

ANALYSING THE SIN OF HUMAN TRAFFICKING OF MEN, WOMEN & CHILDREN

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ABSTRACT

The paper examines the phenomena of human trafficking and has been denoted as a form of modern day slavery. Despite enormous efforts men, women and children are trafficked for forced labour and sexual exploitation. Although the government has made efforts, in recent years the result has been a change in ethnic identity of the trafficked individual rather than the number of victim. Human trafficking is a serious contemporary social justice and human rights issue. Any nation's future and identity depend upon implementation of its laws which must protect its citizens specially women and children from the evils prevailing in the world. Human trafficking has become an international huge profit-making business whereby every individual from local to international level is involved in such heinous crime. This research study summarises the current knowledge about trafficking which include definitions, describes ways in which people are exploited for labour, outlines related policies and laws, summarises needs of survivors and offer ways in which social workers are involved in committing the crime.

INTRODUCTION

The Legal Prohibition against Trafficking of Women and Children

Human Trafficking, especially, trafficking of women and children is a dreadful reality in today's modern world. Women and children are trafficked all over the world for forced prostitution, sexual slavery and forced labour. The mere monetary benefit through this inhuman flourishing trade has gained momentum among people who accomplish such organized crimes internationally. According to CRS Report for Congress (2010), Department of State, USA, every year around 800,000 and 900,000 people are trafficked across the borders worldwide and around 18,000 to 20,000 to the United States.

The aim of this chapter is to discuss the state's obligation under International Human Right Law, International Labour Law and International Criminal Law in order to prevent this hideous act of trafficking in persons. Some of the most important and crucial international human rights instruments adopted by the United Nations actually make reference to the abolition of slave trade and slave practices and trafficking in persons too. As far as the International Labour Law is concerned this chapter discusses the conventions and the legal framework adopted by the International Labour Organizations. Further, this chapter also focuses on the legal responses in dealing with human trafficking and highlights the various conventions, protocols and treaties adopted and enforced by the United Nations in curbing and combating the human trafficking with a specific focus on the trafficking of women and children.

Many conventions and protocols have been framed by the United Nations Office of Drugs and Crimes (UNODC) under the International Law to prohibit and prosecute human trafficking such as United Nations Convention Against Transnational Organized Crime, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children and the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air. The UNODC has also instituted the United Nations Global Initiative to Fight Human Trafficking (UN GIFT) in March 2007 to combat human trafficking in cooperation with the International Labour Organization (ILO), UN Children's Fund (UNICEF), International Organization for

Migration (IOM), Organization for Security and Co-operation in Europe (OSCE) and Office of the High Commissioner for Human Rights (OHCHR).

Furthermore, International Law has also included the Universal Declaration of Human Rights, 1948; the United Nations Convention for the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others, 1949; the International Covenants on Civil and Political Rights, 1966 and the Convention on the Elimination of all Forms of Discrimination Against Women, 1979 towards the initiative of prohibiting and combating trafficking of human beings.

Despite the various laws, conventions and protocols being enforced by the United Nations as well as, the States which have been party to these conventions and protocols, there have been many deficiencies which have aggravated this problem and eventually helped the organized crime group to flourish in this trade of human trafficking. The deficiencies have also given rise to various problems in dealing with the cases of human trafficking, especially of the women and children who have been the majority among the victims of trafficking and have been exploited again and again. This chapter also highlights the gender perspective in human trafficking of women and children and the role of women in the sexual exploitation of other women as well as children. The women involved in human trafficking often take up the role at the top level of this organized crime and facilitate the trafficking of women and children from their country of origin and community.

THE LEGAL RESPONSE TO DEAL WITH VARIOUS ASPECTS OF HUMAN TRAFFICKING

Human trafficking has emerged as a flourishing cross border trade and has become a major area of concern. As per the United Nations, it has been estimated that 700,000 to 4 million people are being trafficked every year all over the world. Among them, the majority of the trafficked persons are women and children who are forcefully indulged into prostitution, slavery, labour and many other types of exploitation. It is seen that sometimes the trafficked persons are subject to such exploitation voluntarily due to their poor economic condition.

