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"THE POLITICS OF PROTECTION: LEGAL REFORM AND GENDER JUSTICE IN COMBATING TRAFFICKING UNDER SDG 5.2"

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Abstract
This paper is a critical discussion of how politics of protection intersects with legal reform and gender justice in fighting human trafficking within the Sustainable Development Goal 5.2 that aims at eliminating all forms of violence against women and girls. Regardless of the developments in international and national law, including the Palermo Protocol (2000) and the CEDAW (1979), there is a great gap between what the law promises and the reality experienced by the survivors. The research claims that the mainstream state-centered and punitive methods, frequently influenced by the carceral feminism and the politics of the international donor have strengthened patriarchal and paternalistic institutions, but not women. The paper employs a qualitative, feminist legal, and intersectional perspective and draws on case studies of India, the Philippines, and the United States to show that the laws on anti-trafficking often confuse evidence of sex work with that of trafficking, promote border control over the well-being of survivors, and replicate North-South power dynamics. It concludes that the real change towards SDG 5.2 need rights, and intersectional change to deal with structural inequalities, including poverty, gender discrimination, and migration precarity, and enhance agency and participation of survivors in law and policy-making.

INTRODUCTION

Trafficking in persons is highly prevalent and difficult to condition in the 21st century as a form of gender-based violence. Although the world and countries have been trying to curb the vice through decades and efforts, millions of women and girls are still trafficked to be sexually exploited and forced labor and other abuses. The United Nations has thus identified the need to eradicate all forms of violence against women and girls in society, including traffic and sexual and other forms of exploitation in the public and private arenas in its Sustainable Development Goal 5.2. This international requirement places trafficking as a crime and violation of basic human rights.

The politics of protection, the manner in which states, international organizations and NGOs articulate, control and intervene in the name of protecting

women, is at the centre stage in influencing the laws against trafficking. They mirror the conflicts between security and human rights, national sovereignty and international governance and the agency of women and state paternalism. An example is that legal reforms in response to international conventions e.g. Palermo Protocol (2000) tend to focus on criminalization and border control at the cost of the empowerment of survivors and the delivery of long-term justice.

Simultaneously, gender justice as an SDG 5.2 goal is pursued and provokes a challenge to state-centric traditional protection. Gender justice does not just seek means of punishment but places the voices of survivors at the center, the structural inequalities that lead to violence against women, and the laws that strengthen the rights of women instead of enabling them to limit them. Feminist authors have indicated that unless these dimensions are taken into consideration closely, anti-trafficking structures may end up replicating the very inequalities that they are meant to eradicate.

This paper is an exploration of the relationship between the politics of protection and legal reforms to fight trafficking and whether this reform is affecting or reinforcing gender justice in SDG 5.2. It claims that legal reforms are necessary, but they have to be carefully considered in a feminist focused approach. It is on this basis that the global objective of ending trafficking can be converted into more than a mere declaration to act into an actuality.

Research Problem

Despite the introduction of a lot of international conventions and national legal reforms to cover the issue of trafficking, there is still a gap between the law and practice. Anti-trafficking legislation embraced by many states puts an emphasis on prosecution and migration control but these do not consider survivor-based justice, rehabilitation and gender equality. This disjuncture poses important questions concerning the fact that existing legal strategies under SDG 5.2 actually promote gender justice or simply reproduces the politics of protection where women are portrayed as passive victims who are to be rescued by the state.

Research Objectives

Under SDG 5.2, the politics of protection have a critical role in influencing legal reform in anti-trafficking campaigns.

Evaluate the efficiency of the existing legal systems to promote gender justice and provide assistance to victims.

Research Questions

What is the role of international and national legal reforms in the politics of protection in fighting trafficking?

What other models or solutions can be more able to make survivor agency centralized and facilitate justice?

