relationship is based on a legal property transaction in classical slavery, in modern slavery; it appears as a "de facto" control that is not supported by law and even constitutes a crime. But in both, the main tool used to maintain

this control is violence. Therefore, the control of another person and the violence or threat of violence that maintains that control play a central role in all forms of slavery. Therefore, a definition of slavery, classical or modern, which is devoid of the elements of “exploitation” and “control of another person based on violence or threat of violence”, does not seem possible.

3. The paradigm of modern slavery

Classical slavery practices cover two different systems. In the first system, slaves could survive if they devoted themselves to their masters. This relationship of dependence on throat satiety was mostly encountered in cases where the slave source was prisoners of war and enslavement of serfs. In this system, which was “beneficial” for both sides, the captive-servant was getting rid of death, and the owner was improving his economic situation thanks to this worker with low consumption. The second system was based on racial segregation. In this system, racial or ethnic differences were used to explain the existence of slavery and even justify it [6]. In these systems, the power holders based their legal and political justifications on these justifications in order to morally justify the decisions they took for economic reasons to maintain slavery.

In the modern slavery system, the concepts of captivity of war or apartheid no longer mean as much as they used to. However, the fact that these ideas that legitimized classical slavery have lost their validity over time does not mean that modern slave owners have not started to use new criteria to select their slaves. Today, we see that the most important criterion used by modern slave owners when choosing their slaves is “personal vulnerability”. It is the economic, social, political and cultural conditions that make people vulnerable to slavery [7]. What matters today is not “how suitable the skin color, ethnicity, religion of the enslaved people are to be slaves”. The basic qualities that modern slave owners look for in their potential slaves: It is “being so pure, weak, poor and deprived that one can be deceived”. In addition, there is no need to legitimate this justification nowadays. Because, unfortunately, in the modern world, the morality of money itself has reached the power to smash many other concerns in life. For this reason, most modern slaveholders do not even need to explain or defend their chosen method of exploitation of labor. Those who use modern slaves enslave these people for profit, not to mistreat them. As a result, since modern slavery is much more profitable than classical slavery, the size of the final figure after incomes are deducted can be accepted as a valid excuse for everything for modern slave owners [5].

Today, the modern slavery system manifests itself in unregistered economic practices created by the mafia and terrorist organizations, sometimes seeing people of a certain race as belonging to a lower social class, mostly based on the cheap labor needs that capitalism needs [8]. This new slavery system, including but not limited to; human trafficking, trafficking in women subject to sexual exploitation, forced marriage, transfer of a woman by her spouse or her husband’s family or her own family to someone else in exchange for money or in line with different traditional rituals, exploitation of child labor, sexual exploitation of children, being used as a soldier in conflicts, debt slavery, domestic slavery and exploitation activities related to racism are carried on in the axis of many different practices [6]. Modern slavery, which includes many of the most serious human rights violations, including extreme economic exploitation, severe discrimination and coercion, may not always be

detectable at first glance, as it is often created through complex and dark relationships [9, 10]. This situation makes it difficult to reveal a clear picture of modern forms of slavery, to punish the actions that cause this phenomenon and to eliminate this problem.

In Bales's words, slavery; it has now turned into an "attractive" business field, and contrary to popular belief, slavery is not decreasing, the number of slaves is increasing day by day [5]. Today, modern slavery is part of the modern global economy and is somehow in our lives whether we are aware of it or not.

4. A proposal for a legal definition of modern slavery

When the studies on modern slavery are examined, it is seen that the majority of these studies prefer to focus on the practices that can be considered in the category of modern slavery, their sources and common features, rather than the definition of the concept. In this respect, modern slavery studies generally appear as a large corpus consisting of thousands of pages that contain many determinations about the concept but avoid defining the concept. The concept of modern slavery is not defined in national and international legal documents. For this reason, attempts to define modern slavery have been limited to the efforts of some non-governmental organizations and a few academics fighting modern slavery.

Nevertheless, it can be said that contemporary politics, international documents, activists and scientists have been able to reveal the image of modern slavery with modern slavery approaches. Although different approaches to this image vary in terms of some elements of the image, it is seen that there are three common elements in the denominator of the image. These; One person's control over another is the involuntary aspect of this control relationship and exploitation [7].

But this compromise, which seems to have been achieved in the image of modern slavery, is out of question when it comes to defining the concept. However, as in the fight against any problem, it is clear that a consensus should be reached on a definition related to the concept in order to fight modern slavery. For this reason, I will try to put forward an original definition proposal, with its justifications, in order to express modern slavery, in the hope that it will contribute, albeit in a small way, to meeting this requirement. In order for this definition to be able to develop an effective action at national, regional and global level in the fight against modern slavery; I care about the possibility of benefiting both researchers, administrative authorities and judicial bodies.

In this context, a modern definition of slavery appears to have the following characteristics:

- the definition should cover all the different aspects of modern slavery.
- the definition should not be so narrow that it excludes potential victims.
- the definition should not allow for a broad interpretation that would dilute the efforts to combat modern slavery by rendering the phenomenon of modern slavery meaningless.

In this context, I can express the four elements that I think must be present in any modern definition of slavery (**Table 1**):

	Name of element	Context of element
1	Control	Existence of control over the person, established through the exercise of proprietary powers, which deprives the person of his or her individual freedoms to a great extent.
2	Continuity	Maintaining control over the person throughout an ongoing process, not a one-time action.
3	Voluntas	The insignificance of the will of the person at the point of ending the control over him/her.
4	Exploitation	Control over the person for the purpose of exploitation.

Table 1.
Essential elements of the definition of modern slavery.

Of course, it can be argued that others should be added to these elements while defining modern slavery. Since I think that there is some justification for this view, I chose to characterize the elements in the table above as “elements that must be included in the definition”. However, I would also like to point out that I am concerned that the addition of elements required for the definition that are not necessarily necessary to explain modern slavery and are applicable only to some instances of modern slavery will only add to the confusion about the concept. Therefore, I prefer to formulate the definition I am going to propose to include only these four absolute elements. Of course, there will be different forms of expression that include these four elements; however, at this point I propose to define modern slavery as:

“The situation, in which, for the purpose of exploitation, a person is systematically detained over time being deprived freedom, getting his/her consent in control due to desperation and authentication opportunity, by violence and trickery, physical or verbal menace, abuse of authority.”

5. Critique of different definitions of modern slavery

I think that a definition that does not include any of the elements in the definition I have proposed may be useless to understand the modern slavery phenomenon “as it is”. I will try to defend this view by examining the major modern definitions of slavery in the literature.

For example, let us take the definition of the 1926 Slavery Convention, which is at the center of all descriptive debates in international legal texts. In the Convention, the definition of slavery is formulated as “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. In this definition, we can only reach the control element in the table through judgmental and scientific interpretations [11, 12] that suggest that the definition should be re-read in accordance with today’s conditions. We see that the elements of continuity, voluntas and exploitation in the table are not included in this definition. In this case, even if the definition of the Slavery Convention is reinterpreted according to the conditions of the day, it is insufficient to cover some examples of modern slavery and remains broad enough to cover some situations that do not constitute slavery.

In this context, in the simplest form of the powers related to the property right, I will try to test this definition in terms of various examples, remembering that they have the authority to *usus, fructus and abusus* [13].

This is a basic function in terms of the period when it is possible to establish legal property rights on the person and legitimate and legal slavery is in question. However, when it comes to modern slavery practices encountered in modern legal systems where it is not possible to establish legal property rights on the person, this basis will be dysfunctional in determining slavery.

For example, the ECHR, in its assessments on slavery, prefers an interpretation that is closely tied to the definition of slavery in the Slavery Convention. According to the ECHR, only if the “authorities related to the right to property over the person” in the definition are legally recognized, a violation of the prohibition of slavery in paragraph 1 of Article 4 of the ECHR may be in question. Therefore, since it is not possible to establish a legal property right over a person in the legal systems of the states party to the ECHR, the ECHR has not detected “slavery” in any of the applications it has examined so far.

Also, for example, in a business relationship established between the employee and the employer, the employer earns a profit on the labor of the employee in relation to the subject of work. It is clear that this situation is “fructus”, which is one of the powers of ownership. In addition, this authority provides the employer with a control over the worker. However, if this benefit is carried out in a way that is not contrary to a lawful contract established between the employee and the employer and the employee is paid a fair wage for his labor, it will not be considered as slavery in any way. However, when this example is examined through the definition of the Slavery Convention, it may seem as if the worker is a slave as “a person on whom any of the powers related to the right of property are exercised”. Because, in the definition of the Slavery Convention, it is not mentioned that “control over the person should be of a nature that would deprive the person of his individual freedoms significantly.

Another important deficiency in the definition of the Slavery Convention is that it does not include the element of continuity. In fact, the expression “status of the person” in the definition expresses a continuity with a legal basis. However, as I mentioned above, this continuity does not make sense in terms of contemporary legal systems where the status of slave is not legally recognized. The expression “(person's) situation” in the definition does not always contain a continuity. For example, it cannot be said that a person who has been subjected to the act of rape once is in a state of slavery. However, a person who has been subjected to a pervasive and repeated rape can be characterized as a kind of modern slave throughout the continuum of his situation. Or, it is clear that a person who is forced to do something that will happen immediately for the exploitation of his labor and does not have the will to get out of this situation is subjected to forced labor, but this case has not yet turned into slavery. However, if forced labor in this way turns into a serious, continuous and intense deprivation of individual freedom, with different behavioral patterns that have an exclusionary effect on the will, depending on the main purpose of exploitation, then slavery should be mentioned. In both cases, victims are in the position of “a person to whom any or all of the property rights are exercised” in the definition of the Slavery Convention. However, as it is tried to be explained in the examples, this situation they are in cannot be described as modern slavery in every case.

In addition, the fact that the control over the person has the purpose of exploitation and the fact that the will of the person is unimportant in the termination of control is not included in the definition, which distracts the definition from the reality of modern slavery. For these reasons, we can say that the definition of the Slavery Convention is insufficient in terms of covering modern slavery practices in its current

form, and that with its interpretation in accordance with today's conditions, it widens the scope of modern slavery too much and obscures the concept.

The second definition I will examine is that of the Walk For Free Foundation, a non-governmental organization that conducts significant global work on modern slavery. WFF modern slavery It defines it as an umbrella concept that expresses "the situations of exploitation that a person cannot refuse and cannot get rid of because of threat, violence, coercion, abuse of power or deception" [14]. Essentially, this definition includes the three elements I have identified, namely control, exploitation and will. However, this definition does not include the element of continuity. For this reason, the definition of WFF may be insufficient in terms of covering all the appearance forms of modern slavery.

Bales, on the other hand, defined modern slavery as "the detention of a person by violence or threat of violence for the purpose of economic exploitation" in his definition, which he accepts as extremely general [5]. But in a more recent study by Bales, co-published with different authors, modern slavery is defined as: Modern slavery is a relationship in which one person is controlled by another through violence, threats of violence or psychological coercion, loses free will and is deprived of freedom of movement, is economically exploited and is paid nothing but a living wage [15].

The fact that the element of exploitation is limited to only economic exploitation in both of Bales' definitions is the most important problem faced by these definitions in terms of meeting all the appearance forms of modern slavery. If these definitions are taken as a basis, sexual exploitation by forced marriage in the axis of traditional rituals, ideological exploitation by being used as a soldier in conflicts and people enslaved as a result of exploitation with religious motives will be excluded from the scope of modern slavery. Apart from this, we see that in both definitions of Bales, the element of continuity is ignored. For this reason, I have to say that Bales' definitions are not definitions that will cover the whole of modern slavery practices, even though they include a narrow-scoped element of exploitation along with control and voluntas elements.

Known for his expertise in immigration law and international humanitarian law, Piotrowicz prefers to define the modern slavery as: "the control of a person by another person using violence, threats or psychological pressure, and as a result economic exploitation of the person resulting in the loss of free will and freedom of action" [16]. As such, just like in Bales' definitions, this definition, which includes the elements of control, will and limited exploitation, is incomplete in terms of defining the modern slavery phenomenon, since it does not include the element of continuity and limits the element of exploitation to only economic exploitation.

In a study recently published in Turkey, modern slavery, we see that it is defined as "the human will being weakened by deception, deception or coercion, and being forced to stay permanently in situations where it cannot save itself from the exploitation of its labor and body" [17]. This definition, formulated by Ogün Usta, differs positively from all other definitions, especially in that it includes the element of continuity. This definition, which I think is sufficient in terms of control, exploitation and will, is open to criticism because of the weakness in the expression "the human will ... weakening". So much so that, when examined semantically, the expression "weakening the will" still indicates the existence of a certain degree of will, together with the weakening of the will. However, for people who are faced with modern slavery, it is necessary to talk about not weakening their will, but taking away their will completely, that is, the elimination of their will completely.

Therefore, in fact, I can say that if the definition of the Master is rewritten with a stronger expression such as “the abolition of the will” rather than “the weakening of the will”, it can be a definition that fits the elements I have identified and covers all the manifestations of modern slavery.

At this point I am concerned that the conclusion has been drawn that I have argued that the only and best definition of modern slavery is the one I have made. Of course, all definitions of the concept can be considered as “adequate” by the authors who wrote these definitions. In this study, I need to remind you that the qualifications I have made regarding the above definitions such as “incomplete” and “inadequate” are based on the criteria included in the table of “Elements that must be present in the definition of modern slavery”, which is also tried to be put forward by me. Therefore, it is clear that all the characterizations put forward regarding all these definitions are of a relatively subjective nature. Nevertheless, I would like to state that I hope that these criticisms can contribute to the development of an effective fight against modern slavery at the international and national level, at least in terms of definition.

Abbreviations

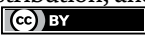
ECHR	European Court of Human Rights
ICTY	International Criminal Tribunal for the Former Yugoslavia
WFF	Walk Free Foundation

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Chapter 4

Reincarnation of Slavery: Realities and Experiences of Indian Efforts to Combat Human Trafficking

Barsa Priyadarsinee Sahoo and Vineetha Sivakumar

Abstract

The crime of trafficking in persons needs to be understood as a serious crime and a grave human rights violation. Every year, thousands of men, women, and children fall into the hands of traffickers in either their own countries and/or abroad. As part of its commitment to combat human trafficking (HT), India has ratified various international conventions and enacted its own domestic frameworks. In addition, the efforts of the Government in terms of commitment to the international convention can be seen in terms of the establishment of Anti-trafficking Human Units post-2011. The draft bill of The Trafficking in Persons (Prevention, Care, and Rehabilitation) Bill, 2021, is still pending in parliament. In this context, a review of the existing efforts to combat trafficking in human beings is essential. The chapter highlights the existing discrepancies and evaluates the lacuna in policy implementation, based on secondary data. The chapter will also highlight the nature and magnitude of HT, along with vulnerability factors.

Keywords: human trafficking, slavery, human rights, vulnerabilities, India

1. Introduction

Trafficking in persons has been a concern to the international community as it results in profound violation of the human rights of its victims. Conceptually human trafficking includes “the criminal practice of exploitation of human beings where they are treated as commodities for profit and after being trafficked, are subject to long-term exploitation” [1]. Traffickers tend to interfere with the basic rights of victims, ranging from the right to make decisions, move freely or choose one’s employment to affect their life and individual dignity. The concern becomes graver as the extent of human rights violations to which victims of human trafficking are subjected are both unimaginable and unbelievable [2]. Global attention to the issue of trafficking was acknowledged with the adoption of the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution (1951), which remained the only convention for addressing the issue for almost a period of 50 years. Further, initiatives to combat trafficking in persons were followed by the anti-trafficking movement by Global North Feminist movements, the SAARC Convention on Prevention of Trafficking in Women and Children for Prostitution (2002), and

the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children (1998), a protocol to the United Nations Conventions Against Transnational Organised Crime (2000).

2. Understanding modern-day slavery

Historically, the crime of human trafficking has been associated with the trafficking of women and girls for prostitution. Evidence of this understanding can be seen as the first international instrument in which the word 'traffic' or 'trafficking' is used related to persons is the International Agreement for the Suppression of the White Slave Traffic (1904). In Western countries, human trafficking has been conceptualized and analyzed as a form of slavery, as many-a-time these terms are also used interchangeably. The evidence of a large number of victims for the purpose of sexual exploitation and the related human rights violation is what resulted in making the comparison between human trafficking and slavery.

The patterns of exploiting someone without their consent are the common factors that bring parallels between forced labour, child labour, bonded labour and slavery. Even though legally, slavery and human trafficking are different, there are certain common elements in them that make trafficking in persons to be considered as 'modern-day slavery'. For understanding the similarities of both, an analysis of both definitions is mandated. The Slavery Convention (1926) defines slavery as a "status or condition of a person over whom any or all of the powers attaching to the right of ownership is exercised" [3]. The phrase 'right of ownership' can be interpreted as 'the absolute control the owner has over what he/she owns', typically involving the ability to control a 'thing' that is being possessed or owned. In that sense, slavery provides the ability to the owner to control another person in the same way as controlling a thing that they possess [4]. The exercise of such control can be through threats of violence, coercion or deception, resulting in the deprivation of individual liberty to the slave [4]. In addition, the sense of possession provides for an ability to buy and sell.

The system of slavery attaches a right of ownership or possession, which could be understood as an ability to engage in transactions. That means the system of slavery also provides the master to use his/her slave as an object of the transaction. Another aspect of this ownership is the 'ability to use the slave' in a way where there is a determinant of control which is tantamount to ownership or possession. This 'use' indicates obtaining benefits, either monetary or any other gratification, from the services of the person. Another feature of use and possession is the ability to manage, directly and indirectly, the activities of the person by isolating them from their social relationships, forging a new identity for them, or compelling them to follow an alien religion, confine to a place of residence or marriage or a particular language. The power to transfer property or possession is another feature that is distinct from slavery. When considered as a property, it offers the right to the possessor to dispose of, mistreat and/or neglect the possessed. A feature that makes slavery distinct is the inability of the enslaved to establish that the person was enslaved.

The factors that are critical while drawing this similarity between trafficking in persons and slavery include elements of 'consent' and 'exploitation'. The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) which is supplementary to the UN Convention against Transnational Organised Crime (2000), defined trafficking in persons under Article 3(a). According to this definition.

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs [5].

From this definition, it can be understood that, similar to slavery, the people who are trafficked experience a sense of helplessness under the possession of the traffickers. According to the above-stated definition, there are three elements of trafficking in persons; (i) the action (which includes recruitment, transportation, transfer, harboring or receipt of persons), (ii) the means to achieve the Act (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (iii) the purpose of the intended action (i.e., exploitation). The victim's consent is irrelevant in cases of trafficking in persons. The use of threat or force or coercion or deception to secure control over the person makes it similar to a slave system. The traffickers possess complete control and exploit the traffic, which could also be similar to that slavery. Further, the purpose for which people are trafficked includes various forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Similarly, slaves were also used as manual labourers, for sexual exploitation, etc., which also draws parallels between both. In this context, post-nineteenth-century trafficking in persons could be equated to modern-day slavery [6]. The reality that human beings are obtained, sold and transferred for whatever purposes, which reduces their life to total misery, is what makes it similar to the slave trade [6].

3. Trends of human trafficking: a global scenario

Despite international efforts to combat it, a large number of people are trafficked around the world. Every year, thousands of men, women and children fall into the hands of human traffickers, either in their home countries or elsewhere. Technically, most countries around the world are dealing with this issue because they are either the origin, transit, or destination of victims [2].

The Global Report on Trafficking in Persons 2021 [7] provides a detailed picture of the trends and patterns in trafficking across the globe. Data indicates the highest level of trafficking in persons from Western and Southern Europe (approx. 11,800 cases) followed by Northern America (approx. 9300 cases), of which victimization of women and children shows an upward trend. In 2018, it was found that of every 10 people trafficked, about 5 were women and 2 were girls [7]. Children, both boys and girls, form one-third of the overall trafficked population, while 20% are adult males.

Examining the trend in the age and sex of victims in the past 15 years, it is found that (**Figure 1**) the number of adult women who are being trafficked is declining while the number of children is increasing rapidly to over 30%. Data also show that the number of boys who are rescued from traffickers is also increasing when compared to that of girls.

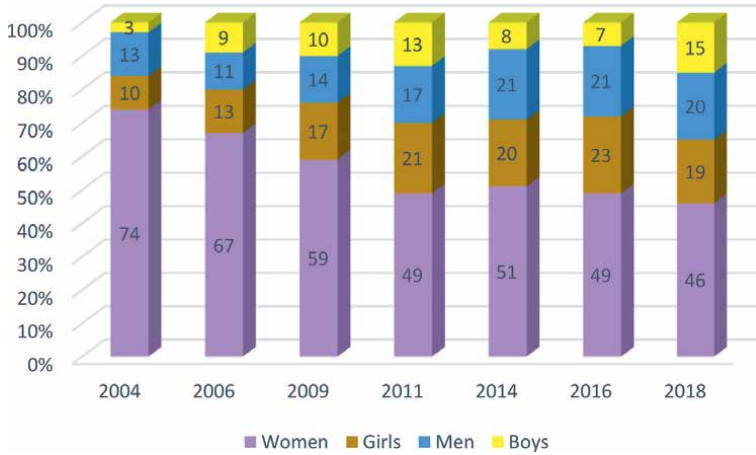


Figure 1. Trends in age and sex profiles of detected trafficking victims, selected years [7]. Source: UNODC elaboration of national data.

The 2018 United Nations Office on Drugs Crimes (UNODC) data reveal that 77% of women victims reported being trafficked for sexual exploitation, whereas 67% of men victims reported being trafficked for forced labour. However, this does not mean that men are not trafficked for sexual exploitation or women are not trafficked for forced labour. “When 14% of women are trafficked for the purpose of forced labour, 17% of men are trafficked for sexual exploitation, making it the second largest purpose for which both men and women are trafficked.” In the same way, 72% of girls are reported to be trafficked for sexual exploitation, while 66% of boys are trafficked for forced labour in 2018 [7]. The same pattern can be observed in the case of boys and girls, 21% of girls are trafficked for forced labour, while 23% of boys are trafficked for sexual exploitation. Globally, around 50% of the victims are trafficked for sexual exploitation, while 38% are trafficked for forced labour. Statistics since 2015 show that the share of persons trafficked for sexual exploitation is decreasing while other forms like forced labour, engaging the various types of criminal activities [7], begging, etc., are on the rise.