The need for immediate remedy to this illegal trade, which is a violation of human rights, is of utmost importance in the current scenario. The United Nations has been working on this major issue with the help of its conventions and protocols to prevent, prosecute, punish and eradicate this problem. But the United Nations conventions, protocols and legislations are interpreted in a different manner in different countries and the meaning of the word 'trafficking' also varies from country to country. Since it is a social issue, it also depends on the social and economic conditions as well as traditions and culture of each country. The legislations of the countries of the world and the United Nations conventions and protocols needs to be streamlined and aligned to deal with human trafficking in a better way.

Human Trafficking, as per the UN protocol, is defined as the "recruitment transportation, transfer, harbouring or receipt of persons, by means of coercion, of abduction, of fraud, of deception, of 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"

The UN Protocols should make sure that the people who are found guilty of trafficking should be penalized; the victims should be dealt with sympathy, should be given proper protection and should also be given a temporary or permanent residence in the country of destination . The UN Protocols and Conventions for combating human trafficking, especially women and children, have been accepted globally but a major question which arises is how far are these effective in preventing or combating human trafficking in all the countries. This requires a common consensus which is beneficial and efficient for all countries irrespective of various legislations operative in individual countries.

The Legal framework for combating human trafficking was first institutionalized in 1904 as an international agreement to suppress the white slaves by the League of Nations and later in 1910 a Convention for the suppression of the White Slave Traffic came into force. During that period, white slaves were referred to prostitutes and white slavery was referred to prostitution. In 1921, the convention included children and in 1933, it made provision for female children. The above mentioned convention was again amended by the Protocol signed at Lake Success, New York on 4th May 1949. To combat human trafficking; slavery, servitude, sexual exploitation through forced prostitution and other forms of exploitation which are being carried out because of human trafficking, the

protocols and treaties enforced by United Nations must conform to the International Law and should be complied by the state / countries at the domestic level. The UNHRC monitors the implementation and compliance of the protocols and conventions in the countries of the parties with the help of its rapporteurs, groups and NGOs.

The parties also prepare a yearly report about the activities undertaken and various steps and actions taken in combating human trafficking in their own countries and submit it to the United Nations for review. The enforcement of legislations at the domestic level in conformity with the International Law and related protocols and conventions enforced by the United Nations is the most effective way in combating human trafficking, especially of women and children. But in most of the cases it has been noticed that efficient working of legal mechanisms to combat this crime is not so effective due to the fact of increasing number of cases of trafficking across the world and the sophisticated methods being used by the traffickers in response to these legal prohibitive measures against this organized crime.

With reference to the laws prevalent in South Asia in combating cross border trafficking of human beings, these laws are majorly domestic legislations since most of the cases are monitored or dealt locally. This is particularly because the countries in South Asia depend on the criminal justice system prevailing in their own countries for the enforcement of legislations and punishment of the offenders thereby.

The United Nations has thus enforced many conventions and protocols to deal with human trafficking and taken various measures to combat this organized crime with the help and support of major countries all over the world. Some of these conventions and protocols which have been enforced towards the prohibition of human trafficking, especially of women and children and protecting their basic human rights have been discussed under the subsequent points.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

It was on 10th December 1948 that the United Nations adopted the Universal Declaration of Human Rights. Its preamble acknowledged that the recognition of inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation

of justice, equality, freedom and peace in the world. The General Assembly of the UN considers the UDHR as a common standard of achievement for all the nations and mankind and expects that every individual and the society should promote and respect the human rights and freedom by educating people keeping in mind the declaration.

Article 1 of UDHR states that everyone is born free with equal dignity and rights and that they should act in a spirit of brotherhood with reason and conscience. From the basic assumption that all human beings are free and equal, means that the principles of slavery, slave trade and servitude must be abolished. Further, Article 4 of UDHR states that no person shall be held in slavery or servitude, and that slavery and slave trade shall be prohibited in all forms. Furthermore, Article 13 of UDHR states that every person has the right to freedom of movement and residence in any state. Also Article 23 (1) states that every person has the right to freely choose the employment and to obtain favourable conditions of work.¹¹⁸

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966 on the same guidelines of the UDHR. It recognizes that the human beings can enjoy the civil and political freedom and can achieve freedom from fear only if the states create such environment in which every individual can enjoy these rights along with the economic, social and cultural rights. It also lays stress that the States under the Charter of the UN, should promote universal respect for human rights and freedom and observe the same in every deed. This responsibility should also be spread and instilled among the individuals of the States. Article 8 clearly states that –

