



TOWARDS EFFECTIVE PROSECUTION, PROTECTION AND PREVENTION: ADDRESSING LEGAL GAPS IN SRI LANKA'S FIGHT AGAINST HUMAN TRAFFICKING

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Human trafficking is a heinous crime that violates the human rights of its victims. Every year, numerous individuals fall prey to traffickers both domestically and abroad. Sri Lanka, too, has been identified as a source, transit and, to a certain extent, a destination for individuals subjected to human trafficking. Therefore, the crucial challenge is to determine whether Sri Lanka has an adequate legal framework to combat human trafficking and protect the rights of the victims. The objectives of the research are: (a) to examine the domestic and international legal framework, (b) to analyze the effectiveness of domestic legal provisions compared with international law, (c) to recommend necessary improvements to strengthen the capacity to investigate, prosecute and prevent instances of human trafficking in Sri Lanka. Reviewing the existing domestic law reveals that the country has adequate substantive provisions to counter human trafficking. However, there is a lacuna in effectively implementing the substantive law. The early identification of trafficked individuals is of utmost importance. It enables their proper recognition as victims and facilitates relevant support and protection. Failing to identify and assist these victims promptly not only hampers the effectiveness of the criminal justice system in collecting evidence against traffickers but also exposes the victims to harm further and intensifies their existing trauma. The lack of knowledge and focus among relevant officers and their reluctance have made it difficult to arrest and prosecute perpetrators of human trafficking. Moreover, the slow pace of court proceedings and the unwillingness of victims to participate in investigations have further complicated matters. The research suggests that Sri Lanka needs to improve its efforts to investigate, prosecute, and prevent human trafficking by strengthening the procedural legal framework, enhancing the capacity of law enforcement agencies, and providing training and education to relevant officers. Additionally, it is crucial to raise awareness among the public about the harms of human trafficking and the importance of reporting suspicious activities. By taking these steps, Sri Lanka could make significant progress in the fight against human trafficking and fulfill its obligations to protect the human rights of its citizens.

Keywords: Human Trafficking, Procedural Obstacles, Recommendations, Sri Lanka, Substantive Laws



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Introduction

Human trafficking is a severe human rights violation often caused by poverty, globalisation, and economic inequality. It is similar to modern-day slavery and involves forced labour and sexual exploitation. (International Labour Organization, 2005). Despite the inherent danger and profound impact on human rights and dignity, human trafficking remains one of the most poorly understood forms of transnational crime, with significant deficiencies in both the prevalence data and the legislative responses at the domestic level (United Nations Office on Drugs and Crime, 2023).

Human trafficking represents a significant concern within Sri Lanka, whereby the country primarily operates as a source, transit and destination country (UNODC, 2006). Individuals are trafficked from Sri Lanka to West, Southeast, and South Asian nations, as well as Europe, for commercial sexual exploitation, organ trafficking, and forced labour. According to the United States Department of State Trafficking of Persons Report (2022), a range of factors contributes to the heightened vulnerability of children to trafficking, such as armed conflict-induced displacement, domestic violence, disruptions to traditional family structures caused by rising female labour migration, the severe impacts of the Covid 19 pandemic, and the prevailing economic crisis.

Against this backdrop, the objectives of this research are: (a) to examine the domestic and international legal framework, (b) to analyse the effectiveness of domestic legal provisions compared with international law, (c) to recommend necessary improvements to strengthen the capacity to investigate, prosecute and prevent instances of human trafficking in Sri Lanka.

Methodology

The overall approach to this research is based on the method of doctrinal research. To achieve the research objectives, the study analyses primary resources such as international and domestic legal instruments and secondary resources, including publications from the United Nations, journal articles, and web-based resources.