3.1 Trends of human trafficking in India: NCRB

The National Crime Records Bureau (NCRB) report demonstrates a huge drop in cases related to trafficking of persons in India in the last 5 years. The incidence of human-trafficking cases in India was 2848 in 2009, reaching around 8132 in 2016, dropping to 2189 in 2021. Can this drop be attributed to the anti-trafficking efforts in India? A report published in Reuters in 2019 attributed the fall in numbers, not to an increase in vigilance, but to the change in the mode of operations of the perpetrators who have learned to circumvent law enforcement officers [8]. Digvijay Kumar, a civil-society member from the Institute for Development Education and Action, states that “Traffickers have changed their mode of operating, discarding known routes and finding new ones... In many cases, the police are not registering cases under trafficking laws” [8]. The decrease in numbers could also be attributed to inaccuracy in the sources from which data is collected.

Based on the data provided by NCRB, **Table 1** describes the trend of human trafficking in India from 2016 to 2021. As shown in the table, in the year 2016, the number

Year	Cases reported in India	Karnataka	Rate of trafficking
2016	8132	404	5.0
2017	2854	31	1.1
2018	2278	27	1.2
2019	2260	32	1.4
2020	1714	13	0.8
2021	2189	13	0.6

Source: NCRB data for the year 2016, 2017, 2018, 2019, 2020 and 2021.

Table 1.
Trend of human trafficking in India 2016–2021.

Year	Number of cases in Karnataka as per NCRB data	Number of cases	Arrest made	Convictions
2017	31	178	222	10
2018	27	146	185	0
2019	32	155	190	0
2020	13	119	136	0
2021	NA	134	205	0
2022 (till Feb)	NA	31	34	0
Total	103	763	972	10

Note: Answer by the Home Minister to the question of K.T. Gowda in Legislative Council of Karnataka.

Table 2.
Trend of human trafficking in Karnataka 2017–2022.

of human-trafficking cases reported was 8132 and the number of cases reported in the year 2021 was 2189. Though the table shows a steady decline in the reported cases over the last 5 years in India, the number of cases has increased in the year 2021 as compared to 2020 with the addition of 475 new cases. Experts predicted that COVID-19 has limited the economic and livelihood options for people, which may make people more vulnerable to traffickers. However, the data for the year 2020 paints a different picture. This may be due to the unavailability of data for the year 2020. **Table 2** shows the disparity in numbers provided in the NCRB data and the actual figure presented in the Legislative Council in the State of Karnataka, India.

Even the trend of trafficked victims provided similar results as presented in **Table 3**. This table has mapped the gender of victims trafficked in India to assess whether sex trafficking tops the Indian statistics, similar to the global figures.

It is not at all surprising to see that each year, more female victims are trafficked as compared to male victims as “sexual exploitation for prostitution” comes out as one of the major purposes of trafficking for all the years (**Table 3**). As presented in **Table 3**, in the last 5 years, the number of trafficked victims is more for the purposes of forced labour, sexual exploitation for prostitution and “other reasons.” Though it is not clear what constitutes “other reasons,” the number of victims trafficked for other reasons is higher as compared to victims trafficked for domestic servitude, forced crimes, petty

Year	Total	Male	Female
2016	15,379	5229	10,150
2017	5900	2362	3538
2018	5788	2069	3719
2019	6616	2537	4079
2020	4709	1912	2797
2021	6533	2471	4062

Source: NCRB data for the year 2016, 2017, 2018, 2019, 2020 and 2021.

Table 3.
Victims trafficked in India from 2016 to 2021 by Gender.

crimes and others. Out of the total victims (6533) trafficked in the year 2021, 44% (2704) are trafficked for the purpose of forced labour, 33% (2049) are trafficked for the purpose of sexual exploitation and prostitution, and 12% (753) are trafficked for other reasons.

4. Factors contributing to trafficking

Factors contributing to trafficking in person are complex and vary from country to country. Although there is a tendency to attribute the causal factors to the economy, global figures show that this crime occurs both in developed and underdeveloped nations. However, the vulnerability of people in developing countries is much higher [9]. Generally, trafficking occurs from countries that are economically, politically and environmentally weaker to those where the relative quality of life is better. Literature on this crime identifies certain specific factors that contribute to trafficking, including poverty and unemployment, globalization of economy, feminization of poverty and migration, non-inclusive development strategies, armed conflict situation, gender discrimination, law and policies on migrant labour and migration, law and policies on prostitution, corruption, cultural and religious practices, etc. [10]. Many other studies also suggest that economic factors can add to susceptibility to trafficking in persons [11–14]. The 2018 report also shows that recruitment of the victims is characterized by demand for economic resources and basic survival needs, including food, shelter, and healthcare [7].

People who are subjected to trafficking get exploited in an ample way at the hands of traffickers. Many-a-times, the nature of exploitation cannot be classified under straight categories. A victim could be subjected to multiple kinds of exploitation. The NCRB data also captures the purpose for which persons are trafficked.

People who are subjected to trafficking get exploited in ample ways at the hands of traffickers. Many-a-time, the nature of exploitation cannot be classified under straight categories a victim could be subjected to multiple kinds of exploitation. The NCRB data also captures the purpose for which persons are trafficked. It is not at all surprising to see that each year, more female victims are trafficked as compared to male victims as “sexual exploitation for prostitution” comes out one of the major purposes of trafficking for all the years (**Table 4**). As presented in **Table 4**, in the last 5 years, the number of trafficked victims is more for the purposes of forced labour, sexual exploitation for prostitution and “other reasons.” Though it is not clear of what

Purpose of human trafficking	2021	2020	2019	2018	2017	2016
Forced labour	2704	1425	1141	1046	1657	10,509
Sexual exploitation for prostitution	2049	1466	2080	1922	1257	4980
Other forms of sexual exploitation	0	0	0	0	0	2590
Domestic servitude	475	846	364	143	1113	412
Forced marriage	182	187	227	220	240	349
Petty crimes	32	11	13	7	9	212
Child pornography	5	14	0	154	0	162
Begging	7	10	68	21	358	71
Drug peddling	0	0	0	0	0	8
Removal of organs	6	0	4	6	0	2
Other reasons	753	694	2674	1745	2137	3824

Source: NCRB data for the year 2016, 2017, 2018, 2019, 2020 and 2021.

Table 4.
 Purpose of human trafficking from 2016 to 2021.

constitutes “other reasons,” the number of victims trafficked for other reasons is higher than victims trafficked for domestic servitude, forced crimes, petty crimes and others. Similar results can be seen for the year 2021, as represented in **Figure 1**. Out of the total victims (6533) trafficked in the year 2021, 44% (2704) are trafficked for the purpose of forced labour, 33% (2049) are trafficked for the purpose of sexual exploitation and prostitution, and 12% (753) are trafficked for other reasons.

Figure 2 demonstrates that forced labour constitutes India’s largest trafficking problem [15]. Traffickers use debt-based coercion (bonded labour) to compel men, women, and children to work in agriculture, brick kilns, rice mills, embroidery and textile factories, and stone quarries. Traffickers often target those from the most disadvantaged social strata. The traffickers lure the victims with better life facilities by way of moving to cities that provide employment opportunities. As reported by Gouri Lankesh News Desk (2020) [16], eight Adivasi women were trafficked from Jharkhand to Bengaluru via Delhi in September- October 2019 with the promise of

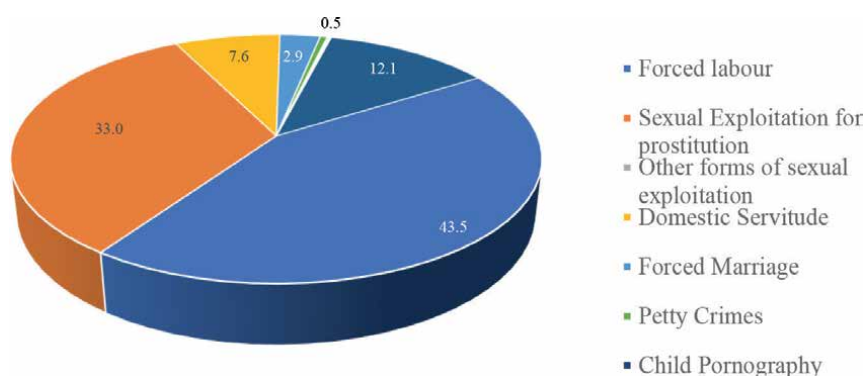


Figure 2.
 Purpose of human trafficking 2021. Source: NCRB data for the year 2021.

a job in an incense factory with monthly wages ranging from 7000 to 9000 rupees. However, after joining the factory, they were made to work 15 hours a day. In their attempt to escape from the factory, their Aadhar cards were snatched away from them and were reported to have been raped repeatedly in the same factory premises. Until October 2020, when they finally escaped from the factory, they were only paid Rs 200 per week with only two meals a day.

Some traffickers lure poor parents to sell their children to provide their children with a better future. In a case reported by Indian Express (2021) [17], Bengaluru police arrested an interstate infant trafficking gang and rescued 15 children. As reported by Bengaluru police, the gang had sold 28 infants for an amount ranging from 3 lakh to 20 lakh rupees. The traffickers would take children as old as 10 days to 1 month from poor parents and sell them to childless couples. In some cases, they would promise couples to get babies cheaply through surrogacy and collect sperm and later return after 10 months with a baby, sometimes with fake medical records of a surrogate mother. As the surrogacy procedure costs somewhere between Rs 15–20 lakh, many childless couples were lured by the gang's offer of a baby at a cheaper cost.

In India, traffickers exploit millions of women and children for sexual exploitation. An 11-year-old girl from AP was trafficked and sold to a brothel in Pune where she was repeatedly raped, starved, and injected with oestrogen and finally died of full-blown AIDS [18]. These women, weakened by starvation and ignorance, are easy prey for predators who transport them to cities where they are exploited.

Another girl Nadira, 22 years old from Mumbai narrates a similar experience to the police as reported in Deccan Chronicle (2018) [18],

“I lived with an ‘aunty’ in Mumbai. She was very abusive. I ran away from her home and landed in a government home. I escaped from there also after a boy I met on Facebook promised to get me a job in Bengaluru. He even bought my flight tickets. Here, I was received by some men, who were his agents. They took me to a PG accommodation in R.T. Nagar, which was full of young girls. All of them worked in dance bars in and around Majestic area. They were trafficked like me.”

Traffickers target Indian women and girls but also fraudulently recruit significant numbers of Nepali and Bangladeshi women and girls to India for sex trafficking. In a case reported by a Bangalore-based NGO, a Bangladeshi couple, aged 17 (husband) and 18 (wife) years old, was brought to India on November 29, 2021. After reaching Bangalore, they realized they were trapped in the name of a Shopping Mall job. They were beaten badly and were subject to several types of exploitation. The girl was desperately trying to contact Bangladeshi authorities to be rescued, not knowing a single word of Hindi, English and Kannada when she was finally rescued by the NGO [19].

Another purpose of human trafficking in India is domestic servitude. As reported by photojournalist Smita Sharma (The New York Times, 2017) [20], girls as young as 10 years are trafficked for domestic servitude. Those girls who are not in demand in the sex industry due to their skin color and body (e.g., too dark and skinny) are sold as domestic slaves. They were kidnapped, sold to placement agencies and then put in houses for domestic work. In a similar case,

“a mother of three who was a victim of domestic violence went to her mother for safety. But her mother couldn't take her in. That's when a man promised her a good job in the city. Instead, she was sold into servitude and placed in a house. It took a

year before the woman broke down and told her employers how she had ended up in their home” narrates Smita Sharma.

Personal circumstances like low levels of literacy, awareness and lack of information can also make individuals vulnerable to trafficking. Women and children with disability are more vulnerable and become easy targets. Fragile or dysfunctional family relationships, marital discord, experiences of physical and sexual abuse, gender discrimination, family pressures, desertion by husbands, etc., make women more vulnerable than their counterparts. Studies also reveal that unmarried, divorced, separated or widowed women are more vulnerable than married women. Other structural factors that influence trafficking in persons include industrialization, globalization, urbanization, economic crisis, privatization and liberalization, policies to promote tourism, commercialization, loss of traditional livelihood and inflation, etc. [2]. Further inadequate or faulty laws, poor enforcement of laws, minimal chances of prosecution and ineffective penal policies, the nominal probability for prosecution, high levels of corruption, less awareness, debates on the gravity of the matter and a lack of legislative will to develop and implement policies towards protection to victims also facilitate the crime [2].

The Global Report on Trafficking in Persons [7] states that even though the crime of trafficking is found in most countries in the world, it tends to remain hidden with perpetrators operating in a highly sophisticated manner exploiting the loopholes in the cyber laws and the disparities in the global economic distribution. It is to be acknowledged that even though spread across the globe, this crime remains hidden as the perpetrators operate in a highly secretive manner hiding deep beneath the economy and exploiting the vulnerabilities of the victims. Literature also suggests that victims of trafficking undergo a range of human rights violations [21] both at the hands of the perpetrators of trafficking in persons and the criminal justice system, although the nature of victimization varies [22], and hence this crime becomes a grave concern.

5. Legal framework to curb trafficking in persons in India

While India ratified the Protocol [5] in 2011 and has anti-trafficking legislation, enforcement of this legislation is inadequate. This is not a situation limited to India. Among the 132 countries that have ratified the Convention, 15% did not record any conviction and 40% had less than 10 convictions for the offense of trafficking in persons between 2010 and 2012 [15]. The report of 2016 also shows a similar trend [23]. The number of convictions in India for this crime during the past 5 years is not also that great (refer to **Table 2** for conviction rate). This calls for an evaluation of the existing legal framework to address the trafficking of persons in India.

The supreme legislation governing citizens' rights in India is the Constitution of India, which has recognized the need for preventing trafficking in persons under Article 23, Article 39(e), and Article 39(f). Article 23 forms part of the scheme against exploitation under the Indian Constitution. Although initially conceived as a provision to abolish slavery, after multiple deliberations, Article 23 was drafted to include the prevention of beggars, traffic in human beings and bonded/forced labour. Article 23 (1) reads: “Traffic in human beings and the beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law” [24].

The judicial intervention has resulted in expanding the provision to be applicable for the prevention of unpaid and underpaid work, forced labour, bonded labour, and compulsory services, in addition to trafficking in persons and bonded labour contacts [25–29]. Under Article 39(e), the state is obliged to have policies aimed at social welfare, including policies for preventing the abuse of any citizen who is ‘forced’ by their circumstances, for example, economic necessities, to enter any occupation that are unsuitable. The data presented under ‘factors contributing to trafficking in persons’ shows economic factors as a major determinant (refer to page 6, para 3). Article 39 (f) ensures the equal opportunity rights of individuals to develop in a healthy manner under conditions of freedom and dignity with a guarantee to protect children and youth from exploitation.

Until the amendment to Indian Penal Code (IPC) in 2013 [30], the only anti-trafficking legislation in India was the Immoral Trafficking Prevention Act (ITPA), 1956 [31], in pursuance to the obligation under Article 23 of the Indian Constitution. This covers a few elements of trafficking, including procurement, inducing or taking a person for prostitution (Sec 5), detaining a person (Sec 6), and seducing or soliciting for the purpose of prostitution (Sec 8). Under this legislation, the authority for issuing directives for the rescue is a Magistrate (Sec 11), the procedure for search and interrogation (Sec 12), etc. In addition, provisions in the IPC, such as 363A, 366A, 366B, and 370 (before 2013 amendment) [32], also comprised the framework for combating trafficking in persons (Table 5).

The ITPA, initially drafted in 1956, is heavily impacted by the broader understanding that the crime of trafficking in persons is linked with the procuring women and girls for the purpose of prostitution. Although named as the central legislation to combat trafficking in persons in India, its scope is limited to prostitution or commercial sexual exploitation and penalizes all those who facilitate and abet this crime, including clients and those who live off the earnings of prostitution [33]. Analyzing this legislative piece from the lens of trafficking in persons, it is widely criticized for its conceptual loopholes and definitional inconsistencies [33]. Even though the word ‘traffic’ exists in the title of the legislation, it does not define the term ‘traffic’ or ‘trafficking,’ nor does it define ‘commercial sexual exploitation.’ This lack of definition creates confusions on the nature of the offense under this legislation; namely, is engaging in prostitution an offense or trafficking for the purpose of prostitution an offense. This ambiguity has also resulted in confusions while implementing the legislation, say law enforcement officers invoking ITPA instead of the provisions

Offense	Punishment
Trafficking of person	7–10 years + fine
Trafficking of more than one person	10 years to life + fine
Trafficking of minor	10 years to life + fine
Trafficking of more than one minor	14 years to life + fine
Person convicted of offense of trafficking of minor on more than one occasion	Imprisonment for natural-life + fine
Public servant or a police officer involved in trafficking of minor	Imprisonment for natural-life + fine

Source: Sec 370, IPC.

Table 5.
Offenses and punishment under Sec 370 IPC.

under IPC. Another issue with this legislation is that it assumes that prostitution takes place in brothels. This completely undermines the fact that sexual exploitation can also occur in private premises, like hotels, residences, clubs, mobile locations, etc.

Treating victims of trafficking as offenders and hosting them in corrective homes also raises concerns. It is to be noted that the same person cannot be a victim and an offender at the same time. Considering them as both victims and offenders at the same time exhibit the contradiction in the attitude towards prostitution and prostitutes in our country. While sex work is not an offense in India, all those who sell their bodies for a living are considered as offenders under the ITPA. Further, the use of the term 'corrective home' is also considered ambiguous as victims of trafficking who are forced into brothels need not be corrected. Another flaw of the legislation is that it does not bring it to its ambit socio-religious practices like the devadasi system. Further rights of victims, including psycho-social rehabilitation and health and educational support are also absent in this legislation. Another drawback of this legislation is the lack of witness support mechanisms.

The penal policies under this legislation also require scrutiny. For example, the punishment awarded to those who visit the brothel could be revisited as not all visits to the brothel involve trafficked persons. The Standing Committee report (2006) describes incidences of widespread misuse of Sec 8, which carries a punishment for solicitation, resulting in the harassment and punishment of women involved in sex work/victims rather than the perpetrators [34].

The Indian Penal Code also provides a framework to define trafficking in persons and penalize the same. In furtherance to the ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons [5], the Criminal Law Amendment (2013) subbed the existing section of 370 with Sec 370 and Sec 370A [30]. This came as a response to the proposal of The Report of the Committee on Amendments to Criminal Law who proposed a definition for trafficking, which again did not distinguish trafficking from voluntary sex work [35]. This faulty assumption defined 'exploitation' to include both voluntary and non-voluntary prostitution [36]. The responses from various civil-society organizations resulted in defining trafficking without conflating it with prostitution. With the amendment, Sec 370 is now expanded to include slavery, trafficking in persons for the purposes of forced/bonded labour, sexual exploitation, organ transplantation and even child marriages. Sec 370 currently reads as follows:

“whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by

i. using threats, or

ii. using force, or any other form of coercion, or

iii. by abduction, or

iv. by practicing fraud, or deception, or by abuse of power, or

v. by inducement, including the giving or receiving of payments or benefits,”

in order to achieve the consent of any person having control over the person recruited, transported, harbored, transferred or received, commits the offense of trafficking. The explanation for this includes expressions of slavery, practices

Offense	Punishment
Exploitation of a trafficked child	5–7 years + fine
Exploitation of a trafficked person	3–5 years + fine

Source: Sec 370 A, IPC.

Table 6.
Punishment under Sec 370A IPC.

similar to slavery, servitude, forced labour or services, forced removal of organs, etc. constitute the crime of trafficking [32]. The punishment under this section could be summarized as follows:

“Sec 370A provides punishment for exploitation of trafficked person, a snapshot of which is provided in **Table 6.**”

Although the definition of trafficking provided under Sec 370 is very much like that provided in the Trafficking Protocol, it omits two key elements: ‘an abuse of a position of vulnerability’ and ‘forced labour’. This omission raises challenges in terms of failing to cover economic or social vulnerabilities. Although ‘forced labour and services’ existed in the Ordinance [36], it was omitted in the Act. This omission has further resulted in limiting the scope of the legislation to prostitution while overlooking those performed in households, construction sites, mills, kilns, factories, farms, etc. [37]. A study conducted between 2013 and 2018, assessing the cases registered under Sec 370 shows that many of the cases are related to sex work, with a minority of cases which dealt with exploitation of workers and migrants. This study also observes that the Appellate Court judges have been concerned with the procedural aspect under Sec 370 rather than expanding the substantial aspect of this legislation [37]. They also observed that Sec 370 is also used as an additional charge in other criminal law cases, for, e.g., cases where a wife left her husband to live with another man along with her child or in cases of rape and sexual abuse, for securing confinement, making the scope and application of this provision more dynamic. Considering the substantial elaboration, a High Court ruled that Sec 370A could be imposed on a customer who has approached a sex worker [38]. Further, another High Court clarified that imposition of Sec 370 A in such cases is dependent on the facts and circumstances [39]. Such elaborations of Sec 370 A could target all sex workers, whether trafficked or not, creating ambiguity similar to ITPA. The larger application of Sec 370 along with ITPA in 2017–2018 displays this danger [37].

Other practical issues with Sec 370 are, it requires proof that the accused has recruited, transported, harbored or transferred, either single-handedly or in group, any victim for engaging in the crime of trafficking. When it becomes difficult to prove the modes, as many-a-time, the victim(s) may not be aware that they are being trafficked or who the trafficker is, it raises challenges in proving the same. The Global Report on Trafficking in Persons (2020) demonstrates that it could be a person that the victim trusts (including partners/parents) who would have sold the person to traffickers [7]. Another essential element is proving ‘exploitation’. What constitutes exploitation is another ambiguity with the legislation.

The lack of a concrete framework towards protection and rehabilitation of victims of trafficking has led the Ministry of Woman and Child Development (MWCD) to propose the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 [40]. The Bill does not define ‘trafficking’ but defines ‘aggravated form’ of

trafficking, which may include trafficking for the purpose of forced labour, marriage, childbearing and begging. However, trafficking for sexual exploitation does not fall under the definition of 'aggravated form' and is kept as a separate category. Although the Bill claims to prevent, protect and rehabilitate victims of trafficking, it is heavily criticized for replicating the essence of the earlier legislation, focusing on sex trafficking and prostitution. One of the merits of this legislative piece is that it has defined the term 'victim', which is found to be ignored in other frameworks, either in India or in the Protocol [5]. Although there are provisions for social integration and reparation, the Bill is criticized for leading to the extradition of victims, which may add to their vulnerability and re-victimization. The institutional model prescribed for rehabilitation of victims, similar to the ITPA has already been proven to be ineffective, facilitating sexual abuse and suicide [41–44]. The schemes for compensation and witness protection included in this Bill can be seen as a welcome step. Further the terms like 'brothel,' 'public place,' etc., are omitted from the definitions making it a law to supplement the ITPA, which also suggest the conflict between ITPA and the Bill, where the legislative intent varies. The Bill assumes all sex workers as victims of trafficking and does not differentiate consensual and voluntary sex work from that is forced.