1. 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.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or wellbeing of the community;

(iv) Any work or service which forms part of normal civil obligations. Notwithstanding any lacunas, ICCPR is determined to its cause, abolition of slavery and slave trade.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The International Covenant on Economic, Social and Cultural Rights was also adopted in December 1966. Unfortunately, the ICESCR does not have any specific provision dealing with slavery or slave related trade although it does states some rights for fair trade and just conditions of work which does apply to people who have been trafficked. For the purpose of labour exploitation, the Covenant provides that the state must recognize the rights of everyone to gain his living by work and also to join free trade Unions to safeguard his stand. Under this covenant there was a committee set up known as the Committee on Economic, Social and Cultural Rights. In the year 2002, this committee expressed concern over the trafficking of women and children for sexual exploitation in the Czech Republic and Slovakia. Most recently this committee has made recommendations on the issue of trafficking in persons

to Slovenia and Uzbekistan and in both the cases the need to assist and protect the victims is a recurring principle. Therefore, it is evident that the focus of this committee was on the victims of trafficking in humans.

THE CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child was adopted by the UN in November 1989 and was entered into force on September 1990. Article 1 of this convention defines a child as every human being below the age of 18 years. The provisions of this convention are determined to protect the inherent rights of the child. The Convention considered that since child is a part of a community and a fundamental group of the society called the family should be given the required protection and assistance for the development of personality in a harmonious manner and should grow up in an environment of love, care, affection, happiness and understanding and are entitled to special care and assistance and should be protected. The Convention on the Rights of the Child also states that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'.

Article 31 of the CRC obliges the states to take all appropriate national, bilateral and multilateral measures to prevent the abduction of the child, the sale of or traffic of children for any purpose or in any form. The other provisions of the Convention must be taken into consideration. Article 19 requires the state parties to protect children from all forms of physical and mental violence, injury or abuse, neglect or neglecting treatment, maltreatment or exploitation including sexual abuse while in the care of parents, legal guardian or in care of any individuals.

Article 20 provides for special assistance and protection to be granted by the state to the children who are temporarily or permanently deprived of their family environment.

Article 21 ensures that the adoption of child shall, in all respect, be in the best interest of the child in case of national or inter country adoptions.

Article 32, 34 and 36 provide for children's protection from economic, sexual or other exploitation.

Article 33 of the convention calls for all the state parties to prevent the use of children for production of trafficking, drugs and psychotropic substance.

And article 39 recognized the right of the child to physical and psychological recovery and social reintegration in case where they have been subjected to any kind of abuse.

PROTOCOL TO THE CONVENTION ON RIGHTS OF A CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The protocol to the convention on the rights of a child dealing with involvement of children in armed conflict is a human rights instrument that can supplement the UN Trafficking Protocol with regard to children specifically trafficked for involvement in armed conflict. The protocol is aimed at enhancing international humanitarian law on recruitment of children in conflicts and was adopted in 2000. Article 4 (2) imposes all the states to take efficient measures to fight against recruitment and involvement of children in armed conflict, criminalizing the practice and Article 6 (3) provides the states parties to demobilize those children who have been involved in armed conflict and to assist them in their physical and psychological needs and bring them back into the society. Article 70 (1) imposes them to cooperate to prevent the involvement of children in armed conflict. This protocol has been ratified by 119 states, however, there are still many states where children are used during armed conflict namely, Iraq, Indonesia, Iran, Burma etc. The committee under this protocol started its work of examining states in 2005 and is dedicated towards its cause.

PROTOCOL TO THE CONVENTION ON RIGHTS OF A CHILD, ON SALE OF CHILDREN AND CHILD PROSTITUTION AND CHILD PORNOGRAPHY

The Protocol to the Convention on Rights of a Child, on Sale of Children and Child Prostitution and Child Pornography came into force in 2002. Article 2(A) of the protocol gives the definition of sale of children as being ‘any act or transaction whereby a child is

transferred by any person or a group of persons to another for remuneration or any other consideration' and Article 3

(1) calls all the state parties to criminalize the following domestic transnational offence

committed by individuals or domestic groups: the offering, delivering or accepting of a child for the purpose of sexual exploitation, removal of organs for profit and forced labour, acting as an intermediary for inter country/state illegal adoption, the offering, obtaining, procuring and providing a child for child prostitution and producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography. Finally Article 8, 9 and 10 provide for the responsibility of the state to provide assistance to the victims.