Research Methodology

The paper adopts the qualitative and normative approach based on feminist legal theory, intersectionality, and critical policy analysis. It has a doctrinal legal research methodology, exploring the main international tools like the Palermo Protocol and CEDAW, but relying on the national case studies in India, the Philippines, and the United States. The study using secondary sources such as academic literature, UN reports, and feminist criticism to evaluate the law-based frameworks in terms of the politics of protection and their effects on gender justice with SDG 5.2. The analysis is based on a three-dimensional conceptual frame that includes feminist approaches to law, protectionist discourses, and how the SDGs inform domestic changes. The paper points to the differences between law on paper and law in practice and the conflict of state-centered scholars and punitive law reform and justice. Its pattern allows making an interdisciplinary critical assessment of the laws regarding trafficking in the context of global governance and gender justice discourses.

Conceptual Framework

This paper uses a three-dimensional conceptual framework where the politics of protection, legal reform, and gender justice are discussed in the context of fighting trafficking under SDG 5.2. The model integrates the ideas of feminist legal theory and intersectionality, politics of protection, and SDG global governance model in order to realize the intricacies of the law and policy of trafficking.

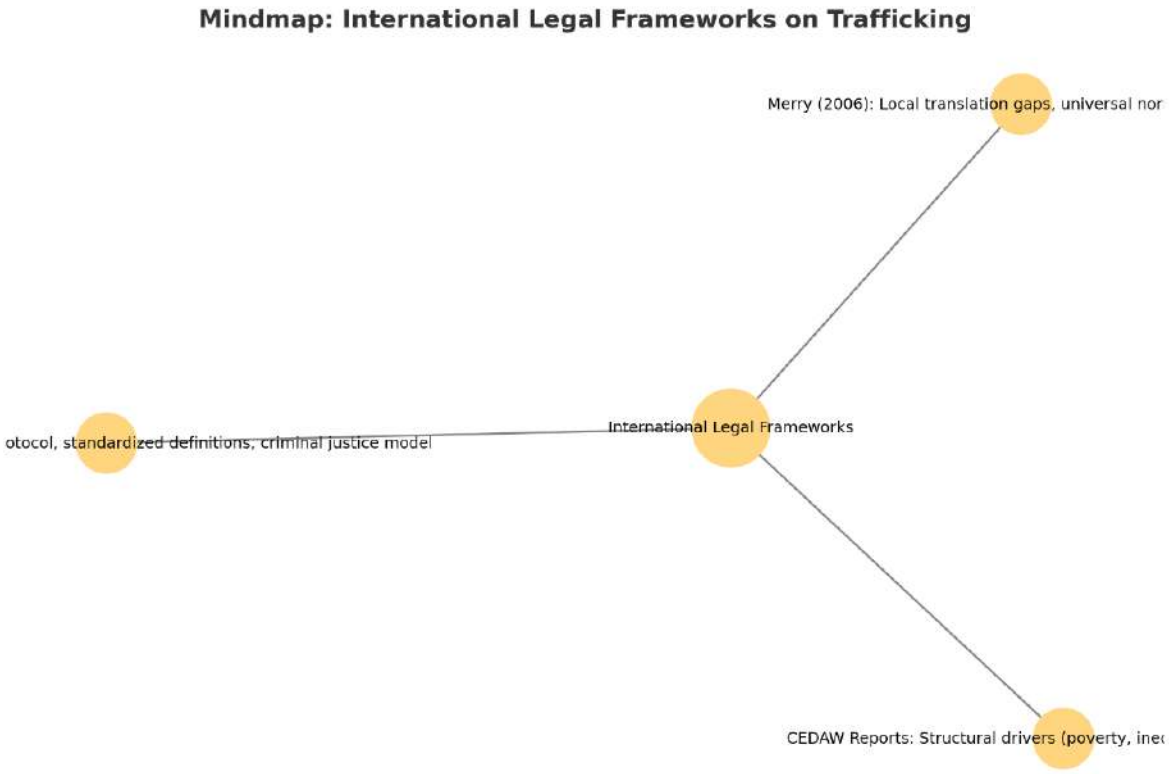
Literature Review

Empirical studies on human trafficking, gender justice, and legal reform have gained much momentum in the past twenty years, especially with the implementation of the Palermo Protocol (2000) and the introduction of the Sustainable Development Goals (2015). Law, feminist theory, sociology, and international relation scholars emphasize the achievement as well as the failures of the existing frameworks.

