The Paradox of Protection and Governance: Structural Contradictions between Criminal Justice and Immigration Enforcement in Anti-Trafficking

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Abstract. Although the international framework identifies human trafficking as a serious felony and requires the protection of victims, there is still a general gap in practice: victims are often mistakenly identified as undocumented migrants, offenders or unreliable witnesses. This ontological inconsistency represents a profound institutional dilemma, not just a cognitive bias. This study discusses the structural contradictions between criminal justice and immigration law enforcement in anti-human trafficking governance. Through a critical assessment of the international legal framework and institutional practises, this study has found anomalies in policy implementation, especially why victims are often classified as illegal immigrants. It also explores how the logic of administrative law enforcement violates human rights and turns existing aid mechanisms into sources of secondary victimization. Research results show that conflicting institutional goals often push victims to the criminal justice system instead of providing asylum, which leads to the process of pursuing justice inadvertently causing more trauma. In addition, the current relief system has obvious conditional characteristics, that is, the premise of providing protection is that the victim is considered to have a certain value in criminal proceedings. This system stems from the conflict between border security priorities and individual rights, and this structural paradox calls for a paradigm shift. Finally, this article advocates narrowing the gap between international human rights norms and national practises and calls for the decoupling of social assistance from criminal cooperation in order to establish a more humane and efficient anti-human trafficking mechanism.

Keywords: Secondary victimization, structural contradictions, conditional relief.

1. Introduction

Human trafficking has been widely recognised as a modern form of slavery and is a major obstacle to global governance and international human rights protection. According to the report of the UNODC, the international community has established a sound legal framework to deal with this criminal behaviour, with the aim of balancing the relationship between severe punishment of the perpetrators and the comprehensive protection of trafficked persons [1]. Under these international norms, nations are required to regard victims as individuals with inherent rights, not illegal immigrants or criminal accomplices, who deserve formal assistance and care. In theory, arresting criminals and helping victims should complement each other, because gaining the victim's trust and confession may be the key to breaking up criminal gangs. However, the actual implementation of these policies exposes the deep contradiction between humanitarian idealism and the rigid reality of institutional life. In the actual state implementation, the expected synergy between combatting crime and protecting rights is often transformed into a hierarchy. In short, the high emphasis on national and border security may quietly erode the dignity of victims. Although the law may require that the focus should be on the victim, previous cases show that the government's protection measures are often unstable and come with various conditions. In the end, there is a gap between international norms and state implementation, because the private rights of victims are covered up by the administrative needs of the country itself.

Essentially, this study explores a profound and contradictory phenomenon: why the very act of providing aid morphs into secondary victimization at the intersection of criminal justice and immigration enforcement. Although traffickers have caused initial trauma, the response taken by state

agencies tends to result in a series of subsequent injuries. Gallagher identifies the root of these failures in the deep-seated legal contradiction between a state's sovereign right to maintain border security and its international human rights obligations, a friction that inevitably pushes victims to the margins [2]. Within the criminal justice system, the victim is mainly regarded as the transmitter of evidence. They are only afforded protection and social services if they are a valuable witness and this whole process is about using their trauma to secure conviction. It is a saviour to oppressor transformation, which indicates that protecting witnesses based on their value makes the aid process a tool of coercion. Immigration enforcement agencies also tend to classify victims who have problems in complicated judicial processes, or who are unable to give consistent statements as illegal immigrants, criminals or unreliable witnesses. Consequently, what once was the shield of international law has become a weapon of surveillance and coercion, and rescue procedures have become a coercive means sanctioned by the State.

This study seeks to transcend the superficial notions of policy failure and offer a rigorous account of the structural tensions which can be found in the responsibilities of institutions and which become evident through the phenomenon of secondary victimisation. This phenomenon has been best explained by Stumpf's concept of crime migration, which is the systematic intersection of criminal law and immigration enforcement [3]. In this ambiguous legal terrain, suspicion against the institutions that is a part of the immigration control policy frequently affects the judiciary. The issue is that the state is an established promoter of human rights, and it's also a watchful gander at the borders. In the event of such conflict, national security has virtually always superseded the individual right. While these studies have explored in great detail the factors that make human trafficking possible, much less research has focused on the ways in which human trafficking can be actively brought about by cooperation between the criminal justice and immigration enforcement. This article shows that the working principle of conditional aid mechanisms is based on a deep study of institutional obstacles, uncovering systemic defects that lead to secondary victimization. Besides the theoretical aspects, this work is of great practical significance for the national governance. It calls for a paradigm shift in addressing anti-human trafficking and suggests a paradigm shift in the model of decoupling the social assistance from the criminal proceedings. This research aims to contribute to establishing a more ethical and effective governance approach that prioritizes individual rights over administrative convenience, fostering a paradigm shift.