Several versions of the bill have been presented post-2016; however, its basic framework has not changed, making it faulty legislation. Moreover, when the political will to combat trafficking is also in question when multiple drafts are still presented, and the Bill remains on hold even after 5 years.

6. Conclusion

The trafficking of persons has been a challenge to the international community as it results in gross human right violations. How individuals are being exploited, losing their fundamental rights bring comparisons between the practice of human trafficking and slavery, by which this crime is termed as modern-day slavery. This association of trafficking in persons to prostitution for a century resulted in a very narrow interpretation of the crime, creating practical issues with respect to the implementation of such instruments. According to data presented for the last 5 years, globally there has been a steady decline in the number of persons who have been trafficked. This decline could be attributed to the increased debates on human trafficking across the globe and the human-trafficking efforts. There was an assumption that the increased levels of vulnerability followed by the pandemic would result in increasing levels of trafficking, but the reports suggest the contrary. This could be due to the difficulty in capturing data during the pandemic, as reports suggest the challenges in anti-human-trafficking efforts during the period. The Indian statistics also show a decline in the number of trafficking persons during the past 5 years. Although the numbers were much higher in 2016, they fell to almost one-fourth during the next year, remaining almost at the same levels afterwards. There are different explanations for these reduced numbers, as either a credit to the functioning of anti-human-trafficking cells in the country or, on the contrary, arguments that the traffickers have changed their modus operandi, which makes it difficult to trace them. Furthermore, the existing laws tend to attribute human trafficking to sex trafficking, resulting in challenges with identifying the victims and offering victim protection. Hence, it can be said that the efforts to combat trafficking have not materialized to a great extent, although the statistics show a decrease in numbers.

Conflict of interest


“The authors declare no conflict of interest.”

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Section 2

Methods of 21st Century
Slavery/Enslavement

Chapter 5

Child Sex Trafficking Pandemic of the 21st Century in Kenya

Jane Kimathi

Abstract

We have all seen films that portray the dark and lurid world of human trafficking defections that seem sensationalized and exaggerated for cinematic effects. Yet, it never occurs to our minds that this is happening in front of our doorsteps. Globally, children are estimated to account for 29% of human trafficking. Child trafficking involves the “recruitment, supply, transfer, harboring, illegal adoption, and receipt” of a child for commercial sex or forced labour exploitation. Child trafficking comprises the main category of trafficking cases in Kenya, and children have been known to be trafficked for sexual purposes, particularly along the coastal region. In Kenya, child trafficking happens inaudibly within the communities and families due to poverty, lack of access to education, unemployment, HIV & AIDS, and related orphans, and weak laws and policies for child protection. The coastal region’s financial dependence on tourism, which tends to attract individual travelers, may exacerbate the sexual exploitation of children. Addressing the phenomenon of child sex trafficking has proven difficult because of the presence of the use of private villas for sexual exploitation and the reluctance of law enforcement to inhibit effective child protection. The vital call to individuals, communities, and leaders is to promote a child-friendly environment that makes families move out of poverty and ignorance.

Keywords: Kenya, child, sex trafficking, sex tourism, social stigma

1. Introduction

This chapter treats the topic of child sex trafficking, a phenomenon that has existed for a century globally, and Kenya is not exempted. This chapter will explore the ambivalent presence of child sex trafficking in Kenya, considering the tourism industry, the poverty, corruption, cultural perception, and stigma of the victim of child sex exploitation within the family and the community during reintegration.

2. Human trafficking pandemic of the 21st century

The unusual reality seems to be trapped against humanity but no one speaks about it as a global pandemic of the 21st century. Human trafficking is a growing social phenomenon that carries serious challenges in understanding its clandestine nature and the complexity of sexual exploitation. Human trafficking also referred

to as modern-day slavery is a gross violation of human rights and is an old practice found in all human societies. Historically, most of the victims of trafficking originated from Africa as far back as the era of the transatlantic slave trade during the 15th Century [1].

Today there is an assumption that slave ownership and trade is something of the past and only a matter of concern for historians, but unfortunately, slavery has not disappeared, it exists today in various forms, mainly behind closed doors. During a historical tour to the coastal part of Kenya, while researching on challenges of reintegration of victims of child sex trafficking, the tour guide narrated that the Arab slave caravan collided with African counterparts to capture and drive slaves from the interior before being brought to Shimoni slave caves, awaiting transportation. The conditions for slaves were considered to be extremely harsh and miserable. Our tour guide narrated that many died while being tortured or castrated [2].

Human trafficking has become transnational and affects every continent on the globe [3]. Article 1 of the United Nations Universal Declaration of Human Rights (UNDHR), states, “All human beings are free and equal in dignity and rights”. Despite its persistence, human trafficking is a modern-day business that earns \$150 billion annually according to an ILO report. At the same time, 19% of victims are trafficked for sex, and sexual exploitation is 60% of the global profit of human trafficking. Globally 71% of human trafficking victims are women and girls and 29% are men and boys. Children are estimated to account for 29% of human trafficking [4]. The UN 2030 Agenda for Sustainable Development Goals aim to eradicate forced labour, modern slavery, human trafficking, and child labour (SDG Target 8.7).

Yet among this modern slavery is child trafficking crime affecting global society in low-income countries. Sex trafficking is a crime that is illegal in every country in the world, yet it takes place in every country worldwide. Sex trafficking is extremely prevalent and on the increase for women and girls but children make up the vast majority of victims, with sexual abuse deeply rooted in their innocence and lack of protection. A report by the International Society for the Prevention against Child Abuse and Neglect (ISPACAN) observed that Child Sexual Exploitation (CSE) is one of the major concerns throughout the world [5].

2.1 Defining a child

The United Nations Convention on Rights of the Child Article 1, states that a child is a person below the age of 18 unless the age of majority is attained earlier under the national law applicable to the child [6]. Convention on the Right of the Child (1990) Article 1, states that a child means every human being below the age of eighteen years unless under the law applicable to the child.¹ The Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially women and children Supplementing the UN Convention against Transnational Organized Crime (2000) Article 3 (d) states that a child shall mean any person under eighteen years of age [7]. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour (2000) Article 2 (ILO. No.182.) says the term child shall apply to all persons under the age of 18 [8]. Article 260 of the Kenyan Constitution provides an “adult” means an individual who has attained the age of eighteen years and “a child” means an individual who has not attained the age of eighteen years [9].

¹ Ibid.

2.2 Child sex trafficking

Child trafficking is referred to as child recruitment, transportation, transferring, harboring, or receipt of a child using force or threat in any form of coercion, any abuse of power over the vulnerability of a child, or giving or receiving of payment or benefit to achieve permission from any person to control the child, for exploitation. The declaration and agenda for Action against Commercial Sexual Exploitation of children define the sexual exploitation of children as "a fundamental violation of children's rights. it comprises sexual abuse by adults and remuneration in cash or kind to the child or a third person. The child is treated as a sexual object and as a commercial object, which constitutes a form of coercion and violence against children and amounts to forced labour and a modern form of slavery [10]. While child sex in travel and tourism involves persons who travel from one place to another and engage in sexual acts with children.² Sex represents an important tourist attraction in many countries, as in the case of Thailand and a number of Asian and African countries. For most people travel and sex are frequently linked, even among those traveling in their own countries. This is truer for the holidaymakers;

"Sex is widely understood to be part of the tourist experience, and whether with other tourists, with local 'holiday romances', or with sex workers, many people expect to have more sex whilst on vacation," (human sexuality class discussion, September 6, 2022).

3. Global overview of child sex trafficking

Child trafficking is an offense to human dignity, and typically involves violations of several fundamental child rights. The 2020 UNODC report on trafficking in human beings shows that globally one in every three victims detected is a child [7]. It also finds that there are more child victims detected in low-income countries than in income countries, and children are mostly trafficked for sexual exploitation.³ Child trafficking or the sale of children involves the "recruitment, supply, transfer, harbouring, illegal adoption, and receipt" of a child for commercial sexual exploitation or forced labour exploitation within or across borders of countries.⁴ Child trafficking is a demand-driven crime for cheap labour during periods of economic growth or decline [11]. Children who are trafficked for labour exploitation may subsequently end up in the commercial sex trade and vice versa [12]. Commercial sexual exploitation of children consists of criminal practices that humiliate and threaten the physical and psychosocial integrity of a child. These children are in modern slavery, suffer all types of abuse, are treated as sexual objects, and are deeply rooted in their innocence but lack protection. Nonetheless, it is not seen as a social problem because it only affects a cluster of several voiceless individuals who are children. The social status of children attribute to child victims explains why this crime is not recognized as a problem that needs attention.

In the last decade, there has been tremendous recognition of the growing global phenomenon of the sex trade; especially those related to children trafficked into the sex industry. The adoption of the UN Convention on the rights of the child in 1989 was

² Ibid.

³ Ibid.

⁴ Ibid.

also heralded as a remarkable achievement in child rights advocacy and protection. Many countries in Africa have put in place measures to ensure that children are protected from sexual exploitation. However, over the past decade, evidence has emerged that child sexual exploitation is becoming more pervasive and increasingly due to poverty, rural migration, destruction of social norms and morals, and growth in travel and tourism among other factors. Africa has a share of the child trafficking problem that exists in different types namely; trafficking children primarily for domestic labour, as child soldier, for begging, or organ harvesting within and across countries and from outside the region for the sex industry and sexual exploitation [13].

3.1 Regional perspective on child sex trafficking in Africa

The situation of child trafficking in the African context is nothing new every day; children are being bought, sold, and transported. These movements take place in the child's community, at transit points, and at final destinations. Child trafficking is a social contemporary challenge with many supply factors among them the scarcity and poverty mentality of families and society. The patterns of extreme poverty, social norms, and familial backgrounds play a role in child sex trafficking.

Paradoxically, the imperfect in the African cultural perception of the demand for underage sex and particularly among the African myth that sex with a virgin is a cure for HIV/AIDS and related orphans, and the weakness or lack of laws and policies addressing the protection and prevention of child sex trafficking. Hence, in the African context, children are seen as a blessing, thus most people aspire to have at least four or more children in their lifetime. A famous African proverb states that “it takes a village to raise a child” it takes a world to eradicate slavery” slavery is around today and it has been around for centuries. This message is as profound as safeguarding and protecting children is everyone's responsibility.

The extended family network is very valued in the African culture, making it easy for affluent family members, friends, relatives, and the community to offer to assist the poor families in their midst. A big number of children often burdens families in rural areas and informal settlements and some parents might have succumbed to HIV/AIDS. They, therefore, tend to easily trust anybody, friends, relatives, and the community who is willing to help. Because of this network of trust, poor families will tend to give out their children for domestic work with ease hoping also that the child will be assisted to get good education outside the village setup. This being away may lead to the situation of child trafficking for sexual exploitation.

In some cases, not poverty really leads to child sex trafficking in Kenya, but also children from a background of sexually abused environmental settings. For instance, these hostile communities are characterized by a high risk of sexual and gender-based violence, high levels of substance abuse, and a lack of opportunities for education. Indeed, exposes children to endure a life of physical, sexual, or psychological abuse from families or any other adults and are forced to seek escape by running away from home. Culture has been a major factor in sex child trafficking, which does not a factor due to poverty. Mainly the coastline of Kenya practices child marriage where girls are married off when they are babies and are divorced when they are still babies and end up on the streets and prey to traffickers for sexual exploitation.

Some African countries have created a culture that perceives children as commodities that can be bought and sold with little regard for their wellbeing. In Ghana, the problem of child trafficking “child slavery” for different reasons brings back memories of slavery. A BBC documentary on this issue in February 2017 [14] suggested that

children are simply given to traffickers or 'slave masters' by parents who are unable to cater for them or sold according to Left [15]. In African culture, the practice of fostering or child placement is the root of modern child trafficking. Out of poverty, parents become comfortable with sending their children into bonded labour as the shortest means of solving their own economic and social hardship. The traffickers are able to fulfill their needs but the life of the child who is a victim of sex trafficking life may not be the same. Ghana's Human Trafficking Act, 2005 (Act 694),⁵ addresses human trafficking activity within, to, from, and through Ghana which is mainly guided by the United Nations Palermo Protocol to Prevent, suppress, and punish trafficking in person, which is the international legal framework to combat trafficking. However, the paradigm of child sex trafficking gradually shifts toward a greater need to serve the supply and demand industry of child sex trafficking.

Many traffickers are well known to the victims because are either they are family members, relatives, neighbors, or friends. Family members entrusted with caring for the children are often the ones grooming, manipulating, abusing, and exploiting them in domestic servitude or sex trafficking. The family unit is a key path to the cohesiveness of society in addressing child trafficking issues, underlying social structural factors are on the family level. However, having a family member as the main perpetrator and trafficker may also result in many victims feeling unable to speak about the experiences, they endured due to the shame it may bring upon their families, communities, and themselves. In many of these cases, children may simply have no other trusted adults actively engaged in their lives.

3.2 Overview of child trafficking in Kenya

Child trafficking accounts for the majority 55% and 72% of sexual exploitation [16]. Some child sexual exploitation includes child prostitution, pornography, trafficking of children for sexual purposes, and child marriage. It is estimated that 1.8 million children are exploited in prostitution and pornography worldwide [17]. Kenya is an origin country for children trafficked to; Chad, France, Spain, Rwanda, Germany, Netherlands, Uganda, Italy, and Tanzania. As an end country, Kenya harbors children trafficked from; the Democratic Republic of Congo, Somalia, Uganda, Uganda, South Sudan Ethiopia, and Tanzania. In addition, Kenya is a transit point for children being trafficked from; the Democratic Republic of Congo to Ethiopia, Uganda to Somalia, and Tanzania to Burundi.⁶ The most heinous of the various forms of child trafficking is sexual exploitation where the victims are forced, coerced, or deceived into the trafficking networks.

Over the past decade, evidence has emerged that child sexual exploitation is becoming more pervasive and increasingly due to rural migration, erosion of social norms and morals, high poverty levels, and growth in travel and tourism among other factors. Therefore, there is relatively low engagement by the community and the tourism industry to prevent the sexual exploitation of children. In the last decade, there has been tremendous recognition of the growing phenomenon of the sex trade as a severe crime worldwide; especially those related to children trafficked into the sex industry. Kenya is a major regional hub for child trafficking, victims, including children who are sold into sex tourism in Mombasa.

⁵ Human Trafficking Act, 2005 (Act 694) (Ghana).

⁶ Ibid.

3.3 Child sex trafficking in Kenya in Mombasa

Mombasa is one of the Kenyan coast towns, which is known as the main tourist destination with exotic beaches that attracts people for holiday. The city is strategically placed as it serves as the main tourist pivot for the coastal region. Mombasa town remained the centre of Arab slaves from the 8th to the 16th century and it has continued to be the port of eastern and central African countries. The slave trade ended but its ugly scar is engraved in part of Mombasa and other coastal towns. Modern slavery in the sex tourism industry fuels child sex exploitation in Kenya and is most prevalent in the coastal region. Kenya has a share of the child trafficking problem that exists in different types namely; trafficking children primarily for domestic labour within and across countries and from outside the region for the sex industry and sexual exploitation [18].

Parents from low income are approached directly in the community or via social media with offers of work in exchange for payment of education. Child prostitution is slowly becoming acceptable in the Mombasa region of Kenya. One of the media reported that there could be as many as 100,000 child sex workers a distributing figure that has turned the coastal region into the world's hub for child sex tourism in Kenya [19]. It is also estimated that more than 20,000 children are trafficked annually for rampant prostitution, especially on the coast, which is a "hot" sex tourism destination with private villas and guest houses dotted along the Coast [20].

The 2010 Constitution of Kenya (Article 53) recognizes the need for all children to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous cultural labour. In the year 2009, the US Department of State reported that Kenyan children were trafficked for various domestic and agricultural activities including herding cattle, street begging, working in recreational establishments, and prostitution, as well as involvement in the sex tourist sector in the coastal region. Further, trafficking for sexual purposes often involves the migration of children from the upcountry region to the coastal region [21] for both the supply and demand required to grow the child trafficking industry. Mombasa sex tourism is timely between July to December, which is the highest pick season for tourists in Kenya. Children are groomed and targeted online for sex and forced to work in sex parlors. Other are given to adults both local and foreigners who are seeking to rekindle their sexual lives by having sex with children, who are perceived to be free from HIV and other diseases. The price for young girls between 10 and 15 years, who are sold for sex with a tourist in Mombasa, is \$600 (54, 000), but boys are trafficked into sex tourism as well, whereas others engage in sex tourism as a means to an end" [22].

It is worth noting that many child sex workers have moved to the coast from other parts of the country and have often been forced into sex work even before they arrive.

Faith was nine years not her real name when she was trafficked from the northern part of Kenya to Mombasa for domestic work by a friend of her mother. Their journey took one week, and each day she was being sexually abused by a different man. Her mother's friend told her that she was preparing her for a relationship with a white man. When she arrived in Mombasa, she was forced to start sex work. She was later rescued by a good Samaritan on the beach while she was on the run and taken to a rescue shelter.

Trafficked children are sexually exploited by people working in Khat (mild narcotic) cultivation areas [23]. Children are trafficked in the sex industry, and the production of child pornography, adoptions, or organs, has international dimensions [24]. Another well-known form of Online Child Sex Exploitation (OCSE) includes

online grooming, live streaming of child sexual abuse, and the production and distribution of child sexual abuse materials for offenders overseas [25]. Despite the Kenya law that inhibits child trafficking, another distributing portion of trafficked children are newborn babies whose cases go unaddressed and unsolved by Kenyan authorities [26]. Babies are trafficked through connections between Kenyan and foreign, where the police do not take seriously this crime [27]. The level and acceptance of sexual exploitation of children in the coastal areas put all children in Kenya at risk. It reflects a fundamental breakdown of families and communities, and a failure of the authority to provide protection to children and to prosecute those responsible for promoting and profiting from child sex work. Though coastal communities are among the poorest segment group in Kenya, the lucrative tourism industry has failed to deliver economic benefits and employment for the host communities and this has exacerbated and increased the vulnerability of children to sexual exploitation.

Child sex tourism and commercial sexual exploitation of children consist of criminal practices that demean and threaten the physical and psychological integrity of children. Child sex trafficking can have a devastating impact on children including long-lasting trauma, sexually transmitted infections, unplanned pregnancies and abortions, and mental health problems, such as depression and suicidal ideation. The declaration and Agendas for Action Against Commercial Sexual Exploitation of Children is a groundbreaking instrument that defines the commercial sexual exploitation of children as "a fundamental violation of children's rights. ...the child is treated as a sexual object and as a commercial object [28].

4. The challenge of addressing child sex trafficking in Kenya

Trafficking in human beings despite a modern-day legal issue has a lengthy political and legal history. There is a lack of sufficient, relevant data on sex trafficking which makes it harder to measure and track the scale of the problem and develop effective responses. Therefore, social protection mechanisms currently in place are inadequate when it comes to preventing or addressing the vulnerabilities that expose women and girls to trafficking for sexual exploitation in the first place. Technological advances, in particular, the Internet and mobile devices have facilitated the sex trafficking of children by providing a convenient worldwide marketing channel. Individuals can now use websites and social media to advertise, schedule, and purchase sexual encounters with minors.

Due to the endemic socio-economic problem faced by Kenyan children, they are not able to fully realize their constitutional protections. Other challenging factors that lead to child sex trafficking are African poverty, armed conflicts, and instability, as well as traditional practices, such as early marriages, female genital mutilation, and the vulnerability of families who have little social and legal protection. However, conviction rates for trafficking for sexual exploitation remain low amid challenges such as underreporting and few prosecutions [29]. Kenya has ratified and acceded to various international instruments that seek to address child trafficking and protect the best interest of the child.

4.1 Social stigma during the process of reintegration

The experience of child sex trafficking does not always stop when trafficking ends, many victims continue to suffer the harmful effects of trafficking, and face additional

and evolving long after they have left the trafficking situation. Child sex trafficking experiences affect the victim's well-being and create tension and emotional problems in their relationships and interactions with family, community, and wider society. Reintegration efforts hence need to consider and address the social stigma impact on victims of child sex trafficking at individual, family, community, and structural levels.

Children trafficked for sexual exploitation experience social stigma in the family and community as well as experience shame from their past life. Stigma is a social construct that varies from one community to another. Goffman defines stigma as “an undesirable or discrediting attribute that an individual possesses, thus reducing that individual's status in the eyes of society [30].” Social Stigma is a widely used term to explain the feelings and experiences of shame due to different physical deformities or negative attitudes and behaviors [31]. For survivors of sexual trafficking, the shame and isolation that follow can be divesting.

In many African cultures, the association with the sex industry is highly stigmatized where the children end up losing their identity by being placed in an institution or adopted into a family. The individual or social stigma is often marked with shame, disgrace, reproach, or even a strain on a person's good reputation. Therefore, the concept of social stigma theory explains why survivors of child sex trafficking are faced with stigmatization, humiliation, and discrimination by family and society, as well as their experience of shame. Besides, consideration of child rights is authoritative to ensure that the rights of each child receiving and needing reintegration support are not to be negotiated in any way. The family unit is a key path to the cohesiveness of society in addressing child trafficking issues, underlying social structural factors are on the family level. Reintegration of trafficked children is often a difficult, complex, and long-term process, which lies in the fact that it is different for each child and it involves not only the survivor but also the family, community, environment, and culture within which the process is taking place. The actual handing over of survivors of a trafficked child into the families and communities is one of the major challenges. The problems such as; stigma, rejection devaluing their self-esteem and shame, and self-loss of identity. However, the children anticipated these negative approaches because being into ‘sexual exploitation or prostitution’ makes their lives too difficult upon their return to their families and communities.

Burkitt depicted that most victims are mainly concerned with giving an understanding of questions such as “*where do they go, who they are and how to disclose themselves to society*” due to their trauma experiences, some children find it hard to re-connect their past and the present, especially the young ones [32]. Some communities believe that trafficked children should not expose themselves to the public because of hate and disgust in society and that they bring social evil from their past work in the sex trade. The stigma attached to the children who are victims of trafficking, and particularly to any association with sexual exploitation, is significant for individuals, families, and communities and can have severe consequences, seriously impeding their recovery and reintegration. Besides, fear and shame often lead many victims to remain silent about their experiences of abuse and are blocked by fear to warn others who might be vulnerable to trafficking. The children who were involved in prostitution, risk rejection, isolation, and being labeled as prostitutes, and could be easily attacked, or even murdered by the family or community for the “scandal”, they have brought upon their families and society [33].

Similarly, trafficked children for ritual cleansing, are potential HIV carriers and are likely to face negative stereotypes in the community leading to double stigmatization as well as rejection or refer as a witch who is supposed to be put on the blaze. This

is related to values, attitudes, and mindsets within the families and the communities because the local culturally dominant values systems and moral code, hold negative views and attitudes toward child victims of sexual exploitation to work to support their return. It is important to involve and educate the family and the community in participation in the reintegration process since the family members bear the burden of social stigmatization as well. Therefore, the family and the community require an understanding that survivor of child sexual exploitation needs homecoming acceptance since they still carry with them the stigma of shame from their experiences.