Gallagher (2017) offers one of the most detailed analyses of the International Law of Human Trafficking, demonstrating how the Palermo Protocol formalized the definitions of human trafficking at the global level and simultaneously institutionalized the model of criminal justice approach.

Merry (2006) also criticizes the translation of international law to local contexts, pointing out that universal norms usually do not capture any local realities particularly marginalized women.

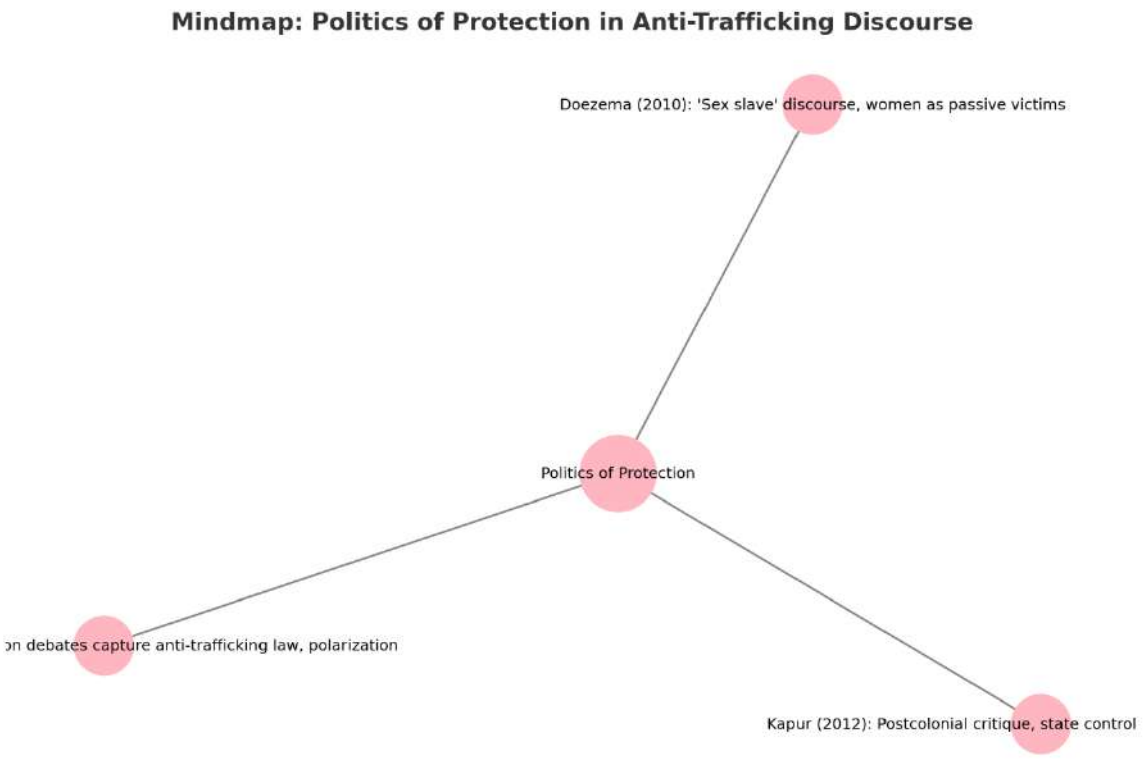
Reporting by CEDAW Committee highlights the structural causes of trafficking, such as poverty, inequality and discrimination, which puts trafficking as a gender justice concern, but not exclusively as a criminal issue.



According to Chuang (2010), the law against trafficking has been ideologically hijacked by the debate on prostitution, which has been adopted with polarizing and ineffective policies.

As depicted by Doezema (2010), the history of constructing the discourses of sex slaves supports the image of a passive victim that requires saving.

Kapur (2012) questions the protectionist legal systems in the postcolonial societies, and she shows how such systems in most cases tend to strengthen the state in controlling women mobility instead of increasing rights.