INTERNATIONAL CONVENTION ON ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION AGAINST WOMEN

This convention was adopted in 1965 by the UN General Assembly. It does not contain any measure directly dealing with the term trafficking in person or the forms of slavery, even though its monitoring body, the committee on the Elimination of Racial Discrimination made reference to trafficking in persons in some recommendations and observations to the state parties on the basis of Article 5. Notwithstanding the lack of measures specifically dedicated to human trafficking, the committee recognizes that Azerbaijan protects and assists trafficking victims wherever possible in their own language.

PROBLEMS EXPERIENCED WHILE DEALING WITH HUMAN TRAFFICKING

It is a known fact that human trafficking is a thriving business and ranks third in the world among the organized crimes, just behind the arms and ammunition and drug trafficking in the global markets. Among the trafficked victims all over the world, around 80% are women and 50% are children. The enforcement of law at the international level as well as at the state level is not stringent enough to rescue the victims and to protect them from the

traffickers. The victims of this organized crime are forced into slavery and prostitution and are left in a pathetic condition of living by the traffickers.

It has been noticed that trafficked victims (women and children) are mostly helpless and are deprived of their basic human rights. To protect their rights, the United Nations Commissioner for Refugees (UNHCR) has undertaken various initiatives to ensure the basic human rights to be provided to the victims of this trade and also helps them to obtain the refugee status in the destination country.

Despite the initiatives taken by UNHCR, the victims of human trafficking face various problems in the destination country during their slavery and exploitation and also in their countries of origin after they escape from the traffickers when they return to the country of origin or when they are deported by the immigration officials of the destination countries. During their stay in the destination country, the trafficking victims are totally left at the mercy of the traffickers, and they are often found to be living in an inhuman condition, facing ill treatment and are exploited continuously. Their passports are seized and are left with no hopes of liberty but to be exploited forcefully.

Even if they escape from the hands of the traffickers, or are rescued from the traffickers, their plight does not seem to end. They still face problems such as lack of protection, danger of being caught and exploited again, difficulty to get refugee status, difficulty in immigration, trafficking visa, deportation etc.

In some cases, the confidentiality measures and safety measures taken to protect the victims in the countries of destination were seen effective but despite this fact the traffickers trouble the members of the family in the country of origin. Such retaliation faced by the victims assisting in the investigation and legal action against the traffickers being taken as well as the closed ones of the victims occurring in the country of origin include threats, bribes, coercion, violence, terrorization by the traffickers as well as the officials involved in trafficking. The local law enforcers are even found to be unprepared to deal with such cases of victim protection and are most of the time found to be corrupted.

There is an incongruity noticed between laws which are concerned with the migrants, especially those without any documentation and the laws which provide protection of the trafficked persons and their permit to reside in the country of destination. It has been noticed

that the persons who are found to be trafficked and are not recognized by the law enforcers are immediately deported to the country of origin and these persons also face detention at the immigration. These persons who are the victims of trafficking or the illegal migrants are mostly unaware about their rights. They even face discrimination even after being sexually exploited. There are many cases where they have been accused, criminal actions being taken against them, arrested and punished for being into forced prostitution and sexual exploitation.

The UNHCR and other Human Rights organizations have been working towards rescuing and providing justice to the victims and also in eradicating this serious crime across the borders as well as within the borders. But it has been noticed that the organizations working towards this objective also face serious consequences from the society as well as the government in various countries, especially in South East Asia. This is because of the prevalence of criminal justice system which is followed in these countries locally, deficiency in proper enforcement of anti-trafficking laws, misinterpretation of UN protocols by the government and other officials, lack of knowledge about these laws and protocols among the citizens. Another reason is that the members of the family and society do not cooperate with them in this noble cause as they fear facing serious retaliation from the traffickers. The organizations working towards the objective of eradicating this crime globally face threats from the traffickers as well.

Another problem faced in dealing with human trafficking cases is lack of coordination between the stakeholders of law enforcement officers and government officials as they have their own conflicting agendas while dealing with the victims of trafficking and such illegal migrants.