2. Conceptual and Scoping Definitions

2.1. Defining Human Trafficking

The definition of human trafficking is behaviour, means and purpose, within the framework of international law. Unlike smuggling (which is mainly aimed at the security of national borders), human trafficking is a direct violation of personal dignity and is realized through exploitation. The UNODC gives a clear guideline on the punishment of forced recruitment and transportation of personnel; however, in reality, migration falls in a grey zone between voluntary and forced migration [1]. The distinction between ‘voluntary’ smuggling and ‘forced’ mobility is notorious for loopholes. Many immigrants may be initially willing to cross borders illegally, but once at their destination they lose their status and freedom, and become victims of labour exploitation, sexual abuse or debt slavery. The shift of identity (illegal immigrants to exploited) is a significant challenge for police. Consequently, States lacking awareness of this change have tended to focus on punishing victims as illegal aliens instead of working on how to meet the challenge of coping with the crimes committed against them.

2.2. The Concept of Secondary Victimization

This conceptual ambiguity directly leads to the secondary victimization of survivors. Crucially, the term does not refer to the initial harm caused by traffickers, but to the recurring psychological and physical trauma caused by aid agencies during intervention, rescue and judicial proceedings. As

Campbell pointed out, secondary victimization occurs when investigation procedures force survivors to talk about their trauma in a culture of distrust [4]. This form of harm is almost routine and routine in the context of anti-trafficking governance. If the urgency to collect evidence outweighs concern for the care of survivors in the legal system, they are re-experiencing the coercion and exploitation of the initial trafficking experience. This type of injury is at the interface between two legal regimes: criminal justice and immigration law enforcement.

2.3. Focal Institutional Contexts

Stumpf termed this phenomenon crime migration and explained the systematic overlap of the spheres of criminal justice and border management [3]. Victims in the context of criminal justice are frequently an instrument of investigation and prosecution. Immigration enforcement, meanwhile, continues to focus on border security, deterrence of unlawful immigration and detention/deportation. These forces have been working together to systematically crack down on the victims. The environment is so complex, for example, that when survivors are raided at their place of work, more attention is paid to checking residence permits than to looking for indications of trafficking. Thus, rescue is often perceived as a risk by the survivors. The absence of a policy firewall between administrative law enforcement and the criminal investigation, and the sharing of information with the police, often makes information known to the immigration authorities directly evidence for deportation. This overlap of protection and punishment further contributes to the victim's resistance and fear of the state institutions, and makes the mechanisms designed to offer asylum a means of systemic trauma.

3. The Theoretical Rationale for Protection

3.1. International Human Rights Norms and the Primacy of Protection

In the international stage, the legal framework for regulating human trafficking is not merely a tool to strengthen a country's criminal justice response; on the contrary, its core feature should be a firm commitment to the rights of victims. The cornerstone of this global system is the Palermo Protocol, which establishes a well-known 3P model: prevention, prosecution and protection. Crucially, the agreement is the first to upgrade victim protection to an equal level under international law for criminal prosecution Council of Europe [5]. This means that human trafficking is not just a matter of border control or public order, but a serious violation of human dignity and fundamental rights. As Obokata pointed out, international human rights law puts forward positive obligation for countries, rather than passive obligations of non-interference [6]. States not only need to criminalize human trafficking, but also have positive mechanisms to identify, assist and protect victims. Such protection should not depend on the victim's legal immigration status, nor should it be limited by their immediate willingness to cooperate with the police. In short, under the ideal design of international norms, the trafficked person is the subject of the rights, not a suspicious illegal immigrant or just a tool for prosecution.