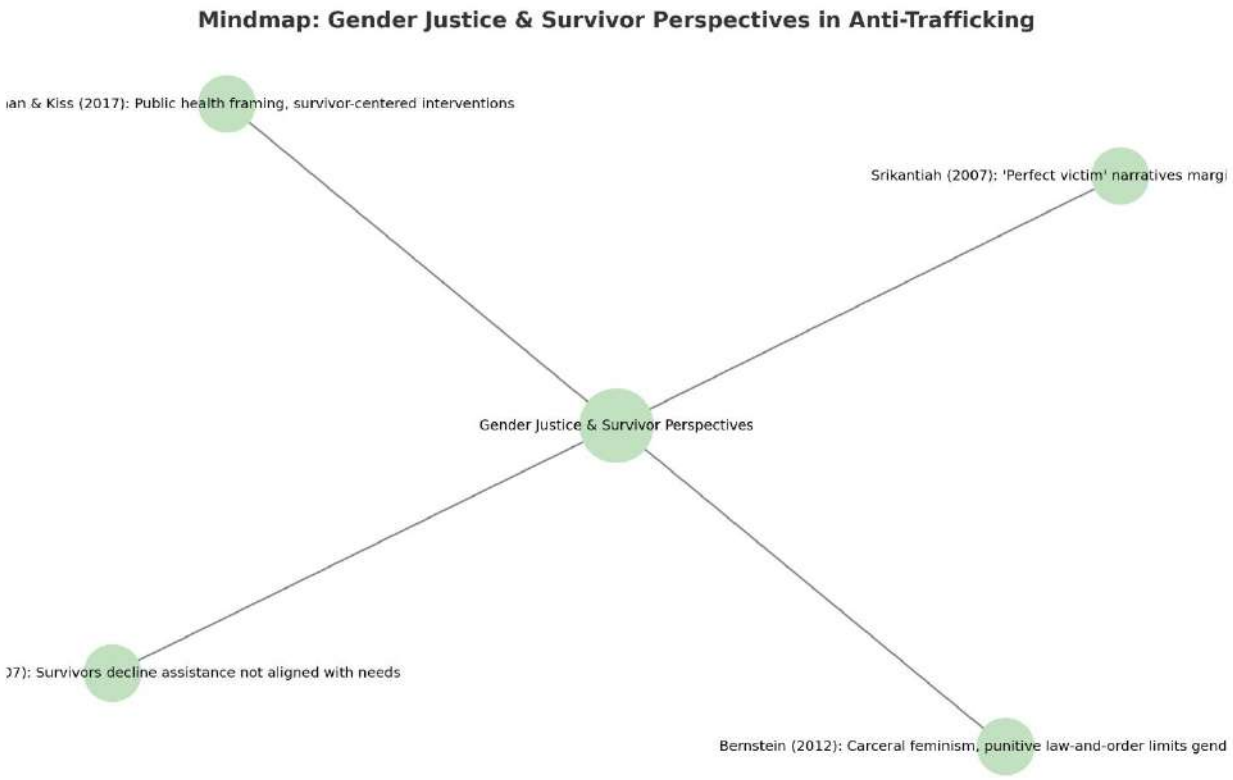


Law and order solutions can be incompatible with gender justice, Bernstein (2012) uses the term carceral feminism to refer to the dependence on punitive solutions to the issues of women protection.

Srikantiah (2007) reveals the ugliness of domestic trafficking law in the United States, which assumes the existence of the perfect victim, excluding survivors whose stories are not restricted to the related portrayals of the victimhood.

In empirical studies involving survivors, Brunovskis & Surtees (2007) emphasize how many of them refuse state assistance since it does not correspond to their actual needs, which explains the contradiction between the law and the lived realities.

Zimmerman and Kiss (2017) make a strong case of trafficking as a community health issue and presents holistic interventions that are not within criminal law.



Andrijasevic (2010) evaluates the problem of restricting migration routes by trafficking legislation, which in a way makes women even more vulnerable to exploitation.

Davidson (2010) criticizes the dichotomous thinking of the free/unfree issue of labor in trafficking arguments, perceiving structural inequalities in labor markets.