4.2 Corruption and child sex trafficking in Kenya

Corruption is worse than sexual exploitation or prostitution. The latter might endanger the morals of an individual; the former invariably endangers the morals of an entire country. Corruption is presently one of the major challenges facing the human race. The world over, corruption is increasingly being seen as a threat to human existence to the extent that some commentators have called for it to be recognized as a 'crime against humanity.

Kenya is a regional hub for trade and finance in East Africa but has been hampered by corruption. In Kenya, corruption has always existed in different forms and is not determined by political or geographical. It exploits the human person for selfish interests and results in gross injustice and human rights abuse. Kenya ranked 18th out of 180 corruption perception index in 2021. Kenya has adopted specific penalties against trafficking in children in the counter-trafficking in person Act 2010. However, there is still a gap when addressing crime while ensuring the protection of victims. The challenge remains because the number of trafficked children is still rising steeply [34].

Trafficking in human beings despite being a modern-day legal issue has a lengthy political and legal history [35]. Corruption in public officials linked to the phenomenon of trafficking for purpose of sexual exploitation can take place along the entire criminal chain at the place of origin or recruitment of the victim, during transit and at the destination, but also within the justice and victims protection systems. Forgery and criminal association, the distraction among these phenomena is not clear. Corruption in sectors of the Kenyan government perpetuates traffickers' ability to obtain fraudulent identity documents from complicit government officials. The opportunity for corruption takes place in the trafficking chain, in the criminal justice, and during the protection and support of victims or survivors. Since a child, trafficking is connected to crimes such as illegal child, and parent/guardian immigration. Corruption plays a part in facilitating the trafficking process. Most of the trafficked children reported cases to indicate that government participation and complicity are involved.

In November 2020, the BBC Africa Eye brought to light a baby-stealing syndicate in Kenya after a year of investigation. The syndicate of stolen babies from poor and homeless women, primarily single mothers who lived in informal settlements. This criminal enterprise benefited financially from snatching many children of their mothers. A baby girl fetched \$500 while a baby boy fetched \$ 750 in the market. <https://www.youtube.com/watch?v=7ix5jbCmiDU> [36]. Bureaucrats accept bribes from traffickers in return for allowing them to cross the border, get forgotten passports, or, even forged child birth certificates to allow them entry into the country. Since child trafficking is often linked with lucrative crime activity and corruption, it is hard to estimate how many children suffer, but trafficking and exploitation are an increasing risk as more children around the world live in slavery.

5. Instruments in Kenya addressing child trafficking in Kenya

The Palermo Protocol states, that any child who has been moved from their home environment and taken to another environment where rights are infringed as stipulated in the United Nations Convention on the rights of the child (UNCRC), the Africa Centre on the Rights and welfare of the Child (ACRWC) has discussed the trafficked child [37]. Kenya has a robust legal framework which includes the Constitution of Kenya (2010), and the Counter Trafficking in Persons Act (2010) that prescribes a jail term of not less than thirty years imprisonment or a fine of not less than thirty million (KSH) or both and upon conviction, to imprisonment for life [38]. The Act makes a provision for the deterrence and fighting of trafficking in children by protecting victims and penalizing perpetrators.

The Constitution provides that children are entitled to all basic needs and protection from all forms of violence, and the right not to be detained unless for the shortest appropriate time.⁷ Further, it stipulates, “[a] child’s best interests are of paramount importance in every matter concerning the child.” Chapter 4 and the children Act, 2001⁸, also considered a child to have been trafficked if the child has been subjected to exploitation and cannot enjoy the right of being a child and the Kenya Counter-Trafficking in Person Act 2010 has been put in place to address issues of human trafficking. Article 53 recognizes the need for all children to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous cultural labour.⁹ Article 53, 1 (d) expounded in the Children’s Act 2001 to address sexual exploitation, harmful cultural practices, and trafficking of children thus safeguarding the welfare of the children. The Employment Act 2007 makes a provision for shielding children from exposure to child labour and trafficking. The penal code in Section 256 outlaws the abduction or kidnapping of children under fourteen years to steal it. Subsequently, the Sexual Offences Act 2006 criminalizes CSEC (Article 15), child sex tourism (article 14), and Child Pornography (Article 16). In addition, the Ministry of Labour and Social protection vowed to decisively deal with child trafficking in Kenya [39].

Other international laws and policies related to child trafficking in Kenya included: the immigration Act 1984, Panel Code 1885, Employment policy, Adoption guideline, Vision 2030 children’s policy, and draft national policy on orphans and vulnerable children. The United Nations Convention on the Rights of the Child (UNCRC) was adopted on 1989 and Kenya acceded on 30 July 1990, United Nations Convention against Transnational Organized Crime (UNTOC) (Palermo Protocol) was adopted on 2000, and Kenya acceded to 5 January 2005). The African Charter on the Rights and Welfare of the Child (ACRWC) 1990. The UNCRC was the sort to address commercial sex exploitation, which resulted in the first world congress on the commercial sexual exploitation of children (CSEC) held in Sweden (1996), from which Kenya developed its “National Plan of Action Against Commercial Sexual Exploitation of children in Kenya” [40]. Despite the protection of children through ratification of international legal instruments in Kenya, the number of children victims of trafficking is soaring. These laws are not comprehensive in curbing the vice but they care about the various forms of exploitation in child trafficking.

⁷ Ibid; Section 53(1).

⁸ Ibid; Chapter 4 Section 2001(1).

⁹ Ibid.; 53(2).

6. Conclusion

Human trafficking is a horrific crime against the basic dignity and rights of the human person and all efforts must be expended to end it. It is hard to imagine that, in the 21st century, the slavery problem is far more extensive as human beings are exploited in the sex industry and other industries against their will. We still have much to learn from the history of early slavery to enfold the new history of 21st Century modern slavery. SDG: 16: aim to reduce all forms of violence and deaths caused by that violence and focus on ending the abuse, exploitation, torture, and trafficking of children.

Kenya is among the friendliest nations in child protection laws and has been instrumental in promoting regional collaboration in the fight against child trafficking. Child sex trafficking should not be addressed from a point of crime control perspective but rather from child rights and the interest of the child perspective. Child sex trafficking needs a more holistic and sensitive approach and policies that incorporate child protection policies that are responsive to an increase in the commercial sex industry, and international visitors who are involved in child sex tourism. Both national and international bodies need to pass policies and laws that prevent the demand for child sex trafficking instead of the supply. Lack of awareness in communities, among vulnerable children and their families, raises the risk of children being trafficked for exploitation. Lack of education also affects the child's vulnerability to trafficking and parents who lack education are more likely to not fully understand their rights and seek opportunities elsewhere.


One of the possible points that will make the eradication of child sex trafficking will depend on how the underpinning causes of demand for child sexual exploitation are being addressed by every single society across the globe. Both the international and the local governments should equip stakeholders with the necessary skills to counter child sex trafficking. To provide adequate economic empowerment and resources to the families to effectively address their economic status. To protect children from traffickers by enhancing child protection and safeguarding policies that keep them from falling prey to traffickers. In addition, accountability mechanisms and prevention strategies to be in place in order to eradicate child sex trafficking and other child exploitation. Without profound human rights reforms based on the interest of a child and reforms, society will be unable to provide a brighter future for our children. In the end, we must work together with a nongovernmental organization, state, and communities to eliminate the root cause and market that permit trafficking to flourish, to ensure that one-day soon trafficking in human persons vanishes from the face of the earth. We must use our voices to change our society's perception to fight for the abolition of modern slavery and 21st-century child sex trafficking.

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Chapter 6

State Organized Recruitment for the Russian Enterprises: Is It a Pass to a Better Life or to Slavery?

Irina Molodikova and Valentina Chupik

Abstract

This chapter is devoted to the practice of organized recruitment of migrant labourers from Uzbekistan to Russia since late 2020. It examines the situation of the law as “on paper” and its operation in real life when many migrant workers fall into a situation of slavery or close to it (human trafficking). It discusses organized recruitment from a historical perspective from the USSR to modern times and provides the brief analysis of the migration policy and legislation in Russia and in Uzbekistan on the protection of migrant labourers. Based on the materials of more than 1000 appeals by Uzbek migrants to human rights organizations about violations of their rights, the chapter shows how organized recruitment really works, turning many migrants into slaves and why the organization state recruitment policy in Uzbekistan turns into the slavery for the migrant labourers from Uzbekistan.

Keywords: Uzbekistan, Russia migrant labourers, trafficking and slavery, migration policy, organized recruitment

1. Introduction

Uzbekistan is a rapidly growing country with a young population, with an average age of 29.1 years [1]. The population of Uzbekistan since the year of independence has almost doubled from 20.4 in 1991 to 35.6 million people as of July 1, 2022, and the number of people in need of employment is 1.4 million people (as of 01.04.2022), although about 2.4 million people work abroad, 568.5 thousand (24.1%) of which are women [2]. Of the migrant labourers, 1.5 million (61%) are working in Russia, 366.3 thousand in Kazakhstan, 144.7 thousand in Turkey, 47.4 thousand in South Korea, and 348.1 in the other countries. From January to May 2022, remittances of individuals from abroad amounted to \$4.19 billion, which is 61% more compared to the same period in 2021. The main destination country for migrants from Uzbekistan is Russia and, according to estimates by the European Bank for Reconstruction and Development, remittances from Russia are the most important source of foreign currency revenues and income for the country (11.4% of GDP). Monthly remittances per migrant worker amounted to \$453 [2].

Russia is attracting up to 64.4% of Uzbekistan migrant labourers and many of them experience frequent violations of their human rights because of their irregular status or

often fall victim to human trafficking (HT) or even slavery. These issues arise despite the visa-free regime, and are usually due to overstays, the lack of appropriate registration, or the absence of a work permit (patents) [3]. Unfortunately, legally working migrants often experience similar violations of their human rights as illegally working migrants, especially by police authorities. The various administrative barriers represent an enormous challenge for migrant labourers from non-Eurasian Union CIS countries, like Uzbekistan in Russia. They need to pass tests on the history, legislation, and language of Russia; the obligation to register anew upon every entry. By failing to register migrants and pay the resulting taxes to the state budget, unscrupulous employers also push migrants out of legality. The problem of forged documents is also relevant [4].

Substantial financial expenses incurred by migrants push some of them into debt bondage. In 2018, about 21% of migrants in seven border regions of Russia worked without a patent and over 15% paid bribes to obtain one [4]. The main obstacles in obtaining the necessary patents included the lack of financial resources, the employer's passive attitude, and the overly complicated and lengthy administrative procedure. The number of victims is estimated to range from 0.6 to 1.5 million [5, 6]. Uzbekistan government's attempts to establish regulated labour recruitment schemes, which address the residence and work permit requirements already at the pre-departure stage, have not paid off to date. Whereas Uzbekistan concluded agreements on recruitment schemes with Russia in 2017. Nevertheless, the lack of a centralized admission and registration system for migrant workers, persistent mass violation of migrants' rights and their exploitation, as well as corruption in government agencies make these schemes unattractive [4].

According to various sources, the policy of entry bans for migrants in Russia has increased the number of actual and potential Trafficking in Human Beings (THB) victims in Central Asian countries. The well-organized criminal networks facilitate human trafficking through high-level corruption and money laundering that take place both in receiving and sending institutions of Russia and Uzbekistan [7].

This chapter is devoted to the practice of organized recruitment of labour migrants from the republics of Central Asia (in our case, from Uzbekistan) to Russia from the end of 2020. The article examines the situation of the law as "on paper" and its operation in real life when many migrant workers fall into a situation of slavery or close to it (human trafficking). The article consists of an introduction, five chapters, and a conclusion. The first chapter considers the history of the existence of organized recruitment in the USSR when Uzbekistan was part of it. The second chapter is devoted to modern migration processes. The third chapter provides a brief analysis of the migration policy and legislation in Russia especially on the protection of migrant labourers from trafficking and slavery. The fourth chapter discusses the legislation and migration policy of Uzbekistan to protect its own migrant workers. The fifth chapter presents the "ideal layout of the organized recruitment process on paper." And the last sixth chapter, on the materials of more than 1000 appeals by Uzbek migrants to human rights organizations about violations of their rights, shows how organized recruitment really works, turning many migrants into slaves. The conclusions briefly discuss reasons why the organization's state recruitment policy in Uzbekistan turns their labourers into slaves.

2. Organized recruitments in the USSR and nowadays

The history of international experience in the organized recruitment of migrant workers shows that many European States (e.g. Germany, Denmark) have used this

policy extensively since the 1950s to develop certain types of economies with heavy physical labour, hazardous for health, and not attractive to the local population [8].

The emergence and functioning of an organized recruitment system in the USSR as a closed migration system was characterized by internal migrations. This method of state management of labour resources, their movement and redistribution in the conditions of a planned, tightly controlled economy was used to develop new industries or regions (Far North and Far East), large state projects (BAM, Kazakhstan Tselina, Nechernozemnaya Zone development, etc.). In the 1930s and 1960s, in the USSR, it was carried out mainly through the party and Komsomol district committees (on Komsomol assignment), and in some cases through mobilization, that is, by attracting the rural population to cities to work at enterprises. They were provided with tax benefits, lump sum cash payments, and material allowance [9].

In the absence of passports for the rural population and strict migration control until the 1960s, organizational recruitment in the USSR performed both economic (industrial) and social functions. It was, on the one hand, a way to satisfy the demand of employers for labour, and on the other hand, served as a means of ensuring certain personal interests of workers (change of employment, higher wages, etc.), from the 1930s until the collapse of the USSR. Specialists with higher education were usually sent to national republics for the development of the economy of the outskirts. During the organizational recruitment, many enterprises, especially the administration of new buildings, did not fulfill their obligations to the recruited collective farmers, did not dole out money, often did not provide them with medical care, did not pay them benefits during the next period, and did not accommodate them properly upon arrival at the place. The cost of recruiting escapees was high, especially from remote districts and regions [10].

The system of organized recruitment of workers was characterized by a high level of turnover of personnel and fraud of recruiters. The predominant number of people who resigned and left the enterprise arbitrarily during the first year was mostly employees recruited through the system of organizational recruitment from amongst the rural population. During the 1950s, 4.6 million workers were recruited through the organized recruitment system [11].

Despite this, the system of organized recruitment of workers contributed to solving the problem of lack of workers in the Soviet industry in the first post-war years. The change in the economic situation in the country in the 1950s led to a decrease in the need of the economy for unskilled labour and, therefore, to a decrease in the number of workers recruited through organized recruitment [12]. In many regions of Russia, demographic resources were either exhausted or close to exhaustion by 1960. Organized movements played an important role in this process [13].

Of particular note is the system and consequences of organized recruitment in Moscow. The demand for labour resources was so large that almost all sectors of the capital's economy felt a shortage of workers, and the authorities met this demand by hiring workers and employees who arrived under organized recruitment claims (so-called "limits") of ministries and departments on conditions of temporary registration in addition to invited specialists of high qualifications [14].

Unlike an indigenous Muscovite, the so-called "limiter" (temporary residence worker) lacked some of the rights accustomed to a Soviet citizen. The limiter with a temporary residence permit could not make purchases on credit, could not queue for housing, could not leave his enterprise, being unable to find a more suitable job. Employees attracted to Moscow under the limit were significantly underpaid. Life in the hostels was so unbearable that many limiters could not stand it and left the

capital. Limiters were given a hostel and, after 5 years of work, they were granted permanent Moscow registration and the right to receive a separate apartment in the capital. Enterprises built their dormitories and houses for limiters [14].

Limiters, having worked in Moscow for 5 years, often moved to more promising job positions in other industries, and at enterprises that were able to give them proper registration and housing. That led to a shortage of personnel, and it became necessary to hire more and more new workers. “About 50% of the total number of workers recruited for Moscow enterprises left the enterprises to which they were accepted.” [15] Gradually, the process became unmanageable. In Moscow, during the 1970s and the 1980s, they recruited more than 50 thousand limiters per year [16].

This contributed to the fact that due to non-resident workers the population of the capital increased to 8 million people by 1979, which was the level planned to reach by the General Plan for the Development of Moscow only by 1990 [17]. In Moscow, the shortage of personnel was structural. This meant that the lack of labour resources was not overall, but there were not enough workers in particular professions, especially those engaged in heavy physical labour. Limiters made it possible for the administration of Moscow enterprises to do without rationalizing production, and without automating labour processes, which led to the uncontrolled growth of Moscow's population, increasing the social tension [12].

Basically, organized recruitment in the USSR was carried out on the territory of Russia and inside Russia. The population of the national republics practically were not able to move anywhere else due to registration control. And qualified Russian specialists were sent there for the development of the economy of the republics. The modern situation somewhat resembles the situation in the USSR, with the difference that now the incoming workers are foreigners, not “insiders,” and no one promises them the prospects of social elevators except better wages. Until recently, the perspective to gain Russian citizenship has been considered an attractive factor in migration.

3. Labour migration from Uzbekistan during the period of independence

After the collapse of the USSR, forced migrations of the 1990s to Russia and abroad were replaced by labour ones. Commonwealth of Independent States (CIS) was designed in 1991 to preserve, in one form or another, the system of economic, cultural, and historical ties within the former Soviet space and member states like Uzbekistan enjoyed a visa-free regime. Demographic projections for Russia and the countries of its southern underbelly differ widely. Whereas Russia's labour force is expected to shrink by 1 million people per year from 2025 onwards [18], the forecast for Central Asia is very optimistic through 2050. Labour migration from Uzbekistan is projected to rise by 6.4 million. This is a good source of replacement labour for Russia [5].

Uzbekistan's economic development is much lower than in Russia, which is expressed in GDP per capita by the ratio of Russia—\$12,172.8 GDP per capita in 2021, whilst in Uzbekistan only \$1983.1GDP per capita. This makes Russia very attractive to migrant labourers from Uzbekistan. Citizens of Uzbekistan began to actively participate in labour seasonal migration at the beginning of the 2010s and their number increased to 1.8 million people by 2016 [19].

The Eurasian Economic Union (EAEU), as close cooperation for the free movement of goods, capital, technologies, and labour within the five-member bloc, came

into effect on 1 January 2015. Uzbekistan is not a member. This situation did complicate the migration of labourers since 1 January 2015 and create greater vulnerability to exploitation of migrant labourers in the Russian labour market [20]. According to the “stairs of inequality” on levels of payment that is based on racial characteristics of ethnicity, Uzbek workers are at the lowest position together with Tajikistan migrants. The hardest and lowest-paying jobs are in construction, where many Uzbekistan migrants are employed, often in slave-like conditions [21]. According to one survey, 55% of migrants cited informal connections—relatives and friends—as their main channel for finding work [22]. Most Central Asian migrants stayed in Russia in time of COVID-19: only 73,000 migrants out of more than 1 million working in Russia returned to Uzbekistan [23].

During the COVID-19 pandemic, to comply with sanitary and epidemiological standards, those wishing to come to Russia underwent a medical examination, PCR testing, and vaccination, and the patent was not tied to a specific employer. But the quota for workers from Uzbekistan was 10 thousand only in 2021. All construction companies need builders. The construction companies PIK-Industry and TechStroy planned to recruit about 4 thousand people to work in Moscow and Moscow region. In total, the region needs about 14 thousand Russian-speaking men from 21 to 50 years old with work experience of at least 2 years for a salary of 60–100 thousand. Dormitory, working clothes, and meals in the first month are provided by the employer [24]. The Russian government has already approved programs for the implementation of large-scale infrastructure projects. Millions of Uzbeks will be able not only to get a job there, but also to master new experience, according to the leadership of AELM. Reliance on organized recruitment 2022 [25].

In October 2021, the Ministry of Labour, the Ministry of Construction, and the Ministry of Internal Affairs of the Russian Federation announced the start of testing a new mechanism for the admission of foreign labour to the country. The Ministry of Labour of the Russian Federation proposed to remove the limit on the number of migrants of 10 thousand people from Uzbekistan and expand the range of participants from companies in the construction sector and agro-industrial complex to other industries [26]. It is proposed to link a foreign citizen to a specific employer who issues a work permit to the arriving employee, which, as we will see later, often turns into a violation by employers of criminal law on combating human trafficking and slavery. This happens as many migrants, when finding themselves in terrible living and working conditions, run away from their employers. Chairman of the interregional trade union “Novoprof” Ivan Milykh believes that the targeted recruitment of foreign migrant labourers carries certain risks. Workers may find themselves in a situation where all current expenses of the employer will be deducted from the promised salary, which is why migrants are actually tied to their working places [27].

In 2021, 108.5 thousand people went to work abroad as part of an organized recruitment from Uzbekistan. Of these, 100.1 thousand went to Russia (out of more than a million participating in migration to Russia), 6.9 thousand to Kazakhstan, 1.5 thousand to South Korea [28]. In addition, new destinations for official labour migration became Serbia—for 410 people, as well as Germany—for 31 people. The Institute of Forecasting and Macroeconomic Research presented an assessment of new directions for labour migrants from Uzbekistan. They called Poland, Bulgaria, Lithuania, and the Czech Republic attractive directions for the development of migration from Uzbekistan [29].

4. Legislation and migration policy of Russia to protect migrant workers from human trafficking and slavery

The problems of THB for international and internal migrants in Russia have structural dimensions and are imbedded in Russian migration policy. The visa-free regime within post-Soviet space for the majority of the population from the fSU is accompanied by often impossibilities in getting legal registration and permission to participate in the labour market. The protection of crime victims is not developed in migration policy as well as activities in the fight against THB [7].

In 2000, Russia signed two treaties and ratified both in 2004: (1) the UN Convention against Transnational Organized Crime, including the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, also known as the *Palermo Protocol*, and (2) the Protocol against Smuggling of Migrants by Land, Sea, and Air. In 2004, two anti-trafficking articles, namely 127.1 (Human Trafficking) and 127.2 (Use of Slave Labour), were introduced into the Russian Criminal Code (CC) by the Federal law 162-FZ3 [30] and covered by 18 more CC articles. Nevertheless, Russian legislation does not include a definition of a “trafficking victim.” Instead, the Russian definition of trafficking focuses mainly on the trafficking process and types of exploitation (slavery, sexual, and similar to slavery) [31] of trafficking in article 127.1 and 127.2.