The delay in prosecution of human trafficking cases and investigations is yet another problem faced during dealing with the victims and their cases. The victims are therefore held in the destination country, they are not given refugee status and they face risk of being exploited again. These victims are not even provided residence permit despite being included in the laws for protecting the victims of trafficking. These victims are not apprised of their rights and hence face difficulty in getting justice for the crime being done against them.

Lack of clarity, lack of proper understanding of anti-trafficking laws by the law enforcement officials and lack of availability of resources also add up to the impediment in prosecuting human trafficking victims.

RESPONSES TO LAW ENFORCEMENT AGAINST HUMAN TRAFFICKING: A REGIONAL OUTLOOK

The increasing rate of human trafficking for labour, sexual servitude, slavery and prostitution all over the world has led to the enforcement of various laws worldwide to combat this crime. The response to law enforcement in human trafficking is different in different countries. Various International laws, conventions and protocols have been adopted and enforced by the United Nations and its allied organizations such as UNODC, UNTOC and UN.GIFT. In addition to this, many more legislations have been enforced by each and every country all over the world to combat human trafficking.

The major activities of human trafficking take place in the developing nations such as countries of South Asian region including the Indian sub-continent, Central Asia, Middle East region, African region and some parts of Eastern Europe. These regions have strived to combat human trafficking by enforcing various laws at the domestic level in conformation with the International Laws and protocols of the United Nations. The legal systems in these regions are diverse and the responses to the law enforcement against trafficking are also varied. The region wise outlook of the responses to the laws enforced in these regions is illustrated in the following paragraphs.

South Asia:

In South Asian region, the cross border trafficking of women and children is a major area of concern. The trafficking activities take place in the countries of this region which acts as country of origin, destination as well as transit. Human trafficking is a very severe form of organized crime in this region. But it is very difficult to find out the exact number of victims of trafficking because of the subversive nature of the crime and the insufficient response and lack of proper effective measures to tackle this heinous crime. The exploitation

of women and young girls in this region is continuously on the rise despite the enforcement of various domestic laws in the countries of South Asian region.

Most of the women and girls trafficked in the South Asian region hail from the Indian sub-continent countries such as Bangladesh, Nepal and India and even from Sri Lanka and Pakistan. These women and girls are mostly sent to brothels operating in India and also trafficked to the Middle East region for exploitation, sexual servitude, and prostitution. The trafficking of women and children takes place in this region mainly because of the poor economic condition, lack of employment, lack of education and the poor societal status of women prevailing in this region. Due to these reasons, the response to the law enforcement in this region is not much effective. The victims of trafficking are not properly taken care of properly as per the standards laid down by the United Nations protocols and conventions, they do not receive any protection during prosecution as well as after being released. They always have a fear of being trafficked again.¹⁴⁷

The South Asian Region has a different legal system. They have a domestic legislation to combat human trafficking in this region but these are primarily based on the criminal justice system which is the predominant justice system prevailing in the region. The domestic legislation plays a prominent role in dealing with the human trafficking and other related crimes. The criminal justice system prevalent here comprises the police, the prosecutors and the judiciary and depends on the domestic laws to deal with human trafficking.

Studies and reports of the National Human Rights Commission of India states that the registered number of cases and conviction rate of the victims are low due to the insufficient law enforcement in the region. The studies also state that the rate of corruption among the police, judiciary, bureaucrats and prosecuting officers is ever increasing. The victims are re-victimized and even re-trafficked involving these personnel with the help of the organized crime groups.

The government initiatives and various measures undertaken as part of responses to the law enforcement has greatly helped in prosecuting the traffickers, rescuing the victims and reducing the number of trafficking of human and children in the South Asian region. Training of police personnel, law enforcement officers, involvement of non-government organizations have greatly encouraged in bringing down the human trafficking rate in this

region though it still holds the highest rank among the countries of origin. The government as well as non-governmental organizations provide shelter, protection and support to the victims of trafficking. Awareness programmes are also conducted to spread the information about human trafficking, especially of women and children, in the region and the most vulnerable community are apprised of the severity of this crime and the laws enforced to curb this crime so that they do not fall prey to the traffickers.