Mahdavi (2013) records the ways in which the Gulf restrictive labor migration policies are used to create a situation of exploitation in the name of protection.

UN Women (2020) outlines how SDG 5.2 has enhanced the increased awareness of trafficking in development policy, but emphasizes the absence of disaggregated data and participation of survivors in monitoring.

Musto (2009) criticizes U.S. trafficking discourses, indicating that the global governance mechanisms such as TIP Report can strengthen the priorities as they may not be in accord with the local requirements.

Raghavan and Doychak (2015) summarize the psychological studies on survivors, as the authors emphasize that trauma recovery cannot be achieved in short-term rescue, but by long-term interventions.

- **Feminist Legal Theory and Intersectionality**

The feminist legal theory draws attention to the fact that law is not a tool of neutrality, but it is the sphere in which the relations of power and gendered assumptions are embedded. The laws against trafficking usually depict women as the main victims who are passive, which may promote patriarchal ideas of protection by overlooking the role played by women. Feminism would demand that the only way to achieve gender justice is by acknowledging women as subjects in their right and having laws that support their decision-making and not limit them.

This analysis is further narrowed down by intersectionality, which recognizes the fact that women experience trafficking differently because of the different overlapping identities such as race, class, ethnicity, and migration status. A domestic worker who has been trafficked across the borders has different problems than a woman who has been

trafficked into sexual exploitation in her own country (Conaghan, 2008).

- **Politics of Protection: Dilemma of Security versus Morality and Women Rights**

The politics of protection is used to refer to the means in which states, international bodies and non-governmental organizations rationalize interventions in the guise of protecting women and girls. These sorts of interventions usually have greater political significance, like control of borders, migration management, or moralizing sexuality. This conflict is reflected in legal changes which focus on criminalization and policing, at times to the detriment of the autonomy and well-being of survivors.

Anti-trafficking efforts that lead to the confusing of trafficking with sex work may lead to raids, arrest, and forced rehabilitation, which are harmful to women, instead of benefiting them. Migration policies which are modeled as the protection of the women against trafficking can result in limiting women movement in the country, and this is a backfiring effect which renders women more vulnerable to exploitation. Those dynamics are important because they should be used to assess the fact that reforms do not actually promote the rights of women, but instead they reproduce paternalistic images of protection (Huysmans, 2006).

- **The SDG Framework: The Part of International Norms in Domestic Reform**

The introduction of the Sustainable Development Goals (SDGs) in 2015 established a global system of governance and required the states to ensure that national policies are aligned with world standards. The idea of SDG 5.2, which demands the eradication of female trafficking and exploitation, is a normative and a political mechanism. It can give a common yardstick by which performance of states can be measured. It enables the governments to give an indication of adherence to international norms, with no significant domestic application.

The SDG framework provides opportunities and challenges. It makes the problem of trafficking more visible as a gender justice concern and motivates states to change laws and institutions. Nevertheless, in the absence of accountability and participation of the survivors, SDG reforms will remain symbolic, as opposed to transformational. The challenge is on how states could transform international commitments into local reforms, which focus on survivor justice (UN, Women, 2020).

- **Anti-trafficking and legal Reform Policies**

International legal instruments, domestic legal reforms, and civil society advocacy have been combined to make efforts to combat trafficking in persons. However, the inability to eradicate trafficking indicates that there exist many loopholes between the potential of law and how it is enforced. This part focuses on the principles of international instruments, considers the country case studies, and shows the further disconnect between the law and actualities.

- **Palermo Protocol and CEDAW International Instruments**

The Palermo Protocol, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), is still the foundation of the global anti-trafficking regime. It compels the states to criminalize trafficking, safeguard the victims and encourage international collaboration. Although influential in achieving an agreement in the definitions of trafficking, some critics believe that criminal justice as its theme encouraged the states to choose a punitive and security-focused direction instead of holistic reforms.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) equally makes a decisive role. The CEDAW Committee, through its General Recommendations has made it clear to the states that they have a duty to take the issue of trafficking as a form of gender violence and also as a breach of the rights of women. The Palermo Protocol, CEDAW focuses on structural inequality where the states would need to focus on the factors leading to the vulnerability of women including poverty, lack of education and the migration policies that lead to restriction of the female population.