According to the Article 127.1 of the Russian Criminal Code “Human trafficking” (CC) *is defined as selling or purchasing a human being, other transactions with regards to a human being, as well as recruitment, transportation, transfer, harboring or receipt previously committed for the purpose of exploitation. The human exploitation is understood as use of other persons’ engagement in prostitution and other forms of sexual exploitation, slave labour (services), practice similar to slavery.* The goal of exploitation can be reached both when the victim is used in the perpetrator’s interests and in the interests of the third persons [31]. Under article 127.2 of the Russian Criminal Code, slave labour is understood as “*labour of a person with regards to whom powers inherent to ownership right are exercised, while this person cannot refuse to perform work (services) for reasons beyond his or her influence.*” This act is characterized by three aspects:

1. use of human labour;
2. exercise of ownership rights with regards to this person, i.e. the rights to possess, use, and dispose;
3. lack of possibility for the person to refuse to perform work (service).

Between 2003 and 2012, numerous additions were made to the anti-trafficking law; 18 additional articles, covering sex and trafficking-related crimes, have been included in the Russian Criminal Code. According to Article 52 of the Russian Constitution, the rights of crime victims are protected by different laws. In reality, however, the state mechanism works poorly: there is no funding for victim protection and both victims and witnesses often do not want to testify in the court of law, fearing revenge by their perpetrators. Absence of registration because of different reasons put person on the margin of the society and creates the vulnerability assistance [7].

The new Migration Policy Concepts of Russia of 2018 emphasize the fight against irregular migration, the enforcement of the migration legislation and special control operations remain the key priority in the Concept [32]. It is worth noting that Russia

is taking steps to improve the situation. Since November 2019, it has been trying to ease the residence permit process for some categories of migrants. Nevertheless, Russia remains one of the main countries of destination, transit, and origin of THB victims, including situation with slavery in the CIS. The UNODC 2014–2017 data shows that the highest number of victims of THB in Russia, with sexual exploitation being the main form. The exception in this regard is Uzbekistan. The largest number of THB victims amongst migrants originate from Uzbekistan (3.632 people), with being men [33].

5. Legislation and migration policy of Uzbekistan to protect migrant workers from human trafficking and slavery

Over the years of independence, the number of migrant workers from the country has steadily increased, as well as the geography of their trips. Measures were also being taken to improve legislation to combat illegal migration. Uzbekistan is the main supplier of labour to Russia and ranks first in cases of people trafficking, mainly men. Article 135 of Criminal Code of the Republic of Uzbekistan (1996) [34] has included the provision “recruitment and export for the purpose of exploitation” in 2003. The Convention against Labour Slavery was signed by Uzbekistan in 2003, but was ratified only in 2021. Readmission agreements have been concluded with the Russian Federation and the Republic of Kazakhstan, and draft readmission agreements with the Republic of Azerbaijan, the Republic of Armenia, and the Republic of Moldova are under development.

To improve and collate the legal regulations of labour migration processes, on April 5, 2017 the Government of the Russian Federation and the Republic of Uzbekistan signed and ratified the same year the Agreement on the Organized Recruitment and Recruitment of Citizens of the Republic of Uzbekistan for Temporary Labour Activities in the Territory of the Russian Federation (hereinafter the Agreement). *The purpose of the Agreement is* to ensure the protection of the social, economic, and other rights of migrant workers from Uzbekistan engaged in temporary working activities in the territory of the Russian Federation [35]. Recruitment is carried out by the Agency for External Labour Migration (hereinafter the Agency or AELM) under the Ministry of Labour.

The new president Shavkat Mirziyoev made supporting migrants one of the priorities of the state’s social policy in the field of organized recruitment of migrants [36]. In 2022, the AELM plans to organize the employment of 60 thousand Uzbeks abroad, a significant part of which will go to Russia.

The same year the Republic of Uzbekistan began comprehensive reforms by adopting a Strategy of Action on the Five Priority Development Areas of the Republic of Uzbekistan in 2017–2021. The main areas were educational and qualification programs, reintegration of returnees, and organized recruitment of migrant workers [37]. The agency provides assistance to migrants in finding employment, and also helps them solve emerging problems directly during their work in the Russian Federation. For this, representative offices were opened in Moscow, St. Petersburg, Samara, Ufa, Novosibirsk, Yekaterinburg, Tula, Voronezh, Volgograd, Nizhny Novgorod, Irkutsk and Amur regions, Krasnodar, Krasnoyarsk and Perm territories, Khanty-Mansi Autonomous region. For example, with the intervention of the Russian representative offices of the Agency for the 7 months of 2022, with the help of the NGO “Tong Jahoni” the payroll arrears had been paid to migrants in the amount of 570 thousand dollars. “Reliance on organized recruitment 2022 [36].

In order to prevent people trafficking, Uzbekistan was also actively working on migration policies. In July 2019, a Decree of the President of the Republic of Uzbekistan, “*Additional measures to further improve the system of combating trafficking in persons and forced labour,*” entered into force. It transformed the Interdepartmental Commission of the Republic for Combating Human Trafficking into a National Commission under the guidance of the President of the Senate. Regional commissions were created in each of the Country's regions and a national *rapporteur* was eventually appointed [38].

In August 2020, the country's 2008 law on human trafficking [39] was amended as new concepts. The law provides a specific definition of the status of the National and Territorial Commissions for combating human trafficking and forced labour, as well as the powers of the Council of Ministers. The relevant government agencies include the General Prosecutor's Office and the Ministry of Employment and Labour Relations. The Ministry of Internal Affairs will create a unified database for human trafficking crimes, with information on traffickers, victims, and the various types of exploitation [38]. If a person receives the status of alleged victim of trafficking they are entitled to rehabilitation and social integration programs. Uzbekistan has some rehabilitation centers for assistance and protection of THB victims [4].

In the context of international cooperation, the Sub-Commission and Winrock International, as part of the USAID project “Safe Migration in Central Asia,” launched a virtual online consultant on migration and human trafficking in the form of Telegram-bot @salom_migrant_bot in 2021. There migrants can learn about the rules of work and residence abroad. It is possible to send an online appeal to the “hotline” on human trafficking, and from there appeals are sent to the Sub-Commission on Combating Human Trafficking of Uzbekistan [40].

In May 2022, the Minister of Employment and Labour Relations of Uzbekistan Nozim Khusanov announced that Uzbekistan and Russia plan to conclude an agreement, including significantly reducing the cost of a work permit for Uzbek migrants.

6. Organized recruitment system and how it should ideally work

Uzbek officials believe that the organized recruitment has many advantages [41]:

Firstly, most of the documents necessary for issuing a patent for the right to work in Russia, including a medical examination and fingerprinting, are issued in Uzbekistan. As noted above, at the request of chapter 6 of the Regulations, this should be done at the expense of Russian employers.

Secondly, the process from the moment of selection of an employee to the beginning of his work on the basis of a patent in the Russian Federation should reduce the time and costs for migrants, taking a maximum of 18 days. In Uzbekistan, it is planned to conduct fingerprinting, medical examination (TB analysis is done for 4 days), testing in the Russian language (certificate is made for 7 days), and remote registration of the taxpayer ID number (done for 5 working days) in branches of the Passport and Visa Service of the Ministry of Internal Affairs of Russia in Uzbekistan. Then in Russia the migrant will only have to register at the place of residence and receive a ready-made patent, all the procedures for which have already been completed in Uzbekistan.

Table 1 below shows how Russian officials see an organized recruitment of Uzbek citizens for temporary work in Russia [41] using the example of the **Organized Recruitment of Foreign Citizens Program from Uzbekistan in the Leningrad**

region. The Leningrad region is one of three participants in a pilot project to attract Uzbek citizens to work in the Russian Federation. Companies wishing to attract migrants need to conclude an agreement with the AELM of Uzbekistan [42]. Potential

<i>Employer steps</i>	<i>Steps of the migrant</i>	<i>Steps of the Agency and/or Private Agencies on Recruitment (Chastnoe Agenstvo Zamiatosti or ChAZ)</i>
<p>1- Registration on the Unified Digital Platform Work in Russia - trudvsem.ru consent to participate in organized recruitment.</p> <p>2- All vacancies are posted on the portal.</p>	<p>Agreement with AELM or (ChAZ).</p>	<p>↔ AELM or (ChAZ) contract with a migrant.</p>
<p>3- Conclude an agreement with the sending organization of Uzbekistan (with AELM under the Ministry of Employment and Labour Relations of Uzbekistan or with ChAZ). In cooperation with AELM, the employer enters into one agreement. When working with ChAZ, he concludes two agreements: with ChAZ and AELM (in real life, an employer representative comes to conclude an agreement and agrees with AELM for each migrant).</p>	<p>The employee, together with AELM or ChAZ, looks through the vacancies.</p>	<p>1. Conclude a contract with the receiving party (AVTM + ChAZ).</p> <p>2. The agency (ChAZ) conducts an interview with an employee for compliance with the selected specialty.</p>
<p>4. The employer conducts a remote interview with a potential employee according to the criteria, including knowledge of the language.</p>	<p>Employee remotely (personally frequently) participates in the interview.</p>	<p>↔ 3. Agency (ChAZ) organizes interview with employee and employer.</p>
<p>5. Pre-departure inspections of law enforcement agencies of Russia.</p>	<p>Worker ↔ Gets authorization documents.</p>	<p>Preliminary inspections of law enforcement and health authorities in Uzbekistan.</p>
<p>↔</p> <p>6. Employer by letter of guarantee confirms readiness to employ a migrant.</p>	<p>↔ Preparations for <i>departure</i>.</p>	<p>Approval of candidates with the employer, receipt of guarantee letters from the employer confirming readiness to employ candidates (in reality, the employer just “buys” the migrants).</p>
<p>7. The employer prepares a place of residence—a hostel of the enterprise, a rented hostel, another room that meets sanitary and hygienic standards.</p>	<p>↔ Preparations for departure and receipt of all documents from the Agency, trainings.</p>	<p>If necessary, the Agency provides migrant training for migration orientation.</p>

<i>Employer steps</i>	<i>Steps of the migrant</i>	<i>Steps of the Agency and/or Private Agencies on Recruitment (Chastnoe Agenstvo Zamiatosti or ChAZ)</i>
8. Employee Appointment and Placement. 9. Assistance in obtaining a job patent housing address registration, passing all necessary procedures for obtaining a job patent (medical examination, registration of voluntary health insurance policies, passing a comprehensive exam in Russian, etc.) + 1-month payment.	←→ Employee travels to Russia.	Agency organizes the departure by buying cheap tickets.
10. After obtaining the patent signing of the contract with the worker—the guaranteed compensation is not lower than the minimum level of compensation (minimum wage rate) of Russia: 15,950 rubles. Safe working conditions and occupational safety.	Receipt of documents and patent by the employee and signing of the contract (if this happens). ←→	The agency helps in the adaptation of the employee.
11. The employer provides jobs to migrants	←→ The work begins.	The agency continues to accompany the employer and migrant labourers until the end of the probationary period.

Table 1. *Scheme of the mechanism for the organization of search, selection, pre-departure training and sending of migrant labourers at the request of employers to Russia (using the example of the Leningrad region).*

workers will be given tests for HIV and tuberculosis, get vaccinated, and provided with an exam in the Russian language. All this should be financed by the employer, as well as pay for the flight and patent costs. This is stated in chapter 6 of the Regulations on the Procedure for the Organized Recruitment of Citizens of the Republic of Uzbekistan for Temporary Work Abroad (hereinafter referred to as the Regulations). However, in real life, employers use many ways to shift these costs to a migrant or through his salary to regain this money. The cost of attracting one employee is estimated at 45–50 thousand rubles (about 500 USD).

It should be noted that the recommendations to scheme 1 state that “in the case of death or injury to the health of a migrant worker due to an industrial accident or occupational illness caused by the employer, the employer shall reimburse the costs of returning the migrant worker or transporting the body to the Republic of Uzbekistan.” Compensation, corresponding guarantees shall be provided according to the procedure established by the legislation of the Russian Federation. These are the

requirements of Chapter 4 of “Regulations on the procedure for organized recruitment.” [42] In fact, this requirement is implemented by means of the forced purchase by a migrant of an insurance in the company of ASK “UzAgroSugurta,” which covers the shipment of cargo 200 (it means return of the body of dead person) or the emergency return of the patient to Uzbekistan. At the same time as signing an employment contract, employees are forced to sign a voluntary termination of employment letter without a date—this is a way for the operator to evade responsibility for industrial injuries, non-payment of labour, and other violations.

7. How the organized migrant recruitment scheme works in real life

This scheme may not reflect certain aspects of reality. Based on the official statistics of AELM Uz and the human rights work of NGO “TONG JAHONI,” we will consider situation with Uzbek migrants’ complaints.

Figure 1. The number of appeals to NGO “TONG JAHONI” from 01.12.2020 to 01.11.2021 behind free legal aid, on nationality of addressed, shows that the main violations are made concerning migrants of the countries of Central Asia. **Figure 1** shows that all three Central Asian countries are the leaders of appeals about violations of the rights of migrants. The number of appeals by citizens of these countries is over 20 times more frequent than from other countries. And it does not matter whether the migrant comes from country of the Eurasian union or the CIS. Migrants used Mobil phone calls, SMS, WhatsApp, Viber, Facebook messenger, comments to YouTube video, Telegram and personal visits to NGO to talk about their problems with NGO’s workers.

Figure 1 shows the huge number of complaints by migrant workers from Uzbekistan regarding violations of their rights.

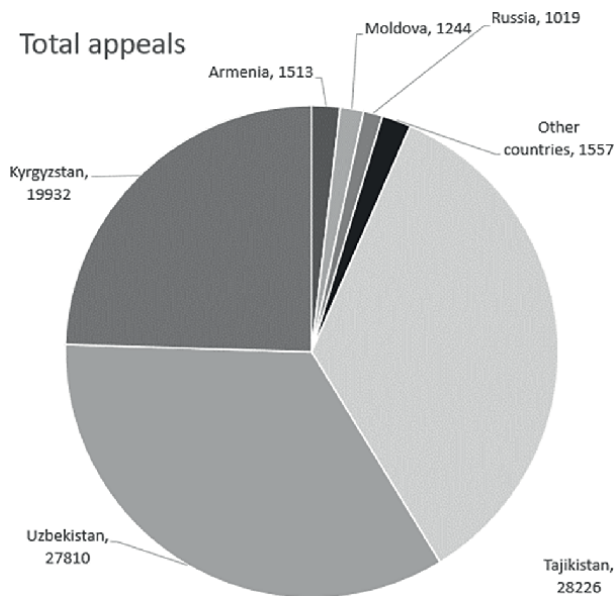


Figure 1. Number of calls to NGO “TONG JAHONI” from 01.12.2020 till 01.11.2021. Source: Case database NGO “TONG JAHONI.”

Slavery and human trafficking

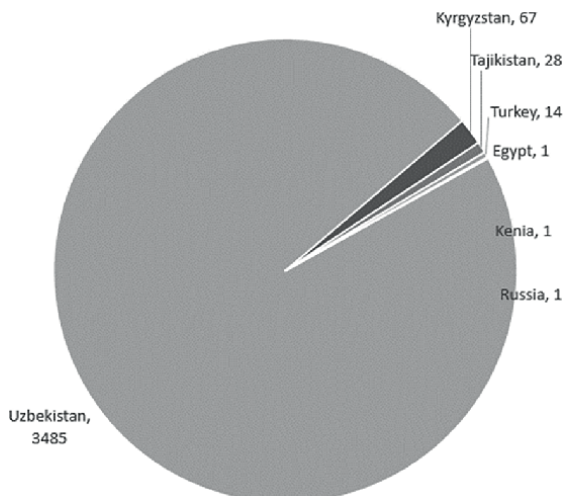


Figure 2. The number of appeals to NGO “TONG JAHONI” from 01.12.2020 till 01.11.2021 concerning cases of slavery and human trafficking. Source: Case database NGO “TONG JAHONI.”

Figure 2 shows number of slavery and human trafficking victims identified by NGO TONG JAHONI out of the total number of applicants by nationality (01.12.2020–01.11.2021). But that cases identified slavery counted according to migrants’ appeals. In case if Uzbekistan number in the thousands, whilst in other countries these are just single digits. This is due to the bad organization of an organized recruitment system in Uzbekistan, as we present below in this paper. The other countries do not practice organized recruitment yet. For example, Tajikistan signed similar agreement with Russia but stopped its implementations due to risk of such cases.

To understand the underlying violations, refer to **Table 2**. As we see from **Table 2**, the number of calls is increasing. This may be due to both the growth of those involved in migration, and improved access to treatment opportunities, as well as increased contact of this NPO with migrants but also due to massive violation of migrants’ rights.

As we will see from the cases below, the employer often does not release the employee until he has reimbursed his expenses for the employer, and the employer is tempted to exploit the employee (who is deprived of the employer’s freedom of choice, which is actual slavery), as long as possible.

Consider several typical cases:

Case 1 – year 2016. 90 men aged 22–40 were selected for the construction of the Lakhta Shopping Mall in Saint Petersburg. As soon as they arrived in St. Petersburg, their passports were taken away and they were driven to country side town Priozersk, where they were accommodated in a hostel with 24 people per room. The employer did not fulfill their promise to arrange for the issuance of patents for them. They were fed badly, and their passports were never returned. They could not leave the hostel and could not escape. When the migrants exited a hungry riot, the anti-riot police squad was called, that beat them and threatened with deportation. The representative of the outsourcing company who came the next day demanded them to pay 8500 rubles (100 US dollars) each for accommodation and meals and 10,000 rubles (about 130 US

Year	Overall organized recruitment	Non-payment over 3 months requests	Complaints about seizure of passports and coercion to illegality	Appeals on deprivation of liberty	Debt bondage appeals	Addresses on labour injuries and diseases	Violence referrals	Average working week
2016	90	90	90	90	0	1	3	84
2017	601	439	115	194	115	4	16	98
2018	969	661	307	154	12	2	5	79
2019	237	219	36	179	139	0	1	86
2020	540	469	469	158	469	2	11	105
2021 Jan–Oct	5485	4917	5469	4072	5485	6	108	92

Source: Case database, NGO “TONG JAHONI.”

Table 2.
 The reasons for calls to human right NPO “TONG JAHONI”.

dollars) each for “ransom to the police” so that they would not be deported due to lack of registration and patent. Some migrants began to demand that they be sent home, others to be given passports, whilst some agreed to work without documents and even signed bills of debt. Most of the migrants were then “resold” to a person who said that they should go to work without patents and payment, as he had “BOUGHT” those migrants, allegedly paying their debts. One of the migrants contacted the NGO TONG JAHONI, which contacted the consul to send the migrants back to Uzbekistan. The consul secured the return of passports and sent migrants home.

The situation falls under the violation of the Criminal Code of the Russian Federation (CC RF) under articles related to trafficking 127.1. and with slavery 127.2., and 332.1 articles on illegal migration of the CC RF, as well as the Labour Code of the Russian Federation. But there was no punishment to the employers. The Agency did not control situation and the police was on the employers’ side as we could see.

Case 2 – year 2018. In Tashkent, the Agency was looking for skilled workers to work at the plant. There were no such specialists found. Then the Agency promised potential migrants to get them to those job positions for a bribe, promising that they could later, upon arrival, transfer to another job. 300 people were recruited, brought to St. Petersburg, where their passports were taken away in the hostel immediately, and the next day they were taken for execution of the patents, for which they were forced to pay on their own, although under an agreement with AELM, it was the employer who had to pay for it. 2 weeks later they were brought to the factory, where it turned out that migrants did not have the specialties that they indicated in questionnaires and patents. After a big scandal, migrants were kicked out of work and without passports and patents began to be resold by groups of 10–15–20 people, as their passports were sent to construction sites in the Kaluga, Moscow, and Rostov regions. People found themselves in a situation of illegality, working for food for 10–12 hours a day without weekends and holidays. Of these, 5 people were abused by exploiters and supervisors, including 1 person who suffered from sexual violence.

The corrupt nature of the Agency is evident in how they created a situation that misled the employer. He decided that the cheapest way to avoid bringing a case against the Agency to court was to sell the migrants. The situation falls under the violation of the CC RF under articles related to trafficking and slavery 127.1. and 127.2., and the organization of illegal migration as well (332.1), in addition there are other articles on sexual exploitation and abuse. According to the information, there was no opened case or trail.

Case 3 – year 2021. In March–April of 2021, the Bureau of AELM of Bukhara Viloyat (regional authority) on its website posted vacancies for poultry workers in the Tambov region with a promise of salaries starting from 52,000 up to 70,000 rubles (from about 900 to 1000 US dollars). The representative of the employer of Interservice LLC selected candidates who knew Russian, were physically strong and had relevant work experience. Upon their arrival to Russia, he took away their passports, and brought them to a poultry farm in the Tambov region, where 42 people were placed in a small house 40 m² in size, with no water, kitchen, heating, and sewage. There they worked without any legal paperwork, in the cold building with a temperature about +9 C, without water, dressing hens’ carcasses for 15 hours a day, 7 days a week without holidays. Once a day they were fed chicken giblets soup and mashed potatoes. Therefore, many caught a cold and fell ill. No medical care was provided to the sick, and 11,000 rubles (about 180 US dollars) were deducted from their salary for absenteeism. For 3.5 months of work, 42 employees were paid 3800 rubles for all (about 50 US dollars). The repeated appeals of migrants to the police did not give any result, nor did an appeal to the head of the Bureau of AELM in Bukhara Viloyat. The

victims turned to the NGO TONG JAHONI, which helped to return their passports, secured the placement of migrants before returning home in the Moscow AELM shelter, and opened a criminal case on organizing illegal migration against Interservice LLC in the Tambov region. However, they did not get a chance to get paid for their labour, as well as to get compensation for slave exploitation and harm to health.

This case also falls under the violation of the Criminal Code of the Russian Federation under articles related to slavery, violations of Russian labour legislation, and Article 322.1 of the Russian Criminal Code, violations of the migrant control system as well as violation by the Uzbek authorities of legislation on protection against labour slavery. Again we can see the Agency do not protect their citizens and Russian police as well.

Case 4 – year 2021. A migrant from the Syrdarya Region has a family of 5 children. His wife turned to the anti-trafficking NGO, stating that her husband was chosen for work in St. Petersburg through AELM and was offered a salary of 80 thousand rubles (about \$800) with accommodation in a hostel. AELM helped him open a loan of \$1000 in the bank and immediately withdrew \$400 for its services, including 3-day training, for which the migrant paid himself. Then with a group of other migrants, he went from AELM to St. Petersburg, and again, this trip was not employer-sponsored, but on account of loan that was imposed on him. After arriving in Moscow, instead of the promised 80 thousand rubles he found in the contract a salary that equaled the official minimum monthly wage of 27 thousand rubles. He was settled in a hostel for a month, but no work was provided and no patent was issued, and after a while he was kicked out of the hostel. He tried to get a job himself, but after 3–7 days of work he was fired without pay, and he fainted from hunger. Many of his group returned home themselves or went to Moscow to the embassy to demand a return. He does not have money for a ticket. For the loan taken, the bank began to demand interest from his wife, so she had to sell their furniture to pay 700 thousand sums (700 dollars for 1000 taken). When the migrant returns, a great debt awaits him at home.