3.2. A Survey of Key Legal Instruments

In regional legal documents, the 2005 council of Europe convention on action against trafficking in persons has been widely praised as one of the most stringent and representative texts for the implementation of a victim-centred approach council of Europe [6]. The convention abandons the logic of mere conviction and punishment, and places victim identification, recovery and long-term protection at the core of its institutional design. First, it requires member states to establish an active identification mechanism to prevent victims from being detained, repatriated or punished before their identity is officially recognized. Secondly, it introduces a recovery and reflection period, which allows victims to temporarily face the threat of eviction during physical and psychological recovery, providing them with a safe space to decide whether to assist law enforcement. In addition, the convention allows the issuance of renewable residence permits under certain conditions. This is

significant because it partially decouples the right of residence from the victim's utility in court, ensuring that protection is more than just a reward for witnesses. By emphasizing medical, psychological and legal assistance, while providing special protection for children, the convention has become an important milestone, marking a shift from a state-led model of prosecution to a state-led model of protection.

3.3. The Disconnect between Theory and Practice

Despite these comprehensive theoretical safeguards, there is still a huge gap in transforming international ideas into domestic practice. Bhabha noted that in the governance of a nation, there is a fundamental issue of protection deficit, and he highlighted that over-focusing on border security can create insecurities within the country for the non-citizen victims [7]. While regional documents give importance to human dignity, the problem is often perceived from a security point of view by the domestic law enforcement, and protection is afforded solely to witnesses who have a high cooperation value, with exclusion of illegal immigrants taking precedence. This has resulted in very selective use of the law. They have been impeded from being effectively operational, as the system is designed more with a law enforcement and expulsion perspective than a human rights one. Instead of the universal protection that international law offers, the protection of humanitarian logic has become a conditional administration preferential treatment in the logic of national security management.

4. The Causal Link between Protective Frameworks and Secondary Harm

4.1. Identification Failure

The key issue in secondary victimization is the failure to systemically identify victims. For one, it is necessary that people should address the issue where the victim is neglected - which can be termed as cognitive impairment. Trust in the immigration sector is often undermined by a culture of mistrust, as law enforcement agencies are trained to focus on immigration control rather than on human rights issues, which can make it difficult to identify individuals as asylum seekers [8]. First, law enforcement departments don't have practical knowledge. They often simply look at the fact that someone was illegally in the country, and don't consider the exploitation relationship and control structure. Secondly, the evidence requirements of the criminal justice system constitute a huge obstacle. Traumatized victims can find it hard to give a coherent narrative but rather give fragmented or contradictory descriptions, Brunovskis noted [9]. This causes law enforcement to think of them as bad witnesses, and not as a survivor who needs help. Indeed, the absence of a trauma-informed lens is a glaring weakness: the authorities do not realize that there are ways for the victim to protect herself after such trauma, such as not speaking up and/or not speaking the same way before and after. This mistrust is reciprocal: victims have a feeling that police will not really assist them, and that if they tell the truth, they will be placed in administrative detention or deported. Last but not least, the ideal victim stereotype also makes it more difficult to identify victims. Christie feels that government only sees the ones who are totally passive and even blameless victims [10]. But many of the immigrants were taking a journey of their own free will only to be coerced into labour. This initial consent is frequently misinterpreted by the authorities as a victim's consent to commit or facilitate a crime, and is thus used as a basis for denying victims protection on the grounds that they have been recruited to participate in trafficking.

4.2. The Priority of Immigration Enforcement

The other reason is the attitude of control first – which is manifested in the form of procedural violence. In most jurisdictions, if the victim's identity can't be established on the spot, the victim will be subjected to administrative detention before any formal assessment. At this time, secondary damage was at its worst. Leerkes think that this detention first mentality can lead to serious psychological trauma, and that its mechanism of action is similar to the control mechanism in the trafficking process [11]. Administrative detention is psychologically and spatially a comparable form

of deprivation as the deprivation experienced by traffickers. There is also the possibility of re-trafficking in ‘rapid deportation'. Gallagher noted that, in many cases, premature repatriation is a direct route to criminal organisations, perpetuating the vicious cycle [12]. The state's attempt to prioritize border security over personal security also turns rescue operations into a form of conveyor belt exploitation which offers victims the choice between forced exploitation and violent repatriation.