In combination, these tools create a two-fold system: Palermo is used to create the legal structure of criminalization and prosecution, and CEDAW emphasizes the human rights and equality of genders aspect. Nevertheless, when it comes to enforcement the requirements of security mandate such as those

enforced by Palermo, states tend to ignore the transformative agenda of CEDAW (Luparelli, 2020).

- **Case Studies**

India

India has also passed a number of laws against trafficking such as the Immoral Traffic (Prevention) Act (1956) and the Indian Penal Code. Recently, there is a more specific look of the proposals like the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill (2018) which could develop detailed schemes. Critics however state that such laws have been confusing trafficking with sex work hence criminalizing consensual adult sex workers, police raids that end up injuring women in the name of rescue. In spite of the legal changes, there is not much access to the justice system, rehabilitation or long-term assistance by the survivors.

Philippines

One of the progressive models is the Anti-Trafficking in Persons Act of 2003 (RA 9208), which was adjusted in 2012. It makes criminal every kind of trafficking, provides support to the survivors, and requires coordination by the inter-agencies. But there are still loopholes in implementation. There are obstacles to receiving legal assistance by survivor, and the prosecution is disproportionately directed to sexual exploitation; the areas of work in which women migrants are particularly susceptible to exploitation are labor trafficking and domestic servitude.

United States

The passage of Trafficking Victims Protection Act (TVPA, 2000) put the U.S as a world leader in anti-trafficking laws. It established criminal sanctions, victim support initiatives, and an annual Trafficking in Persons (TIP) Report, which forms a judgment of the adherence of other nations to the anti-trafficking guidelines. Although the U.S. model continues to be influential on an international level, it has been criticized as being carceral, focusing on prosecution rather than prevention or structural change. As a matter of fact, the migrant women frequently end up in detention or deportation instead of receiving any protection.

- **Loopholes between Law and Practice**

Although the international treaties and national laws have been spreading out to the world, the difference between the normative commitments and lived realities is still very sharp. There are three issues that arise over and over again:

Excessive criminalization and inadequate support of the survivors: The law focuses on the prosecution of trafficked individuals but does not provide enough funds to shelters, psychosocial assistance, and reintegration services. The survivors are seen as witnesses of the state and not rights-holders.

Confusion of trafficking and sex work: Due to the existing laws and regulations that treat consensual sex workers as trafficked persons, most states engage in punishments that dehumanize the female body and direct their actions against marginalized communities.

Poor accountability and monitoring: It is a common practice for states to pass anti-trafficking laws to show that they are upholding the international norms, but prove haphazard, selective or politically oriented implementation. What comes out is a kind of law on paper that does not translate into any significant protection.

- **Gender Justice and Lived Realities**

Gender justice requires the anti-trafficking interventions to shift beyond abstract legal promises to deal with the actual experience of survivors. Whereas the global and national systems tend to focus on state-centered security practices, survivor-centered solutions are associated with the emphasis on dignity, autonomy, and empowerment in the long-term. This strain is evident in the policies that govern the issue of trafficking and their implementation.

i. Survivor-Centered and State-Centered Security Approaches

Survivor-centered consists of approaches which give precedence to the needs and agency of trafficked persons, so that they can get access to justice, healthcare, psychosocial support, and reintegration opportunities (Zimmerman & Kiss, 2017). Feminist critics state that these strategies are more in line with gender justice as they are no longer based on the victimhood of the survivors but rather on their rights and their active role (Merry, 2006).

In comparison, state security systems tend to emphasize law enforcement and border control. With anti-trafficking duties (Kapur, 2012), governments are prone to racializing them as a matter of national security in which the women who are trafficked can be saved and managed, as opposed to being empowered (Chuang, 2010). This leads to legal systems in which the interest of the state to show that it meets international norms takes precedence over the interest of the survivors in justice and rehabilitation.