IDENTIFICATION OF THE VICTIMS OF HUMAN TRAFFICKING

The victims of human trafficking have been identified as mostly adult women in the age group of 18 – 24 years as per the IOM database. These trafficking victims have, on an average, acquired middle level education. These victims are identified during their movement across the border, during transit and also when they are rescued after exploitation in the country of destination. The following graphical representation depicts the education level of the victims of human trafficking where it is clearly evident that the victims are mostly of middle level, high school level and technical school level. Besides, there are also a number of victims who have acquired primary school education.

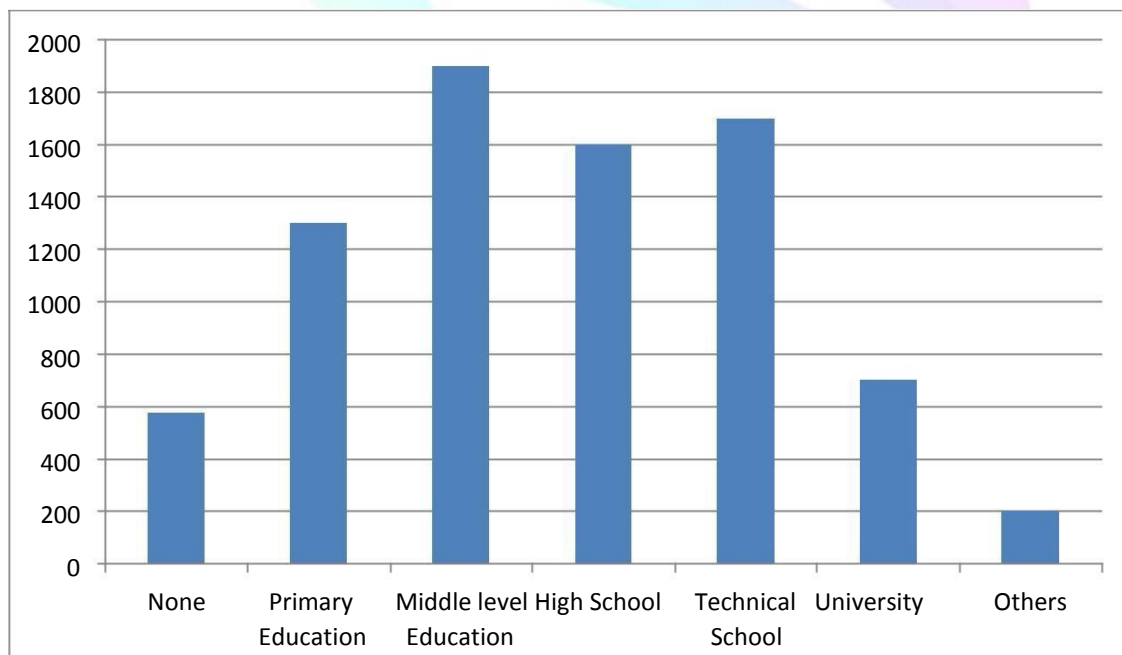


Figure 3.1 Education level of the victims of Human Trafficking

The judicial deliberations which have been the main subject of this paper is not only a textbook example of the challenges involved in the interpretation of the Rome Statute, its outcome is of paramount importance for the future development of the International Law in general and the law on crimes against humanity in particular. Anecdotal evidence has proved that trafficking in human beings has affected more victims than the Jewish Holocaust, Rwanda Genocide, the Wars in Iraq, the Korean War, Vietnam, and both World Wars combined. This data is indeed most alarming. To recognize the promise of the Rome Statute and to effectively prosecute grave cases of trafficking in human beings, the Court must look outside the situations to which international law has historically been applied otherwise, the Rome Statute will prove symbolic, at best. The thesis deals with the need for a specialized convention on Prevention of Crimes against Humanity, just like the Genocide and War Crimes Convention.

It mainly focuses on the extent of the human trafficking trade within and across the borders of the countries and the role of International Law and other related laws such as International Humanitarian Law and Human Rights Law. The chapter deals with role of international laws, UN conventions and protocols, international organizations such as the International Criminal Court and the effectiveness of the Rome Statute. Further, the chapter highlights the distinction between the terms – human trafficking and human smuggling which are often used interchangeably and gives a description of the scope of human trafficking into sexual slavery. It also portrays the role of organized crime groups, nature of this trade and organized crimes.

It also highlights the major causes of human trafficking such as socio-economic and political factors followed by the consequences of human trafficking such as Social, Political, Demographic and Health.