This case is also subject to violation of the Organized Recruitment Agreement by both the employer and the Agency, fraud by Credit Agency and corruption approach from all these organizations. The Agency plaid as initiator of the corruption scheme.

7.1 Bottom of form

The selected cases are typical amongst numerous others. All patterns of using migrants as slaves are very similar:

The Agency is the first step in human trafficking and enslavement. What it does is:

(a) misleading migrant workers; (b) not controlling their situation in Russia; (c) failing to fulfill its obligations to recruit the necessary employees; (d) extorting money from employers. Thus, it all begins with the unscrupulous attitude of the Agency.

The employer is also often involved in this scheme. He wants to return the costs and therefore (a) violates the provisions of the International Agreement on Organized Recruitment, (b) violates the contract with migrants, (c) violates the legislation of the Russian Federation on many articles related primarily to (c-1) the seizure of documents, (c-2) coercion to illegality, (c-3) non-registration of documents of migrants, (c-4) coercion to work, (c-5) restriction of freedom of movement, (c-6) poor working conditions. There is often abuse of power by the police as a result of which the migrant falls into debt bondage. Many cases of unlawful deprivation of liberty using the police are recorded.

An interview with an employer from Russia proves our conclusion about involvement of Agency into the slavery situation. This person refused the services of the Agency, since he had to officially pay for each migrant under an agreement with the Agency, plus unofficially with “black money” in the equivalent of 250—300 US dollars per person. If the employer pays this money, then the Agency helps him: in a microfinance organization at Solidarity Bank, at 48% per annum, he can take a loan in the name of the migrant, after which the migrant signs a receipt in the papers about his obligations to go to work and to appear at the airport. In his papers there is a line about consent to receive a loan. The loan is received by the employer (about 1000 US dollars in sums)—and 400 US dollars from this sum immediately goes to the Agency, whilst the employer receives its part (in order to reimburse the Agency for its services), and for the rest of the sum a ticket for a migrant to Russia is purchased. The payment of debt with huge percentages is due to the migrant or his family.

This conclusion from our cases is supported by Media news. In 2018 a bribe scandal revealed corruption in the Agency, falling into the media. Then they detained 20 AELM workers, the head of the Agency, his deputy, as well as the head of the center for pre-departure adaptation and training of citizens traveling to South Korea. The reason was as follows: migrants were deceived, as their permissions to go to Korea for work were not issued. On the same day, the director of the Agency and his deputy were apprehended when receiving a bribe of \$5000. Nevertheless, this vicious practice continues to work [43].

Nowadays, this practice is reflected at the news from press conference with representatives of the Ministry of Employment and Labour Relations and the Agency on the topic “Reforms being carried out in Uzbekistan in the field of safe, orderly and legal labour migration,” the Ministry’s employees complained that 80 ChAZs were issued licenses for employment of citizens wishing to work abroad. However, in 2017–2021, the licenses of 71 ChAZs were **canceled** (of which 59 were at the request of the ChAZs themselves), and criminal cases were instituted against 12 others. At the time of March 2022, only 6 licensed ChAZs were operating in Uzbekistan [44]. That is, these agencies appear swiftly and shortly after die a fast death, carrying no responsibility for the recruited migrants.

8. Conclusions

Uzbekistan labour market is overloaded by labour forces and needs some channels to relocate in other countries’ labour market. Despite the differences between the history of organized recruitment in the USSR and the current situation, there are still many similarities. The only difference is that during the Soviet era, people were free to leave places they did not like, unlike the current situation. Nowadays situation is much worse, because workers often turn into a situation of slavery for many reasons:

1. Attachment of employees to the employer leads to deprivation of freedom of work, since the employee does not have the right to leave to another employer. The employer has the opportunity to exploit the employee much more intensively, not to comply with his labour rights, to pay below the market or not to pay at all.
2. The employer’s obligation to provide housing leads to poor housing conditions, deprivation of freedom of movement (migrants are kept locked up and guarded so that they do not escape from the poor housing).

3. The obligation of the employer to legalize the migrant turns into the seizure of documents and blackmail by legality. If the employer pays for the execution of documents, he believes that he can hold them until the employee “works out the debt,” charging up by several times the prices for the registration.
4. The obligation of the employer to ensure payment for the arrival of the employee results in debt bondage for the migrant. If the employer is obliged to pay the return ticket to the employee, then he does not want to buy it at his own expense, but hangs this “debt” on the migrant employee.
5. The employer’s obligation to pay no less than the minimum wage gives him reason to pay no more than the minimum wage, since the employee has no right to leave for another employer (see point 1).
6. Bribes from the AELM employer lead to direct human trafficking, and the employer’s desire to return his money spent on the employee leads to the overexploitation of migrants.
7. “State control” on both sides turns into a refusal of law enforcement agencies of the Russian Federation, the Embassy of Uzbekistan, and the Agency’s representative offices to protect migrants from the employer. They refuse to accept the statements of the injured migrants, arguing that “this cannot be, since organized recruitment is guaranteed by state control.”

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Section 3

Victims and Triggers
of 21st Century Slavery/
Enslavement

Chapter 7

The Dilemma of Freedom: A Chinese Story in the Coolie Diaspora to Cuba (1847–1853)

Hernando Cepeda

Abstract

Chinese coolies' hiring during 1847–1853 represents a traumatic historic moment in global labor history. First that all, British and French notions of freedom rejected slavery form of domination, but industrial economies, such as sugar Caribbean enterprise, demanded a cheap labor force. Based on public statements published in British newspapers and private documentation found in Colombian and Cuban archives related to the process of hiring the Chinese labor force, this paper pursues a profound analysis and explanation of the firsts years of coolie contracting, depicting a convulse scenario of disputes among farmers, dealers, and coolies between the frame and the meaning of freedom.

Keywords: freedom, coolies, Caribbean economy, labor, slavery

1. Introduction

In the mid-nineteenth century began a global-transnational enterprise geared to hire Chinese labor to work in farm activities in Cuba. This model received English and Spanish financial support, and the dealers radicated in Macao, Hong Kong, and Canton came mainly from Spain and Latin America.

The connection between Spanish colonies and China is not new at all. They started during the sixteenth century and prolonged to the eightieth century.¹ However, the relation here explained is entirely different.

The first expedition seeking Chinese labor support was organized by “Mrs. Matia Menchacatore and Co” (1847–1852). Afterward, the “Royal Board for the Promotion of Agriculture and Commerce,” on behalf White Population Commission, conceded to Manuel B. Poveda the introduction of 3000 Chinese coolies in Cuba.² This research focuses on the tactics and strategies delivered by the dealers, considering the vast amount of those hirings. Also, it analyses socio-economic conditions in China and understood as an explanation of the increase of coolies in Cuba. In general, the

¹ See: General Nation Archive (AGN) [1] and Cepeda Sánchez [2].

² Letter sent to President and vocals of White Population commission and its secretary Carlos Benitez. Havana, October 18, 1853. ANC. Real Consulate of A, I, C, and Development Board, file 145 Exp. 07155.

meaning of freedom acquired new interpretative dimensions with the presence of Chinese between the notions of European liberalism.³

In any case, the experience of historical labor hiring geared by British, French, and Spanish businessmen seems to receive little attention, despite their importance in the frame of abolitionism. In this sense, the Chinese coolie labor force contributed to halting the capture of enslaved Black Africans. In the 1850s, defenders of slavery explained the advantages of this system, which involved Portuguese piracy in Mozambique and the differences between the American North and South regarding the labor system. Inside the British Parliament flourished the debates about supporting the naval war against African Slavery and at the same time emerged strong ideas defending Chinese labor force recruitment.⁴

In general terms, historiography related to Chinese labor recruitment either in Spanish or British Caribbean colonies shows two different perspectives: on the one hand, coolie Chinese indenture in terms of slavery practices and, on the other hand, assumptions regarding a relation mutually approved, based on juridic documentation that implies a notion of freedom.

This article aims to discover and expose the role of agencies by dealers representing Cuban entrepreneurs' interests. Thus, this paper tracks the association among tactics, strategies, racial significance, and ethical business. Stand out the names of Ignacio Fernández de Castro, Carlos Flotard—representing Cambell & Cia, and Caro & Cia among others—Nicolás Tanco Armero, in charge of Chinese coolies' engagement since 1855. Also appeared well-known reckon political names such as Emilio Althaus—Peruvian vice-consul—besides Martin Pedroso and Ac MacRay, hired by Villoldo-Wardrope Company.⁵

Such economic features expose industrialized and productive models in developing countries and their colonies.⁶ Capitalist production system demands intensive free labor support, which earlier showed massive shortcomings regarding the hired system. In this frame, alternative shapes of subjection take place such as Chinese coolie indenture.

Since 1847 dealers have played a leadership role in hiring labor; therefore, they represent the terrible practice of recruiting Chinese coolies, which implemented: pillage acts, tricks, bribing, and violence. Moreover, thousands of Chinese peasants embark unintentionally on transcontinental ships geared to tropical prosperous Caribbean islands. Thus, several historical elements deepen the first relationship between dealers and Chinese coolies, because 19th moral values emerged regarding freedom promises coined by French revolutionaries.

The shipping of Chinese coolies to Cuba responded to the interest of “Junta de Fomento Económico,” responsible for sending dealers to the free Chinese ports.⁷

³ Definition about Freedom from Foucault [3].

⁴ Mr. LINDSAY thought the abolition of slavery could be better effected by importing large quantities of free labour into the slave districts, thereby reducing the value of negro labour, and, therefore, the value of negro and consequently rendering the importation of negroes an unprofitable occupation. “Supply, the slave trade”. *The Standard*. July 27, 1861. p. 3.

⁵ Regarding the dealers there has been more attention to: Ignacio Fernández, in: Cózar Navarro [4], y Nicolás Tanco Armero, en: Hubert [5]. Luz Hincapié [6], Beckles and Shepherd [7].

⁶ Classic historiography researched the performance of the slavery system in the modernization of significant industrial economies; on the contrary, studies focused on the labour hiring of Chinese coolie indenture displayed less attention. Cf. Bergad [8].

⁷ “A la Junta de Fomento”, Havana, July 21, 1851. ANC, File, 544.

There, the personnel in charge of hiring found Spanish legal support represented in ships and business capital. In this manner, dealers took full responsibility for promoting hiring Chinese coolies; meanwhile, Cuban entrepreneurs celebrated the profitability of sugar prices from their offices, which also found better conditions for widespread consumption.

With those ideas in mind, it is worthwhile to understand the historical position of the Chinese coolie, who fought against adverse socio-economic conditions in China. They probably also receive a slight relief from the dealers, a product of the fake promises. In any case, the dealers represented the promoting agent of this perverse system of hiring labor force; however, they were just part of an economic complex protected by a legal frame. The central hypothesis shows the existence of a superior morality conviction, covered by a simple letter of freedom: “the contracting.” This document demonstrates that the Chinese coolie is a citizen with many civil rights such as freedom of work, housing, feeding, and health, which in reality means a new manner of slavery.

2. Socio-economic conditions in the mid-nineteenth century: abolition and serfdom

The decrease in slave labor in Cuban sugar mills represented a dramatic situation for people in business and capitalist farmers, which reclaimed governmental support. In this particular situation, Cuban elites decided to promote Chinese coolie indenture, geared to replace slavery labor.⁸ Members of “Real junta de Fomento” joined efforts to repeal the sugar import tax claimed on the British Act of 1846. The profitability of the sugar business decreased because of the British Act and abolitionist policies.

The act of 1846 had completed the ruin of our West India colonist...

*Earl GREY could not agree with the Noble and Learned Lord that the Act of 1846 had the effect which the petitioners attributed to it.*⁹

Also, the acquisition of slave labor found more difficulties, own to British and French inspection of Spanish and Portuguese piracy on the African coast. Thus, businessmen suggested a substitution of acquisition of slave labor for Asian workers, many living in Southern China.

Asia appears as the cradle of the labor force because of the recent rivalry between China and England. Additionally, it is worthwhile to consider the previous utilization of Indian coolies by British entrepreneurs in the Caribbean colonies. Concerning the Chinese diaspora, almost 1,5 million immigrants over 25 years went to the destinies of California, Australia, and Asian islands countries [11, 12]. In this context, the Caribbean also received many Chinese coolies. Despite fierce disputes inside the British Parliament about implementing Chinese coolies in their colonies, they became the last resource to impulse and invigorate Caribbean economies. In conclusion, the massive support to implement the Chinese labor force disrupted the global socio-economic history because it made a more complex racial representative form and the labor relationship.

⁸ Cf. Jung [9], Klein [10].

⁹ *The Sun*, London, June 1, 1850; June 11, 1852.

*The number of efficient labourers introduced into the West Indies for the last few years is quite inadequate to the demand. The Mauritius has been receiving about 6,000 per annum, and the West India colonies only 4,000.*¹⁰

*The whole subject of the economy of labour, by the improvements of our machinery, our implements, and otherwise, has occupied the little advance has been made in this line beyond the exertions of individuals members of the society. Horses and mules, ploughs and cultivators, have, to a considerable extent, taken the place of the native and his hoe, and it is hoped that this reform will speedily become more general.*¹¹

*The impossibility of the economy of labour, except at exorbitant rates, is the great difficulty which we stockholders have now encounter, and I think it is an evil that is likely to increase before it diminishes. Indeed, I expected that we shall have to depend solely on Chinese coolies, a number of whom have been lately imported, at considerable outlay, by a few stockholders, myself among the number.*¹²

*The effect of the discoveries of the precious metals in our Australian colonies has been to create a complete revolution in the shipping business... Besides this effect at home, our shipping has been in extensive demand in distant foreign ports, especially in the Chinese seas, for the purposes of conveying Coolie and other natives to California as well as to our own gold settlements.*¹³

*The slave trade and Free labour.*¹⁴

The manner dealers apply work engagement with the coolies aggravated existing notions regarding freedom because they exposed racial policies and European civilization notions, combined with a deep socio-economic crisis inside the Chinese Imperium since 1839 [13].

While this race doesn't improve or mixture; while the government system doesn't change, the great work of Christian regeneration in China would become a significant problem... it is necessary for a moral revolution... the idols, the images, and any Buddhism monstrosity should fall in front of the Christian civilization [14].

Marxist interpretation of labor relations in industrial England acquired significant relevance because it problematizes the place of freedom in modern and slavery economies. Exactly, business people and Chinese coolie dealers made a particular interpretation of the concept of freedom. In this sense, the extended discussion of British abolitionist policies, their performance by dealers, and their actual implementation are essential. First, however, it is necessary to recognize the misunderstanding between social and individual liberty under the frame of possibilities of labor engagement.¹⁵ On this premise, Chinese peasants struggled between the eventful local economy or embarking on a transoceanic ship oriented to—very possibly—unknown

¹⁰ *The Morning Chronicle*. Sat, Oct 25, 1851.

¹¹ *The Express*. Monday Evening, Nov, 3, 1851.

¹² *The Daily News*. Oct. 12. 1852.

¹³ *The Liverpool Standard*. Tuesday, June 22, 1852.

¹⁴ *The Morning Post*. Sept, 191,857.

¹⁵ CF., Williams [15].

destinations. The struggle for freedom results in a plausible consequence of precarious labor conditions, not the motivation for the diaspora [16].

3. The dealers' strategies: moral convenience

Not long after the first Chinese coolies arrived in Cuba, the information concerning the bribe, sabotage, and violence started to leak. The media coverage of engagement practices in Cuba came to the essential political circles. Very soon, statements about inhuman conditions in the displacement from China to Cuba occupied the interest of public opinion. Many of those brave opponents claimed an expedited solution, preferably the definitive halt of this “new slavery.” No matter what, Chinese coolies became a great business with considerable profit for the investors. That would last at least three decades until the governments of Cuba and China displayed strong policies against indenture service.

It is worth saying that there is comprehensive historiography about the complexity of the engagement system; however, it is crucial studying the historical problem of the consequences of interpreting freedom in this context. The organizational structure of hiring the first Chinese coolies was possible because of the leading role of the Zuleta Family, owner of “The London Branch of Zuleta Company.” Worried about the economic situation, they pursued an agreement with the company “Menchacatorre” from Manila. Both expressed interest in hiring Chinese coolies to supply farm labor. However, under new legal conditions framed by the liberal wing of the British parliament and Luis Napoleon’s labor rights policies, explicit consent was necessary for a contract (**Figure 1**).

It is mandatory to explore technical documentation. First, the project of those Chinese coolies indentured was sprouted initially by the Cuban saccharocracy. They also use a legal document to trick the system that recently unsaturated freedom as a civil right. It seems paradoxical here that the system acknowledges it was a trick victim. The first evidence of an abnormality in the shipping of Chinese coolies arrived after an uprising in the traditional route between Xiamen and San Francisco.¹⁶ The Robert Bowne’s cruise, under the command of Captain Bryson, experienced a significant revolt in reaction to unfair treatment by the crew.

*That said ship sailed from Amoy about March 20, with a crew of 19 men including all hands, and about 410 Chinese passengers bound for San Francisco.*¹⁷

Like sitting on a powder keg, Chinese coolies’ resistance expanded promptly in ships and the barracks.¹⁸ Considering the time between embarking and arriving in Cuba, approx. Four months, it is possible to deduce the rapid expansion of rumor, gossip, and sabotage in the barracks. News about the cruelty and lousy treatment came from Cuba and other regions. In addition, the discredited hiring responds to personal strategies designed by the dealers, which pursued to fulfill their mission and increase personal revenue.

¹⁶ “that said ship sailed from Amoy about March 20, with a crew of 19 men including all hands, and about 410 Chinese passengers bound for San Francisco” *The Daily News*. July, 27, 1852.

¹⁷ *The Daily News*. July 27, 1852.

¹⁸ Notions of resistance following: Cf. Norbert and Scotson [17]; Scott [18].

Yo fulano natural del pueblo de .. provincias... en China de edad ... de oficio labrador declaro que é conbenido con el agente de los Sres Matia Menchacatorre y C(al) de Manila en que me embarcaré en el buque inglés Duke of Argyl con objeto de trasladarme a la Habana en la isla de Cuba [ofreciendome] desde mi llegada a dedicarme a ella a las ordenes de aquella junta de fomento [...] y a egecutar los trabajos espresados por cuatro pesos de salario al mes, la mantención de ocho onzas de carne salada, una y media libra de platanos —de otras raices alimenticias, asistencia de medico y enfermero, dos mudas de ropa y una frazada anuales y una camisa de lana [...] Cumplido el cual quedaré en libertad de obrar como mejor me parezca. Mi pasage y manutención a bordo del expresado buque será de cuenta de los señores Matia, Menchacatorre y C(a) de Manila, [...] Y en fe de que cumpliré puntualmente con las obligaciones que quedan espresadas firmo en Amoy a ocho de marzo de mil ochocientos cuarenta y siete.)

Figure 1. First hiring of Chinese coolies. Havana, July 26, 1847. ANC (Yo fulano natural del pueblo de .. provincias... en China de edad ... de oficio labrador declaro que é conbenido con el agente de los Sres Matia Menchacatorre y C(al) de Manila en que me embarcaré en el barco inglés Duke of Argyl con objeto de trasladarme a la Habana en la isla de Cuba [ofreciendome] desde mi llegada a dedicarme a ella a las ordenes de aquella junta de fomento [...] y a egecutar los trabajos espresados por cuatro pesos de salario al mes, la mantención de ocho onzas de carne salada, una y media libra de platanos —de otras raices alimenticias, asistencia de medico y enfermero, dos mudas de ropa y una frazada anuales y una camisa de lana [...] Cumplido el cual quedaré en libertad de obrar como mejor me parezca. Mi pasage y manutención a bordo del expresado buque será de cuenta de los señores Matia, Menchacatorre y C(a) de Manila, [...] Y en fe de que cumpliré puntualmente con las obligaciones que quedan espresadas firmo en Amoy a ocho de marzo de mil ochocientos cuarenta y siete.)

Letters from Amoy of the 3d instant mention a serious disturbance there, originating in some irregularities in conducting the emigration of coolies or labourers by the Chinese brokers and their agents employed.¹⁹

The Chinese coolie indenture system shows significant shortcomings in less than a decade. John Bowring, governor in Hong Kong and consul of New Grenadian affairs in China, reported irregularities in the indenture system. The main focus of his denounces is based on the tactics and strategies delivered by the dealers and their goals of capturing Chinese coolies.

“The men are kidnapped and carried off by force, without any prudence of a contract or wages...”; “Premiums are paid in China for such Coolies as are induced or forced to emigrate, by persons who contract to procure Chinese labourers, or by captains of the ships chartered to convey them”; “We have received some dreadful revelations as to the trade in coolies. It appears that there is now organized in the southern parts of

¹⁹ Evening Mail. Feb 11, 1853.

China system of kidnapping to the full as bad as ever practiced by the native chiefs of Africa in the worst days of the slave trade”; “The Chinese agents decoy or force their victims on board their boats, and torture them until they wring from them a consent to become ‘free emigrants’; “Native Chinese are employed to entice from their homes such as may be persuaded, from hope to profit, to leave their friends.”²⁰

Among those tactics stood out the use of Chinese natives, which had the mission of visiting the nearest poor areas, where they must capture men engaged in gambling, opium, and liquor. After the kidnapping, the dealers took the Chinese coolies to the barracks on stand-by of the highest bidder.²¹ Simultaneously, the dealers implemented new tactics of technical resistance, such as distraction, geared toward the policies of halting the indenture system. In this scene, judges found it impossible to designate the punishment and the crimes to dealers and ship captains, which allow the indenture system to survive.

“On Monday Captain Seymour, the master of the ship Duke of Portland, appeared before Mr. Selfe to answer a demand made upon him by a seaman named Smith, who claimed a balance of 40L”; “Mr Almera stated in his evidence that he had engaged with a man named Aho to supply him with 432 Coolies for the Gulnare”; “It appears that two American vessels, the Ann and Staghound, have been most conspicuous in procuring coolies, and the cruelties narrated are principally in connection with them.”²²

In any event, dealers continued supplying the transoceanic ships with thousands of men, overcoming the amount permitted by international authorities. In 1855 regulation to contract Chinese coolies gained more conditions, based on the Chinese Passengers Act agreement. Its enactment expresses the deep social crisis related to the Chinese exactions, who for more than a lustrum immigrated under severe abuses. Thus, the most common demand consisted of health and safety on board the transoceanic vessels, although it was an aspect deliberately overlooked.

while the emigration officer at Hong Kong had refused to grant a certificate for more than 81 Chinese coolies being taken to sea by the John Calvin, bound for Havana, that vessel carried away 297 such passengers, of whom 110 perished on the voyage by suicide and disease, and 23 more in quarantine and hospital at Havana.²³

For instance, a woman with a child on her back caused the child’s bonnet to fall as she passed two men; on their picking it up she expressed her thanks and offered them some cakes for their civility; these were eaten, and being drugged, the men sat down

²⁰ *The Courant*, Jun 5, 1856; *The Sentinel*, Jan. 10, 1857; *The Liverpool Mercury*. Apr, 1860; *The Globe*, Apr 5, 1860; *The Bristol Daily Post*, May 7, 1860.