- **The Politics of Protection**

Anti-trafficking rhetoric revolves around the notion of protection, which is neither apolitical or humanitarian. Quite the contrary, states and international actors use it frequently to advance political interests, strengthen power dynamics, and control women mobility. The section critically analyzes the politics of protection as expressed in three related aspects as follows; the application of protection discourse justifying migration control, the reenactment of North-South relations through donor conditionalities, and the dangers of paternalism that are represented by the so-called rescue industry (Davidson, 2010).

i. Protection as an Excuse to Migration Control

Although the international agreements like the Palermo Protocol urge states to defend victims of trafficking, in reality, most governments understand the concept of protection to include the directive to increase the surveillance of borders and migration control. Such a securitized model presents the women migrants as naturally vulnerable individuals, whose state acts as their guardian and at the same time limits them in movement (Kapur, 2012). Policies which restrict women to not move freely on their own such as prohibition of domestic workers leaving the country are commonly presented as anti-trafficking actions, in practice they make women more reliant on informal channels, which puts them at risk of predators (Mahdavi, 2013).

This paradox reveals that the politics of protection may be more useful in the state interest of regulating the borders than the interest of the survivors in gaining rights and opportunities. Instead of giving women safe migration routes, they are strengthening their subordination and dependence through the restrictive policies (Andrijasevic, 2010).

ii. Power Games: North-South Divisions and Conditionalities of Donors

Global inequalities are also manifested in anti-trafficking activities. The rich donor countries especially within the Global North tend to dictate the conditions of the anti-trafficking initiatives within the Global South. The U.S. Trafficking in Persons (TIP) Report provides one example and ranks nations according to their adherence to the anti-trafficking norms, which affects foreign aid and diplomatic ties (Gallagher, 2017). Although the term of accountability is used, these mechanisms represent the hierarchical nature of the relations between Northern states and Southern states, with the former playing the role of controllers and the latter being the people under control (Chuang, 2006).

Conditionalities that are associated with anti-trafficking funding can coerce the states to introduce punitive policies that may not necessarily be in harmony with local realities (Musto, 2009), but in line with the priorities of the donors. This relationship draws a continuum of dependency and deadlock to communities in the Global South formulating context-specific, survivor-based responses (Merry, 2006).

iii. The Threat of Paternalism and the Rescue Industry

The politics of protection is also reflected in the development of what critics define as the rescue industry, a network of non-governmental organizations, religious groups and state agencies that make use of the image of the trafficked woman to gain funding and legitimacy (Agustin, 2007). Although there are numerous organizations which offer critical services, some were found to continue the paternalistic interventions, whereby women are rescued rather than empowered (Doezema, 2010). Brothels, such as raids are usually conducted in the name of rescue but may result in detention, forced rehabilitation, and even deportation of women whether they like it or not (Soderlund, 2005).

Such a rescue structure tends to make survivors too silent; they become symbols of victimization but not

change agents. Carceral and rescue-oriented solutions, as it is argued by Bernstein (2012), may end in recreating gendered and racial hierarchies, strengthening and not breaking the inequality systems (Srikantiah, 2007).

- **Discussion**

The SDG 5.2 anti-trafficking agenda around the world has generated significant impetus to deal with gender-based violence and exploitation. The politics of protection, state-centered security logics, and carceral responses, point to the restriction of the existing reforms. This section explains why SDG 5.2 has merits in mobilizing the global action, why current legal and policy frameworks are inadequate, and why the intersectional and rights-based measures are needed, which should focus on the survivor agency and structural justice.

i. Global Action Strengths of SDG 5.2

The fact that SDG 5.2 includes the issue of trafficking is a major normative success. It does not just present trafficking in the context of a crime but a gender justice and human rights concern such that it is visible in the global development agenda (UN Women, 2020). The SDGs encourage states to take a holistic approach beyond criminal law reactions, by placing trafficking as well as health, education, and poverty reduction goals in close connections.