Results and discussion

1. The definition and scope of human trafficking

Human trafficking is a serious transnational organised crime that involves multiple offenders operating across various locations and timeframes. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000, is the leading international legal instrument on human trafficking, supplementing the United Nations Convention against Transnational Organized Crime, 2000. Article 3(a) of the Protocol defines human trafficking as 'the recruitment, transportation, transfer, harbouring or receipt of persons, using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.' The purposes of this Protocol are to prevent and combat trafficking in persons, paying particular attention to women and children; protect and assist the victims of such trafficking with full respect for their human rights; and promote cooperation among state parties to meet those objectives (Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000, a.2). These legal



instruments are designed to facilitate collaboration and coordination among member states, enhance their capacity to combat human trafficking effectively and address its various dimensions. Adopting a comprehensive approach to combat this illicit practice and protecting the victims' rights and dignity is essential.

2. Phenomenal frequency of human trafficking in Sri Lanka

The security of Sri Lanka is at risk due to the increasing incidence of transnational organised crime within the country. Sri Lanka has been identified as a source and transit location for drug trafficking, human trafficking, smuggling, and money laundering (Kathirgamthamby, 2023). According to the US Department of State Trafficking in Persons Report (2022), Sri Lanka has been subjected to domestic and foreign human trafficking, with most cases involving offenders coercing migrant workers into overseas labour in construction, garment, and domestic service industries. This exploitation occurs in various parts of the world, including the Middle East, Asia, Europe, and the United States. Notably, thousands of female migrant workers from Sri Lanka have reported being forced into domestic labour under exploitative conditions in the Gulf region, with many from Nuwara Eliya, Ampara, and Batticaloa. (US Department of State, 2020).

3. Domestic laws of Sri Lanka

The Constitution of Sri Lanka does not explicitly prohibit human trafficking, slavery, forced labour, or other forms of exploitation. However, it guarantees fundamental rights and freedoms such as freedom from torture and discrimination through Article 11, the right to equality and protection of the law through Article 12, and the right to engage in any lawful occupation, freedom of movement, and the freedom to return to Sri Lanka through Article 14. The Penal Code (Amendment) Act No.16 of 2006 was introduced to align the law with global norms and incorporates a comprehensive definition of human trafficking in section 360C. It aims to bring legal provisions closer to the definition of human trafficking outlined in the Palermo Protocol. In doing so, it acknowledges human trafficking in the contexts of both labour exploitation and sexual exploitation.

The first conviction for human trafficking under Section 360C of the Penal Code in Sri Lanka was in the case of the *Republic of Sri Lanka v T.T Banu* (HC Colombo Case No. 5187/2010). The case involved two female Uzbekistan female victims trafficked to Sri Lanka for prostitution after being falsely promised employment. Three individuals were convicted of trafficking, received nine years imprisonment, and fined Rs.100,000/- to the State and Rs.50,000/- compensation to the victims. It is respectfully argued that considering the severe nature of the indictment, such punishment is utterly inadequate.

The Penal Code further includes several sections that address different forms of human trafficking, such as kidnapping (s. 350), slavery (s. 358), and sexual exploitation (s. 360). The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act No. 30 of 2005 was also enacted to implement the SAARC Convention on Trafficking in Women and Children for Prostitution. However, it has not been put into effect yet.

The Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015 compensates and assists victims of all crimes, including human trafficking. The Sri Lanka Bureau of Foreign Employment is responsible for registering foreign employment agents, investigating complaints from migrant workers, and providing redress. Although the Bureau does not explicitly criminalise human trafficking, section 63 of the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 criminalises coercing individuals to migrate for employment without informed consent. However, the penalty for this offence is limited to fine and short imprisonment.

4. Legal lacunas in the domestic law and proposed recommendations



Prosecuting perpetrators is crucial to combating human trafficking and is widely recognised as a critical pillar. The gravity of the crime is duly acknowledged in Sri Lanka, as evidenced by the filing of indictments in the High Court (International Organization for Migration 2011). However, it appears that a lack of indictments is being filed under Section 360C of the Penal Code, which deals with offences related to forced labour or sexual exploitation (UNODC 2020). Instead, Section 360A on procurement is frequently utilised, resulting in a low success rate and only a few convictions (HC Colombo et al., 2010).