²¹ Even with the challenges regarding the scarce documentation proper of the Chinese, Elliot Young introduce the testimony from Hsein Tso-Pang. About the strategies of the dominated “pig-dealing” Ver: Jung [19]; Young [20].

²² *The Berkshire Chronicle*, Jan 10, 1857; *Lloyds Weekly Newspaper*, may 31, 1857, *The Morning Chronicle*, May 14, 1860.

²³ *The Morning Chronicle*, May, 15, 1857; *Surrey and Kentish Mercury and Home Counties Advertiser*, May 16, 1857.

*stupefied; the woman's confederates then came up, offered to carry the two men home, but lodged them in a receiving-ship instead.*²⁴

On the contrary, the hiring of Chinese coolies continued to increase, most likely following the experience of the African trade. At the same time, the dealers developed better collaboration strategies with the conveyors, excited about the rising income.²⁵ But unfortunately, kidnapping, extortion, and violence in acquiring Chinese coolies tend to rise, despite all the efforts to control the traffic.

*The Chinese agents are usually outlaw... mandarins—men of no character—who speedily amass large fortunes. The brokers are the worst and most depraved of men. They obtain the coolies by various devices; they have agents everywhere who are on the lookout for men, and who kidnap and entrap as many as they can. Once in the power of the brokers, they never regain liberty.*²⁶

*The police made a descent upon the vessel, and the men were brought on shore. From their statement, it appeared that they were from keeping Chi, and had been hired ostensibly to go to 'the betel plantations' in the neighborhood of Singapore. In reality they were being conveyed to the sugar plantations of Cuba. Of course, they were set at liberty.... What became of the majority of the 120 no one knows; but of the remains of the company, 45 in all, we have some more definite intelligence....*²⁷

Once again, on the Caribbean beaches of Cuba, it is essential to emphasize the profound crisis of the Spanish government on the island, in addition to the adverse conjuncture of the slavery model that led to the American civil war (1861–1865). Contemporary notions of progress and freedom enounced with bravery in the republican wars against the Spanish domain returned to the still Spanish colony. Under those ideals, shared by the Cuban landowner, the dealers, and the abolitionist, the hiring of Chinese coolies fulfilled their expectations. Chinese indenture, on this logic, maintained distance from African slavery and contributed to the Cuban economic projects.

This kind of dilemma took part of the dealers working in the Chinese islands of Hong Kong and the region of Canton because they argued their commitment to the orders issued by the prestigious landowner in Cuba. The last ones also delivered a speech on liberty, progress, and morality, related to the Western principles of civilization. In fact, important dealers such as Ignacio Fernández de Castro and Nicolás Tanco Armero, dealing from Amoy and Hong Kong, conceived their achievements as part of the civilization project.²⁸ On equal terms, the landowners in Cuba developed a punitive and paternalist manner of indoctrinating and educating the new Asian population on the Caribbean island, which even considered imparting baptism to the new people.

²⁴ *Evening Mail*, Aug. 3, 1860.

²⁵ "A consecuencia del proyecto de Villoldo Wardrope sobre introducir colonos asiáticos en la isla y habiendo hecho igual solicitud Don Manuel B Poveda, lo autorizo para introducir desde luego a 3000 de los colonos expresados" Habana, ANC, 23 de marzo de 1852.

²⁶ *The Stonehaven Journal*, April 7, 1859. / *The Leeds Times*, Apr 23, 1859.

²⁷ *The Daily News*, may 24, 1860.

²⁸ Cfr. Jung, "'Coolies': Race, Nation, and Empire in the Age of Emancipation", 692; Also, Klein, *The Atlantic Slave Trade*, 190.

Contestese a este párroco que puede proceder a administrar el santo sacramento del bautismo conforme el ritual romano a los asiáticos adultos que lo deseen y se hallen con la debida instrucción, bien sea de la finca que indica o de otra cualquiera [aseptado] como blancos en los libros parroquiales... así en las presentes circunstancias de la epidemia reinante como en lo sucesivo: manifiestesele además que aprobamos los bautismos que... de negros de nacidos y criollos adultos.²⁹

A very serious accusation, observes the Telegraph has appeared, in the columns of the London Times, March 18th, against the planters of Cuba, by a Mr. Thomas H. Gladstone. This gentleman has given a sad startling account of the brutal treatment inflicted on the Chinese emigrant by their cruel taskmasters, of which he says he was an eye witness... The philanthropic travellers horrified at such barbarity, is inclined to ask whether it is true that the same cruelty is practiced in the British possessions of the western Isles with regard to the Indian Coolies?³⁰

At the same time it seems clear that where the coolies are taken, not to British but, to foreign colonies, they are often kidnapped for that purpose, ill-treated on the passage, and sink into the position of mere slaves on their arrival in the colony.³¹

4. Moral values in the hiring of Chinese coolies

The mid-nineteenth century turns out to be a crucial period in the consolidation of freedom notions. On the same page, consider including in the historical analysis the most populated country in the world—nearly 430 million people in 1850—contribute to comprehending the links with the morality among global capitalist relations. Just at the beginning, hiring Chinese coolies to support economic activities in the Caribbean seems barely logical. Thus, it is vital to observe the rapid manner in which constructing notions of freedom attended those financial adversities. With a piece of naiveness, it is possible that neither landowners and dealers nor Chinese coolies knew the destiny of the hiring. All of them just signed the document guarantor of rational freedom. At the end of the 1850 decade, tensions between English, French, and Spanish arose the cloak of doubt about the free hiring of Chinese coolies. On the contrary, an idea of a new slavery acquired relevance, receiving more support from the American congress, which strongly condemned any form of coolies' contract. This terrible practice of new slavery would change with the intervention of the Chinese government, which sent a political commission to Cuba and Peru to recover Chinese statements about the humanitarian conditions of the immigrants working in the Caribbean and South America.³²

This reflection of moral conceptions would offer more elements if considering the experiences inside China. For example, in 1860, Pek-Ito Leang, a helpless 18-years-old woman from a small town (Tong Wha), received attention because of her public crucifixion. Furthermore, being still alive, she received part of Chinese torture, starting from the cut-off of her breast and her skin. The offenses attributed to Pek-Ito consisted of seducing, kidnapping, and selling 13 Chinese peasant men as coolies. Afterward,

²⁹ Letter signed by the Bishop Federico Escobar. Habana, 23 de Agosto de 1853. ANC. Reales órdenes y cédula. Legajo 190, exp. 207.

³⁰ *The Tralee Chronicle and Killarney Echo*, June 9, 1857.

³¹ *The Leeds Mercury*, June 29, 1858.

³² Young [21]; Young, *Alien nation*, 36.

she died and her family received her guts as a present.³³ This cruel narration must tell us some ideas about global morality. Impress those tremendous actions to halt a social practice that acquired the conception of crime in recent years. Before, the Chinese coolie indenture system acted as a legitimate alternative to detaining African Slavery. Thus, it is very significant to comprehend and explain the nature of crime in the indenture system.

In the early 50s, Cuban sugar manufacturers' dilemma consisted of reducing sugar mill production costs that recently competed against new international producers. In addition, there was technological turmoil, threatening traditional forms of sugar production. The Cuban business people exposed arguments about its economic commitments, which motivated the hiring of the Asiatic labor force, although dividing the moral guilt of the contract with all the consumers. If there was a personal and cultural desire to consume sugar, the alternatives consisted of assuming economic decisions, all of them unpopular: first, raising the prices of the product, or replacing African slave work for Chinese coolie indenture, disguised by an idea of free labor, because the document is supporting and legalizing the recruitment.

To those who are anxious to have cheap sugar –and we suppose all are, though some may not wish to have it through such sources as Brazil and the Havana, we say, support our West Indian colonies; prevent them sinking altogether; or you will no longer have cheap sugar.³⁴

The plan is simply an offshoot of the old abolitionist measure of replacing negro slaves with Indian coolies, which has since relapsed into the present profitable practice of importing Chinese apprentices to the sugar-growing fields of the tropics. Senor Meana's plan is combined with great skill, and would effectually displace the slave trade on the coast of Africa if adopted.³⁵

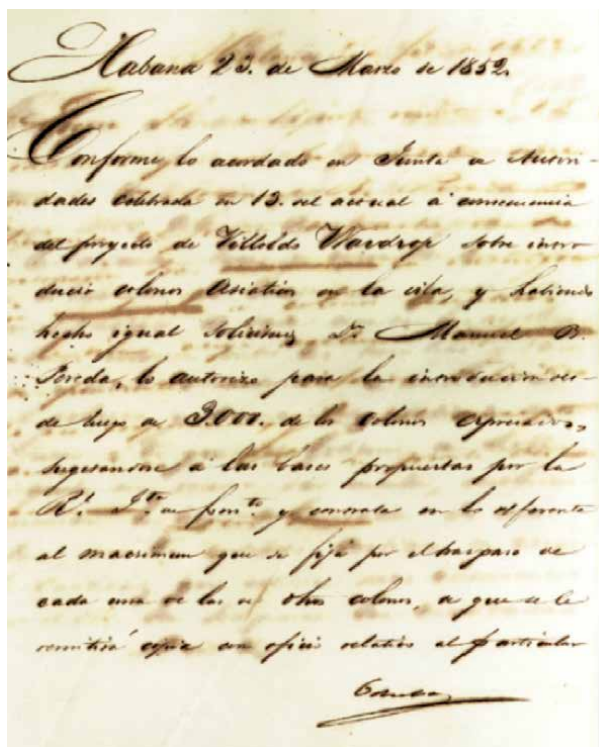
In the mid-nineteenth century, the rise of liberalism invigorated the circulation of ideas related to freedom, most of them explained in the frame of philosophy, politics, and economy, implemented in a political intervention such as abolitionism and the belief in universal rational freedom. In this particular case, it is essential to analyze the place occupied by the Chinese coolies in front of liberalism policies, destined to abolish slavery, mainly because of the strong opposition of the industrial sector in the United States, but also because of the popular insurrections in Europe, and the Cartism work policies. In the same sense, Cuban landowners adopted the obligation of contracting Chinese coolies as free workers, as is demonstrated in much documentation regarding social warranty in an industrial environment (**Figure 2**).

As it has demonstrated, freedom requires a certificated more than the conviction of being a free subject. During the 50s, a global system emerged based on free people's interchange, migration, and contracting. As might be obvious, using a contract does not warrant any proximity with freedom, but the system demanded a paper to support the legal submission. In reality, this legal form fulfilled some of the British and Spanish implementations destined to halt piracy. Also, that kind of Freedom executed a liberal principle of rational choice, once again supported by a contract. The dealers interpreted all those facts in a particular way and overloaded the ships with Chinese coolies based on the legal documentation. In any case, overcrowding and unhealthy conditions did not yet represent a genuine threat to the freedom consigned in the contracts. The global political system preserves the warranties of freedom, whereas there was a signed contract.

³³ *Shipping and Mercantile Gazette*, Tuesday, February 12, 1850.

³⁴ *Shipping and Mercantile Gazette*, Tuesday, February 12, 1850.

³⁵ *The Daily Post*, Jan 19, 1857.



Habana 23 de Marzo de 1852.

Conforme lo acordado en Junta de Autoridades celebrada en 13 del actual a consecuencia del proyecto de Villoldo Wardrove sobre introducir colonos asiáticos en la isla, y habiendo hecho igual solicitud don Manuel B. Poveda, lo autorizo para la introducción desde luego de 3000 de los colonos esperados, sugetandose a las bases propuestas por la Real Junta de Fomento y contrata en lo referente al maximum que se fija por el traspaso de cada uno de los ocho colonos, a que a la comitativa copia un oficio relativo al particular.

Canas

Figure 2. Habana, 23 de marzo de 1852. ANC (Habana 23 de marzo de 1852. Conforme lo acordado en Junta de Autoridades celebrada en 13 del actual a consecuencia del proyecto de Villoldo Wardrove sobre introducir colonos asiáticos en la isla, y habiendo hecho igual solicitud don Manuel B. Poveda, lo autorizo para la introducción desde luego de 3000 de los colonos esperados, sugetandose a las bases propuestas por la Real Junta de Fomento y contrata en lo referente al maximum que se fija por el traspaso de cada uno de los ocho colonos, de que se le remitirá copia con oficio relativo al particular.).

Going deeper into the meaning of the legal majority—among Kantian terms—adduced in the contracts originally signifies the recognition of the historical condition of the subject. The whole body of documentation emphasizes the legality of the hiring; it also defines the labor obligation, which will receive an economic reward (salary), that, no matter the amount, is still considered a payment for the work delivered (**Figure 3**).

Once the Chinese coolie left the embarking ports in southern China, they acquired a different legal condition under the surveillance of the international system, understood as a political device invented by the Europeans in the sixteenth century “to regulate European powers’ affairs.” International laws serve in this case as the referee in implementing human resources to fulfill immigrant demands [22]. In response to this, transoceanic vessels must offer spacious accommodation, air, and ventilation, as well as doctors and translators on board. There was also the requirement of enough food and water supply to complete the notion of nutritional scheme proper of the nineteenth century.

“I am enabled to report to your lordship that there was no blame whatever attached to the masters of either vessel, that whom it would perhaps be very difficult to find more humane or competent persons in our mercantile marine...”³⁶

³⁶ *The Daily News*. Apr 17, 1858.



Figure 3. Chinese coolie contract. Stamp general consulate of Spain in China. Macao, Sept 5, 1851.

While all of those demands rest in the European power's agreements about international law, the dealers continued embarking on thousands of Chinese coolies without complying with the humanitarian commitment.

But their destiny story gets worse because, no matter the dramatic traverse of 3 or 4 months through the Indic and Atlantic, they arrived in a new legal condition in Cuba. Only then they realize that promises of freedom depend on the master's condescending. In this manner, the analysis of contracting and displacing Chinese coolies to Cuba offers a comprehensive overview of the interpretation of freedom. The earlier years of Chinese indenture received an impressive reception from Chinese and Cubans; also, many economists defended the philanthropic intention of the system because of the alternative provided to the capitalist economic relation, which was significantly affected by the persistence of slavery in some communities.

After arriving in the sugar mills, Chinese coolies started to occupy a new legal condition ruled by the established workplace standard. In most cases, Chinese coolies began to share the same authority as enslaved people. Freedom and slavery relations coexisted without much trouble. However, Chinese coolies received a different perception owing to the freedom signed; they were supposed to gain a salary, even if that meant a few amounts in exchange for their labor force. Patrons were also committed to providing clothes and food and taking care of the health in case of sickness. It is worth saying that some patrons fulfilled part of their commitments, but many aspects close to Slavery, such as overworking, physical punishment, and the loss of citizenship, were common. This analysis would gain more elements if it considered the social condition of the peasantry there in China, intending to comprehend the cultural clash for the Chinese coolie living under the state of indentured service in Cuba.

They are penned up at night, hundreds of men together, like mules or oxen, in jail-like barracoons, and guarded by ferocious bloodhounds, kept in every state for the

purpose. I fully believe, “says Mr. Lamont, “That they are literally worked to death in a very few years.”³⁷

It is not probable that our Government or the officials in the Islands would permit the Coolies to be cruel or unjustly treated, as they are in Cuba, Peru, &c.³⁸

Every day I hear of new cases of atrocity connected with Coolie emigration to the West Indies. That poor, ignorant people are absolutely kidnapped, and others systematically deceived under the promise of high remuneration, has been long suspected.³⁹

All the old arguments in defence of the kidnapping, exporting, and selling of the wretched Africans will be reproduced, refurbished, and sharpened for the new war against humanity.⁴⁰

5. Rational action: motivation

Poverty in China in the mid-nineteenth century could not be an explanatory argument about the events regarding tricks, kidnapping, and extortion, in addition to physical and mental punishment executed by dealers and patrons over the Chinese coolies. The fact that many contracting firms experienced revolts, riots, and disturbances, some in the middle of the sea, shows the cruel reality of the hiring system. We must picture the scene where the innocent Chinese peasant, caught in Kwangtung or Fukien, discovers he is a deceitful victim [23]. Naturally, the alternatives were to drown in the ocean rather than continue to a tragic destiny in the Caribbean. Thus, the rational choice consisted in selecting an open resistance in the open sea against their captures or continuing on a trip geared toward a new form of slavery.

The discussion about freedom regains importance between the frame of rational risks assumed by the Chinese peasantry and business people living in adverse social conditions produced by the dramatic changes in the socio-economic field, mainly in Southern Chinese maritime ports. Corresponds, then, to find out the motivation of Chinese peasantry to immigrate, without restricting or relating the analysis to notions of European freedom, because the political process of the Chinese must be studied inside the inner conditions, although prevailing a global glance. From this perspective, overpopulation, famine, rebellions—such as the Taiping—government corruption, and unemployment are critical for the historical analysis. All those facts achieve relevance in the context of new economic conditions emerging from the European invasion of China after 1839 ([24], p. 45; [20], p. 32; [25], p. 453; [13], pp. 41-47).

Everywhere there are bands of robbers and pirates scouring the country and its waters, oppressing the rich, pillaging the poor, and seizing whatever comes their way. The natural consequence of this state of things is stagnation of trade and commerce, a general feeling of insecurity of life and property, a rise in the price of provisions, fuel, clothes, and every necessary of life, occasioning much distress, poverty, and want among the poorer classes, especially in certain districts where labour and trade

³⁷ *The Courant*, Apr 30, 1857.

³⁸ *North British Daily Mail*. Feb 8, 1859.

³⁹ *The Lincolnshire chronicle, and Northampton, Rutland, and Nottingham Advertiser*, Aug 19, 1859.

⁴⁰ *Reynold's Newspaper*. Jan 20, 1861.

*are entirely suspended... It is difficult to imagine how such a vast mass of human beings as are here congregated together manage to live and support life, with so little occupation and business at their command. Foreign trade, which gives employment to thousands at this port, is now all but extinct, and native commerce must be seriously embarrassed when the great highways and channels of communication through the country are closed up and beset on every side with robbers.*⁴¹

In the light of socio-economic antagonism experienced by the Chinese, it resulted in the rational reaction of the known as coolies, which sought new sources of funds. Thus, notions of freedom and independence experience performance-defining elements essential to understanding the moral investment of immigrating outside China.⁴² To accept this idea of rational motivation, we must consider the role played by the owners of sugar mills and Cuban landowners, which executed a clean process, shielding their social performance with legal protection through the use of intermediaries that applied legal conditions of hiring. It is also possible that the hiring process maintained proper freedom manners, but the contract displays slavery conditions. That would clarify the day-to-day forms of resistance, such as sabotage, desertion, and abandonment of work, in addition to gossip and revenge, that express the whole rage against the indentured service. From this perspective, there must be a slight possibility of rational motivation in the contract and the embarkment from the Chinese perspective.⁴³ However, social conditions in Cuba, which expanded very soon in barracks in China, altered the process of implementing Chinese indenture in the Caribbean (**Figure 4**).

It is, therefore, surprising the rising number of immigrant Chinese coolies to Cuba in such a short period, especially when the international political dimension attended the denouncement of violence, mistreatment, and many infringing ways to get more Chinese coolies. In this historical context, it is essential to reflect that many Chinese coolies could consider enlarging the diaspora after the exhaustion of any possibility of changing economic conditions. Thus, abandoning China express the most straightforward form of natural resistance to their government. The General Consul of Spain in Macao explained that: “the Chinese left for Cuba did so of their own volition.”⁴⁴ Naturally, those statements participated in the contemporary political debate and did not necessarily mean the whole reality.

On the contrary, the dramatic social conditions of the Chinese in Cuba show that rational choice did not emerge from “their own volition.” It was, in any case, the result of the same feeling of abandonment by the Chinese government that just in the middle 1870s sent a political mission to discover all the atrocities experienced by the Chinese subjects. In their statements, economic adversities in China operate as the mandatory situation that prompted their decision to migrate. On the other side, it is still a strong argument “lack of interest and corruption from part of the officers in Cuba.”

The mystery about the dilemma that inspires this reflection is still unknown because many tracks lead us to discover the reason for the Chinese coolies to embark

⁴¹ *The Sun*, London, Thursday Evening, Dec 28, 1854.

⁴² Conclusions emerged from the debate among Sewell and Emmer regarding “independence’s spirit that encouraged Asiatics to leave their countries” Emmer, “A “Spirit of Independence” or Lack of Education for the Market?”, 94.

⁴³ Denialist reading of mistreatment, bravery and violence associated to the hiring of Chinese coolies presents a sociological approximation to the rational choices. Cf. Kamala [26].

⁴⁴ Narvaez, “Chinese Coolies in Cuba and Peru: Race, Labour, and Immigration, 1839-1886”, 197.

Rotacion circunstanciada de los bandidos existentes en el deposito municipal de esta jurisdiccion y en los bandidos en el mes de julio que termina

Fecha	Nombre	Edad	Descripcion	Observaciones
de la paga...	...	35	...	...
Segun...	...	40	...	...
Segun...	...	45	...	...
Segun...	...	50	...	...
Segun...	...	20	...	...
Segun...	...	20	...	...
Segun...	...	40	...	...

Figure 4. “Circumstantiated rotation of the existing runaway slaves in the municipal deposit of this jurisdiction”. Escaped Chinese. Matanzas, 1858. ANC.

on the barracks.⁴⁵ However, there are also so many gaps that the diaries and documentation in the archives could attend.

*One of the Chinese examined, and, although one of the prisoners, we place considerable confidence in his story, stated that he had been foully entrapped into going on board the vessel.*⁴⁶

*On late years voluntary emigration from China has not been sufficient to meet the demands for labour in the various colonies. This has induced the formation of societies, which send agents to the different ports in the province of Canton and Fokien, to induce the people to emigrate.*⁴⁷

*The revelations which have been made during the last year or two as to the manner in which these “voluntary labourers” or “apprentices” are kidnapped and huddled on board the English or American vessel employed to carry their to market, and how they are treated on the passage and after they arrive at their destination, surpass in cruelty and atrocity anything that has been ever said or written of the horrors of African slavery and the middle passage.*⁴⁸

⁴⁵ Report of the commission sent by China to ascertain the condition of Chinese Coolies in Cuba. *Chinese Emigration. The Cuba Commission*. Taipei. Ch'eng wen publishing. 1970.
⁴⁶ *Lloyds Weekly Newspaper*, may 31, 1857.
⁴⁷ *Illustrated Times*, June 27, 1857.
⁴⁸ *The Liverpool Mercury*, July 24, 1857.