4.3. Stigmatization and Moral Critique

The deep social roots of secondary injury are cross-cutting prejudices related to gender, occupation and immigration status. Traffickers are generally subjected to harsh moral condemnation, particularly women sex workers. Augustin noted that in the process of generating moral panic about prostitution, the authorities tend to take more action against prostitution itself than against exploitation, and view the victims as criminals [13]. This gender stereotype suggests that women in sexual work are willing participants, and thus are socially excluded and denied the status as subjects of rights. The trend of securitization of borders as pointed out by Dauvergne, was the shift in the definition of illegal immigrants as security threats [14]. This stigmatization means that stigmatized people are excluded and punished first by the government and sympathy and support are offered later. This social and cultural hostility not only validates the denial of protection, but also rounds off the secondary victimization process, as if it's all about as bad as it can get.

5. Strategic Directions for Anti-Trafficking Governance

5.1. Normative Level

From a normative perspective, it is necessary to establish truly victim-centred identification and protection standards; relevant reforms must be implemented to avoid excessive binding of assistance and criminal cooperation. The provision of protection should be based on the extent of the exploitation suffered by the victim, rather than treating it as a potential value as a means of evidence. In addition, the non-punishment principle in international law must be strictly observed. This means that victims should be exempted from penalties related to illegal entry or unlicensed work for being forced to engage in illegal entry or unlicensed work (which are forced to do as a traffic trafficking). Doing so would alleviate victims' fears of the judicial system and enable them to become genuine rights holders under legal protection. By decoupling humanitarian assistance from judicial outcomes, States can ensure that anti-trafficking efforts are not affected by the strategic interests of prosecution.

5.2. Institutional Level

Secondly, at the institutional level, a strict firewall must be established between criminal justice and immigration law enforcement. This will help eliminate the double oppression of crime migration governance and cut off unfiltered information sharing between the police and immigration authorities, establishing clearer coordination mechanisms. The current control priority mechanism often prioritizes detention or deportation, often causing harm to the victim before the identity is recognized. A mandatory and rigorous screening must be carried out before any detention or deportation procedure. The government could minimise the risk of eviction, and secondary victimisation, by prioritising identification over immigration law enforcement. This kind of procedural buffer will effectively stop victims from getting into the "squeeze" situation of the system and from government assistance being a form of exploitation.

5.3. Social Level

As regards social practice, it is necessary to strengthen social culture to support systematic reform. The government should carry out in-depth training to raise awareness of front-line law enforcement officers, so that everyone's cognition will no longer be confined to an ideal victim, and can perceive the multifaceted and complex subjectivity of the trafficker. Professional verbal support and

psychological counselling during the process of interrogation will promote the trust between law enforcement and victims. It is important that the governance system sets up a multi-agency cooperative mechanism to ensure that non-governmental organizations and social workers are involved in the initial identification stage. This will open the police narrow criminal investigation attitude and add social support attitude. Moreover, the de-stigmatisation efforts should be done proactively to remove gender/racial discrimination. It is these multi-faceted approaches that will enable the governance system to move away from being the cause of secondary harms and become a legal and effective justice system.

6. Conclusion

This study, using a critical lens to analyse the anti-human trafficking governance mechanism, highlights that secondary victimization is a direct result of the well-known and systematic conflict between criminal justice and immigration law enforcement. Analysis indicates that while there is an idealised framework for protection in international law, the current culture of distrust and the continued logic of control-priority can impact the reality of protection. This article shows that victims are frequently miscategorized as security threats at the first identification stage, by examining and exploring the mechanism of identification failure, the conditionality of the assistance and the chain reaction effect of the migration of crime caused by the security of the nation's borders. What is important about this study is that it does not take the secondary harm as something that has merely gone wrong in operations; it is redefined as structural by-product of the crime migration policy.

This work seeks to spark a larger conversation about rights and dignity of persons in the evolving global migration context through the given roadmap of the separation of humanitarian assistance from criminal processes. In the future, building solid institutional protections will be the foundation for creating an effective and realistic anti-trafficking protection mechanism. This procedural firewall should be based on the principle of giving preference to individual rights as opposed to administrative convenience. Furthermore, the institutional trauma experienced by victims should be further examined in relation to the growing use of digital monitoring and the reinforcement of border security, which are resulting in more and more hidden algorithmic bias and institutional isolation of victims throughout the reintegration process. More than ever before, the effectiveness of anti-human trafficking should not be judged by how many prosecutions at the cost of human rights were achieved. Rather, it has to be assessed based on the country's capacity to offer safe and unconditional access to protection. Ultimately, it is not just a legal reform issue, it's also a question of global justice.

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