The ineffective use of section 360C of the Penal Code may be attributed to the limitations placed on the duties of arresting officers, particularly immigration officers primarily guided by the Immigrants and Emigrants Act No. 20 of 1948. Due to the nature of their service, they focus on identifying violators of Sri Lanka's laws rather than potential trafficking victims or offenders. Nevertheless, they are more likely to detect cross-border human trafficking during their routine immigration duties. Therefore, it is recommended to train law enforcement officials to recognise signs of human trafficking and take appropriate action when they suspect such activity (Lecamwasam, 2021). These signs might include an absence of travel documents or identification papers, unclear accounts of travel plans or destinations, physical or emotional abuse, loss of control over one's movements or possessions, and being accompanied by someone exerting control or manipulation. Law enforcement officials should investigate, make arrests, and cooperate with other agencies to prosecute traffickers and protect victims.

Moreover, police officers, who are also responsible for identifying presumed victims of domestic trafficking, lack adequate knowledge of the nature and scope of the offence (Lecamwasam, 2021). Furthermore, due to the lack of knowledge, sometimes police officers charge such perpetrators under different provisions. This results in incomplete investigations that fail to meet the evidentiary standard of the prosecution - beyond a reasonable doubt. To address this challenge, it is recommended to offer police officers adequate and appropriate training to identify, investigate, and prosecute human trafficking cases. Collaboration with NGOs and specialised agencies to exchange best practices, provide technical assistance and jointly develop strategies for combating human trafficking is also suggested. Establishing dedicated human trafficking units within police departments is recommended to respond to human trafficking cases effectively. An example of such collaboration is the Standard Operating Procedure (SOP) established by the Sri Lanka Police Department in partnership with IOM, funded by the British High Commission of Sri Lanka (IOM, 2011).

Another significant obstacle to cases reaching the Courts is the reluctance of victims or witnesses to participate in investigations, despite the existence of the Victim Protection Act No. 04 of 2015. (UNODC, 2020). Cooperation from victims is crucial in filing indictments, but not all victims of trafficking wish to pursue legal action. This can have serious consequences, particularly if the victims change their statements after an indictment has been filed, as they are the primary witnesses to the crime (Arambepola, 2021). To overcome this obstacle, it is suggested to empower victims of human trafficking by providing them with information about their legal rights, support options, and opportunities for self-sufficiency. It is crucial to protect their confidentiality and offer specialised training to police officers on effectively managing and protecting victims' privacy. Raising awareness among the general public and vulnerable communities about the dangers of human trafficking and the necessity of reporting such incidents to law enforcement is also recommended. Educational programmes such as the Short Course on Migrant Workers offered by the Department of Legal Studies at the Open University of Sri Lanka can be organised to achieve this objective.

Moreover, the legal proceedings can be frustratingly slow for reasons such as backlog of cases, procedural complexities, inadequate infrastructure, and insufficient legal personnel (UNODC 2020). Such reasons negatively affect the victim's ability to move on with their life. While adopting a victim-centric approach is recognised as crucial, law enforcement officials, including judges, emphasise the importance of remaining unbiased (Karunatilaka). The doctrine of presumption of innocence allows the defence to be given sufficient time to



prepare, which can result in delays. The efficiency of State institutions can also have a detrimental impact on the pace of court proceedings. To address this challenge, it is recommended that judges and prosecutors should prioritise human trafficking cases by establishing a dedicated court or docket to handle such cases and assigning specialised personnel to them (Lecamwasam, 2021). The courts should be provided with additional resources, including personnel, infrastructure, and technological resources, to expedite court proceedings and ensure the timely dispensation of justice.

Conclusion

Human trafficking is a heinous violation of human rights globally, and its complex transnational nature necessitates a coordinated, multidisciplinary response at both national and international levels. The Trafficking Protocol is the primary international legal instrument for addressing this crime. Sri Lanka has ratified and implemented this Protocol through section 360 of the Penal Code. Nevertheless, it was revealed and concluded that Sri Lanka lacks effective procedural methods for identifying, prosecuting, and preventing human trafficking. Consequently, it is recommended that Sri Lanka improve its utilisation of relevant legislation when prosecuting and sentencing offenders, enact victim-centric legislation to counter human trafficking, increase efforts to proactively identify trafficking victims, and raise public awareness of methods and means of human trafficking and how to avoid them.

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