In this sense, the purpose is to make more complex the rationality of immigrating from China to Cuba in the quality of indenture service to determine two possible scenarios: the first one explains that social chaos, resulting from the recent sociopolitical turmoil, that drives the inner economy to extreme conditions of poverty, war, passivity, lack of interest, and willingness, act as the main reason and the explanation to the rational action. The second one explores dealers' role and tricks to raise their income by selling more Chinese coolies [27–32].

In any case, except those based on any manner of violence, ethical and moral values stand out regarding socio-economic provisions and ideological concepts, legitimating the contract of Chinese coolies to invigorate the Cuban economy. The hiring purpose executed innovative manners of dealing, led by Latin American dealers who represented British and Spanish firms, focused on the sugar and guano business. The dealers also used Chinese people to trick and engage the Chinese peasantry. In this form, hooking and hiring Chinese coolies correspond to the rational motivation of Chinese coolies, induced to choose immigration because of the harsh social conditions.

Chinese coolies are kidnapped by Chinese crimps in the most approved fashion; they are invited to gamble (an invitation that no Chinaman can resist) hocussed with shamshoo, and put quietly on board junks in the harbour at night. In the morning they awake to find themselves gliding out of the bay, bound for the Portuguese settlement of Macao. On arrival there they are transferred to barracoons –prisons under another name– where they are fed, clothed, and carefully watched till sent on board ships and consigned to Cuba, where they are sold for 250 or 300 dollars as slaves... I am also told that their gaolers have methods of inducement, into which the bamboo enters largely, for persuading them to make this declaration, and its value as a true exposition of their real feelings is extremely doubtful. They are said to cost, on an average, from the date of kidnapping to the period of shipment for Cuba forty-five to fifty dollars each.⁴⁹

It is imperative to conclude by explaining the particularity of this specific case. First of all, the historical conditions of Latin American dealers show a global connection without precedents. In this same sense, it is crucial to recognize that those dealers acted in the representation of sugar mill landowners that appropriated and implemented the use of indenture service. Freedom appears interwoven with the Caribbean agro exporters' interest, its interpretation of the dealers, and the desire for liberty from the Chinese coolies. Ultimately, the contract of Chinese coolies as free workers stretches to the maximum capacity of the notion of freedom. The dealers, in those terms, became ingenious businessmen enriched by the economic demand of their time, although the perception of their deeds as crimes will require the judgment of history.


⁴⁹ *The Herts Guardian*, may 26, 1860.

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Chapter 8

Fast Fashion: The Illusion of Choice for Modern-Day Slaves

Nirmal Kanti Chakrabarti and Kanchan Yadav

Abstract

The twenty-first century is characterized by the advent of peak consumerism, where the preferences of the global consumer take precedence over everything. For the fashion industry, a trend of creating, using, and discarding fast and cheaply made clothes and accessories have been booming, characterized aptly as ‘fast fashion.’ However, this trend comes at a severe cost, as the brunt of the same is being borne by millions of workers, primarily women and children, employed at the sweatshops of the developing South Asian nations. Working at deplorable conditions for pennies per hour, without any formal employment benefits in place, the basic human rights of these workers are being violated daily. While several international human rights documents emphasize that every nation must provide basic human rights to all of its people, that remains nothing but a fever dream for millions of such workers. Against this backdrop, this chapter provides a background of the garment sweatshop industry, followed by an analysis of the human rights violations therein. Then, it moves on to an exploration of the international legal instruments that can be utilized to counter this issue. Finally, it suggests some practical ways out for the nations most affected by the same.

Keywords: fast fashion industry, modern human slavery, sweatshop human rights violation, garment industry sweatshops, sweatshops and slavery

1. Introduction

The ‘fast fashion’ industry is no healthier for the economy, environment, and people than its namesake, the fast-food industry. As the name itself suggests, fast fashion is geared towards quickly producing a huge quantity of clothing or accessories for the cheapest possible price. Not only would the production of these garments be cheap, but the turnaround time, shipping methods, etc., would also need to be efficient, so that they can reach from the manufacturing facility to the racks in clothing stores in the shortest possible time [1]. The primary purpose of fast fashion is to whet the consumers’ appetite, who have been inching towards buying the hot new look of the season or want to imitate the latest look of their favorite celebrity.

On the face of it, this may seem like a good thing. It is true that currently, the human race lives in a time of abundance—and one need not feel guilty for enjoying the pleasures of life. If the fashion industry is able to sustain this highly efficient and competitive pace and make the consumers happy, it could be seen as a good thing.

However, while the manufacturers, retailers, and consumers may be happy with the current state of fast fashion, these trends come at a severe cost. The two primary areas where fast fashion is exceedingly dangerous are its environmental impacts and human rights violations. Essentially, while one counterpart of the society has been enjoying the newest clothing trends, the other has been sacrificing their life, safety, and health to make that happen.

Globalization has been one of the driving forces behind shaping the fashion industry to the state that it is in now. Along with the social, political, ideological, and economic changes of globalization, the continuous changes in consumer preferences have worked as the primary motivation behind the trend of fast fashion. In the history of human civilization, consumers have never had access to fashion commodities in such an efficient and cheap manner [2]. With almost every developed and developing nation developing shopping malls and other such multi-store shopping centers, a significant percentage of the same is dedicated to various clothing and accessories stores [3].

On a similar vein, the advent of the internet has also egged on the fast fashion industry—primarily in two ways. On the one hand, easy access to the internet has exacerbated the access and dependence of common people on ‘trends’. Previously, to keep updated with the latest fashion trends, one would have to subscribe to fashion magazines that would come out maybe once a month. However, now, the latest happenings of the fashion industry are accessible to everyone at the swipe of a finger—and they are ‘happening’ non-stop. Not only are the fast fashion brands themselves coming out with seasonal collections, look-books, etc., to hammer in the mind of the people that the items of the previous season are no longer ‘hot’, but there are several influencers, YouTubers, Tik-Tok-ers, etc., whose online persona are specifically geared towards guiding people’s fashion choices [4]. This trend of rapidly changing the new ‘in’ thing for the fashion industry, which is geared towards keeping people buying new things consistently, has made people view their clothing and accessories as disposable. They are now seen as items that are meant to be worn only a few times before discarding, in fact, many people tend to view them as one-use only. For that reason, there needs to be a cheap but constant supply of new items to ensure that the industry can function at its current pace.

As brands, even the most renowned ones, begin cutting corners to ensure such supply, the one area where the most cost-cutting happened, is at the production level. As the multinational brands could no longer afford to pay the minimum wages and other employment benefits that are mandatory in developed nations, they moved their manufacturing facilities to developing nations to take advantage of the lax legal regime and ensure cheap labor. Currently, almost all big-name fashion brands have their production facilities in developing nations, primarily in South Asian nations such as Bangladesh, India, Pakistan, Thailand, or China, where the workers are made to work 12 hours a day or more, for less than a living wage [1]. This employment does not come with any formal employment benefits such as health insurance or severance pay either, and no care is taken to ensure that the job conditions do not hamper the health of the workers. Not only that, often, the brands prefer employing vulnerable groups of people, such as women, children, and disabled people, as they can be controlled more easily and their labor is available at an even cheaper price [1]. The human rights implications of such sweatshops are massive—yet, the workers choose to engage in the same because of the lack of employment alternatives, and the concerned governments choose to conveniently ignore them because of economic benefits.

2. Modern slavery: What does it look like?

If there is one word that can be utilized to describe the conditions of the fast fashion sweatshops, it would be ‘deplorable’. However, considering that the sweatshops are placed across different nations and regions, are under different legal and socio-political regimes, and deal with different brands and items of the fashion industry, no singular picture can be painted of the conditions of the facilities and of the people working there. However, an analysis of a few recent events that brought the reality of the situation in the limelight could describe how millions of workers worldwide are being the victims of modern slavery.

One of the earlier incidents that brought the real-life picture of these sweatshops into focus was the 2013 Rana Plaza disaster in Bangladesh. On 24 April 2013, Rana Plaza, one of the primary workshop sites in Dhaka, Bangladesh, where five garment company workshops were situated, collapsed—killing more than a thousand people and injuring more than two thousand [5]. What makes this event even more unfortunate is that this was not an unforeseeable accident. Massive foundational cracks in the buildings were discovered on the day before the accident, and most businesses in the building were closed immediately. However, the sweatshops ensured that their workers did not stop, as the supply chain needed to be intact. Even on the day of the accident, the workers were concerned about the safety of the building, as cracks ran through the walls, pillars, and floors, and did not want to enter the building till their jobs and pay were threatened by the management. At the time of the collapse, the building killed a thousand people in less than 2 minutes [6]. The official figure of death is also deceptive, as it does not include the people who died or committed suicide in the aftermath of the event, as a direct result of the same [7]. This incident sparked a great deal of scrutiny and debate in the international arena, with the parent organizations being enforced to create better labor conditions for the workers. However, these ‘betterments’ were mostly a charade, as they were often kept in place only during the days of the audit [7]. Otherwise, the low, low costs that were being offered by these organizations, could not be ensured.

Even apart from the actual incidents of death and injury, the attitude of degradation that runs rampant in these sweatshops is astonishing. In India, in a 2012 complaint made before the Human Rights Tribunal, it was revealed that the management regularly engages in physical and verbal abuse of the workers, with them regularly being called dogs and donkeys [8]. These instances, combined with unlivable low wages, were happening at workshops of brands of international repute—such as Gap and H&M. While providing evidence of their abuse, a worker who works for GAP at a factory in Bengaluru, Karnataka, stated that ‘We cannot eat nutritious food. We don’t have a good life, we live in pain for the rest of our life and die in pain ... We can’t take breaks or drink water or go to the toilet’ [8]. Many of the workers complained that the long working hours and unhealthy working conditions had made them ill.

More recently, in 2020, the cosmetics brand owned by American reality star Kylie Jenner came into the limelight for refusing to pay its factory workers in Bangladesh, following a low-profit season during the Covid-19 pandemic [9]. The complaint was that it had not paid the wages of February and March 2020 even after months, citing a high amount of cancelation of orders and no sell-through of existing inventory. The claims were made against the company officially known as Global Grands Group, which listed Kendall + Kylie on its portfolio of affiliated brands. However, as soon as the accusation was made, Kendall + Kylie issued a statement that it was not associated

with GBG, and its mention on the portfolio was also removed [10]. Still, the behavior of the brand in the aftermath of the incident clearly hints that its termination of connection with GBG was done in a haste, only after the dirty laundry came to light [11].

A 2021 investigation in the primary production facility of Shein, an e-commerce platform that is the go-to place for young people for new, trendy clothes at the lowest prices, revealed that the situation had not improved at all in the past few years. The workshop is situated in Guangzhou, China, where the investigation revealed the condition that thousands of workers work and live in. The production facility in question is so huge, that it has given rise to several workshops in the region, situated in 'handshake buildings'—areas where the neighboring buildings almost touch each other. Inside these buildings which have long been identified as significant fire risks, the workers of Shein, many of whom do not have any formal employment contract, work till the dead of the night in the sweltering heat, producing and packing clothes for Shein [12]. Even though Shein is one of the fashion giants of the modern day, with it being the most downloaded Apple shopping application in the US in 2021, it has always kept its supply chain shrouded in a veil of mystery—perhaps to prevent being identified with its labor practices. In the UK, where making certain disclosures about labor conditions and supply chains are mandatory for every company, Shein has failed to make most of the necessary disclosures [12].

It was able to maintain this secrecy by refusing to establish any direct manufacturing centers which can be traced to the organization. While the workers know that they are producing their garments for Shein, their orders are received via another organization. As it was revealed, the workers often need to work 15-hour days to ensure that the supply chain remained unbroken. In fact, in many regions in China, the production facilities of Shein have given rise to 'urban villages', which were crowded and tightly packed neighborhoods populated almost exclusively by migrant workers who work in one or other of these workshops [12]. Considering that the workers have no direct contract with Shein, it is extremely convenient for the organization to ignore their rights. For example, even in the intense heat and humidity that these poorly ventilated factories have, no air conditioning facility is provided. The condition in these workshops is so deplorable, that 'sweatshop' is an accurate representation of the reality here, with workers themselves describing it as 'climbing into the stove', with a shift lasting for 12 hours or more [12]. However, thousands of workers still voluntarily opt for the same, due to the relatively attractive, yet still unsustainable, wages offered by Shein.

While these are only some of the incidents from the last few years that shed some light on this form of modern human slavery, there are hundreds of other reported incidents regarding the unhealthy and unsanitary conditions of these sweatshops that cause illness and death among the workers—and perhaps thousands more unreported. There can remain no question about it, that even though the workers 'choose' to work in these factories, this is not a real choice at all, as they are forced into it by their existing circumstances. Their socio-economic standard, lack of education, lack of employment opportunities in the concerned societies, etc., force them to sacrifice their life and health in order to ensure that their privileged counterpart can have access to the newest trends.

3. Human rights: A dream

Against this backdrop, it is an unquestionable fact that the workers at the sweatshops experience violations of several, if not most, of their human rights. Considering

that these are rights that one has by virtue of their being “human”, under several legal instruments, they are considered to be the inviolable and basic elements of life for all people. As the Universal Declaration of Human Rights provides, ‘All human beings are born free and equal in dignity and rights’ [13]. Thus, it is the responsibility of the respective national governments to ensure that all of its people have access to these building blocks of life so that they can flourish to their best possible selves. However, considering the social, political, and economic condition of the developing nations and the particular under privileged status of the workers, it is extremely easy for the fashion giants to exploit this section of the society to churn out more and more products at the lowest possible prices.

As mentioned previously, the precarious conditions of the garment sweatshops cause severe human rights violations in almost all spheres—the right to life and liberty, the right to be free from slavery, the right to be free from inhuman or degrading treatment, the right to social security, the right to just and favorable working conditions and pay, the right to rest and leisure, the right to health and security, etc. [13]. However, the rights that are most important in this context and violated in the gravest manner would be the right to a life with freedom from slavery, and the right to just and favorable working conditions as well as pay.

3.1 Life, free from slavery

Over and above all human rights, would perhaps be the right to life. Without the life of a person being secured under the legal regime, other rights, no matter how well protected, would continue to have no impact. For that reason, almost every international human rights document mentions the right to life as the very first human right available to everyone. The Universal Declaration of Human Rights, under Article 3, mentions that ‘Everyone has the right to life, liberty and security of person’ [13]. The European Convention for the Protection of Human Rights and Fundamental Freedoms, under Article 2, mentions that ‘Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law’ [14]. Similarly, the American Convention on Human Rights, under Article 4, mentions ‘Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life’ [15].

However, ‘life’ in itself is not an easily definable concept, and the problem remains as to where the right to life ends and where the other rights begin. For sure, a right to life could not simply mean the right to continued living without the basic elements of life being ensured first, as life demands a minimum quality of life as well. Thus, under the right to life, other related components of life such as the right to food, clothing, shelter, and safe living environment would also be included. Thus, the scope of interpretation of right to life varies greatly from nation to nation, with some countries, like India, choosing to interpret the right to live in a wide manner, as something beyond mere ‘animal existence’ [16], and some choosing to construe it in a narrow way. However, as the UDHR has identified, the right to life rarely works alone, as it must also be accompanied by the right to liberty—which signifies the right to not be controlled by another in an unauthorized and invasive manner. A similar sentiment is echoed by the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, in both of which, Article 1 mentions that ‘All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and

cultural development' [17, 18]. This right to liberty or self-determination may only be actualized without their being any inordinate external influence, as may be seen in cases of slavery or even modern slavery.

The right to freedom from slavery is also explicitly provided under several international legal instruments, including the UDHR, which mentions under Article 4 that 'No one shall be held in slavery or servitude' [13]. Similarly, the International Covenant of Civil and Political Rights, under Article 8, mentions 'No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labour' [17]. The European Convention for the Protection of Human Rights and Fundamental Freedoms Article 4 is worded almost similarly, with it mentioning that 'No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour' [14]. Article 6 of the American Convention on Human Rights echoes similar sentiments as well [15].

While it is true that the original intention behind drafting these provisions may have been otherwise, to prohibit the practice of actual slavery and trading of slaves that formally lasted till as recently as the nineteenth century, that does not make them inapplicable for situations of modern slavery such as the garment sweatshops. One might argue that the essential ingredient of slavery, the lack of freedom and choice, is absent in this case as the workers choose to work in these sweatshops and are free to leave any time they want. The workers are not owned by anyone as chattels. However, the reality of it is not as simple. While there may not be an official 'owner' of the workers forcing them to continue working, it can be argued that their socio-economic condition is doing the forcing, taking away their free choice to work or not work anywhere they want. Moreover, once they start working at these factories, it seems like the management is taking an inordinate amount of liberty with them—by violating their basic requirements such as health, safety, and sanitation, and threatening to fire them if they do not comply [12]. Thus, the element of free choice in terms of workplace and working environment is certainly absent in this case—making it a situation of nothing but servitude. Moreover, considering how the basic foundation of life are being denied by their employers, it is a blatant violation of their right to life as well.

3.2 Working conditions and wages

The other most important right of the workers that is being violated in this context is the right to just and fair working conditions as well as wages. This right is ensured in most international human rights documents to ensure that the workers, who may already be lower in the power hierarchy than the management, do not get exploited by their employers. Thus, this right encompasses factors such as healthy, safe, and sanitary working conditions, and fair wages for fair work.

Article 23 of the UDHR provides that:

Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests' [13].

A similar sentiment is echoed by Article 7 of the International Covenant on Civil and Political Rights, which states:

'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- a. Remuneration which provides all workers, as a minimum, with:
 - i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b. Safe and healthy working conditions;
- c. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays' [17].

Another key document in this context is the 1998 (amended in 2022) International Labour Organization's Declaration on Fundamental Principles and Rights at Work. It declares that all the members of the organization must respect, promote, and realize in good faith, some fundamental rights that include 'the elimination of all forms of forced or compulsory labour', 'the effective abolition of child labour' and 'a safe and healthy working environment' [19].

This is an inherent right that is available to all workers and humans in general, and that is being grossly violated in this case. Firstly, the focus of the right, as envisaged in various international legal instruments, is 'just and favourable conditions of work' [13, 17]. However, there can be no semblance of justice and favorability in the sweatshops, where the workers are made to toil away for shifts of 12 hours or more, in unhealthy and unsafe working conditions. Surely, a workplace that is poorly ventilated, hazardous, does not allow adequate breaks to the employees and engages in other forms of abuse and can never be described as 'just and favourable'. It also goes against the idea of a 'safe and healthy' working environment, as is mandated by several legal instruments including the International Covenant on Civil and Political Rights and ILO Declaration [17, 19]. Moreover, the UDHR also mentions that there must be protection against unemployment for all workers [13]. This is something that is completely absent in this case, as already mentioned, the organizations prefer to not even employ the workers under their brand name to skirt around any potential liability [12]. Not only is protection against unemployment not guaranteed in these facilities, but often, the employers actively threaten the job security of the workers if they dare to protest against the working conditions [6].

Nestled under the right to just and favorable working conditions is the right to fair wages, which the UDHR mentions as 'just and favourable remuneration' [13]. While the interpretation of what may be considered as 'fair' wages would be highly subjective and depending on the societal and economic context of the concerned nation, it would be safe to assume that it would include living wages not below the minimum wages fixed by the concerned nation, which would allow the worker to accommodate the basics of life with their wages. However, as the condition of many of these sweatshops show, they pay at the level of pennies per hour—with the motivation of shifting the workshops to developing nations being the easy availability of cheap labor. Often, the workers have to take second or third jobs over and above their already hectic hours at the workshop, to ensure that they and their families can have access to food and shelter [8]. Alternatively, the workers, often informally, engage their relatives and other family members, including children, in the sweatshops themselves, to ensure that the family can survive [12].

Thus, it is an unambiguous and apparent fact that there is a blatant violation of the right to just and favorable working conditions happening at the workshops. Surely, as fashion giants that are charging between tens to thousands of dollars for each item, corporations can afford to ensure humane working conditions and living wages for all their workers. Establishing their manufacturing operations in developing nations is not an illegal or unethical practice in itself, as that will keep their costs low, as long as they maintain a basic standard of working conditions and wages for their workers. By not providing the same, they might be making marginally better profits, but at a significant cost to the life and health of thousands of workers.

4. Conclusion and ways forward

Thus, as the discussion shows, there is no doubt that the fast fashion industry is illegal, unethical, and unsustainable across various fronts. Over and above the environmental and other concerns, it is a practice that is extremely harmful for the workers on whose backs the industry stands, as they are forced to work inhumanly long hours in uncomfortable and unhealthy working environments, for wages that do not allow them to break free out of the cycle of poverty. Among other basic human rights, the right to life and the right to just and favorable working conditions are being blatantly violated for these workers. The competitive forces in the market may have allowed it to survive and thrive, but the situation is such that the global community can no longer afford to turn a blind eye to the same. The demand of consumers for the next hottest trend cannot come at 'the cost of the life and health of vulnerable communities in developing nations'.

However, the fact remains that in spite of the scale and continued existence of the problem, the international community seems to be strangely apathetic to the same. When an incident like the Rana Plaza collapse or the wage debacle for Kendall + Kylie happens, there is a temporary uproar and a call to boycott the concerned brands, but this 'revolution' seems to be very transient and easily whetted by the brands by the mere appearance of a solution [7, 11]. Without a strong and consistent demand from the consumer base, the practices of the concerned brands are not likely to change in any way. As long as there is a considerable amount of demand in the market for their products, they will find ways to flout labor laws and ethics and engage in exploitation of vulnerable communities. If one nation comes up with stronger laws and policies


that hamper such practices, they will simply move their operations elsewhere, to a nation which cannot afford to do so. Thus, the ultimate call for change against fast fashion and the modern servitude associated with the same needs to come from the consumer base itself so that these fashion giants are forced to protect the life and health of their workers or shut down shop.

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More than 46 million people are currently victims of 21st-century slavery globally, most of whom are women and children. This book, *21st Century Slavery - The Various Forms of Human Enslavement in Today's World* provides a comprehensive overview of modern-day slavery, also known as contemporary slavery, neo-slavery, institutional slavery, and numerous other terms. It includes eight chapters that highlight human trafficking and explain and explore the act of recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts using force, fraud, or coercion. The book discusses the recruitment, transportation, transfer, harbouring, and receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labour or sexual exploitation. It concludes that the world must not accept slavery in the 21st century. This volume is a useful resource on modern slavery for all academics interested in humanitarian and development studies across the globe and to all policymakers and governments of nations who are pushing for the elimination of all forms of slavery in their nationhood.

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