Monitoring tools are also available in SDG to offer accountability. The achievements of progress reports and indicators every year, motivate states to gather information, enhance institutions, and align national policies with international standards and Civil society organizations have turned to SDG commitments as advocacy instruments to coerce governments to make changes and use resources (Kiss, 2017).

Notably, SDG 5.2 provides a platform of collaboration between multi-stakeholders by involving states, NGOs, and international agencies. This has enhanced the increased collaboration in cross-border trafficking and contributed to raising the voice of the survivors in the global policy arena (Gallagher, 2017).

ii. Reforms Limitations of Existing Reforms

Although these are the strengths, the existing anti-trafficking reforms have a lot of challenges that hinder their effectiveness.

Excessive emphasis on criminalization: The SDG 5.2 requirement is construed by many states by the punitive perspective of the Palermo Protocol focusing on punishing the traffickers and not empowering the victims (Chuang, 2010). This leads to carceral resolutions that do not consider the structural vulnerabilities that include poverty, gender disparity and restrictive migration regimes (Bernstein, 2012).

Implementation loopholes: Laws are usually present in print and not being implemented. It is also possible that survivors do not have access to legal assistance, safe shelter, medical care or economic access and thus the reforms are not transformative but symbolic (Surtees, 2007). The law against trafficking, in certain situations, is used to criminalize sex work or limit the freedom of movement of women, which defeats the same rights that the laws are intended to defend (Crenshaw, 1989).

Inequality in the governance systems across the world: Dependence on donor-led organizational systems like the U.S. TIP Report bolsters North-South hierarchies. The models of donor prescriptions, which are practiced by southern states, do not always suit local conditions, and they are based more on the international legitimacy than on the needs of survivors (Musto, 2009).

These shortcomings highlight the danger of ensuring gender justice becomes compliance with international norms, instead of its actual reflections on the situation experienced by the most impacted (Brunovskis, 2007).

iii. The necessity of intersectional and rights-based frameworks

To overcome these drawbacks, researchers and practitioners propose intersectional and rights-based approaches that focus on survivors and deal with structural inequalities.

Intersectionality focuses on the fact that not all people have equal experiences with trafficking. The susceptibility of women is informed by a combination of factors that include race, class, caste, migration status, and age (Raghavan, 2015). Any policies that do not take these intersections into account will make the

most marginalized survivors irrelevant (Doychak, 2015).

Rights-based approaches require the victim to be seen as a right holder as opposed to a law enforcer. This involves access to justice, healthcare, education and livelihood opportunities and also being involved in formulation of policies that affect them (Zimmerman et al., 2011). NGOs and survivor-led organizations have shown that community-based, holistic initiatives addressing the effects of the trauma, resiliency, and empowerment channeling works (Davidson, 2010).

To incorporate these views, it is necessary to deviate more than state centric punitive approaches to approaches that address the underlying causes: gender inequality, economic exclusion, and unsafe migration channels. Indeed, sustainable development, as Gallagher (2017) decides, also requires criminal law, but it also requires enhancing labor rights, social protection, and safe migration opportunities.

Conclusion

The worldwide campaign against trafficking under SDG 5.2 is a significant step towards the realization of the eradication of violence against women and girls as a key aspect of sustainable development. However, as this paper has demonstrated, the politics of protection tends to influence the law against trafficking in a manner that puts more emphasis on state security, the interest of donors and punishing measures as opposed to the actual realities of survivors. Although we now have the international systems, like the Palermo Protocol and the CEDAW, bringing trafficking into the international agenda, legal reform is still unequivocal and it often does not go further than supporting gender justice.

Re-asserted gender justice will necessitate an outgrowth of legalistic reforms. The structural inequalities that have facilitated the existence of trafficking, which include poverty, gender discrimination, migration precarity, etc., cannot be broken down solely by criminalization and border control. Rather, reforms need to incorporate survivor-centered, intersectional and rights-based strategies, which view trafficked individuals as agents of change and not victims who require rescue.

One of the essential ways to go is to incorporate survivor agency in SDG 5.2 monitoring and evaluation. Protection should not be given to the survivors and the grassroots organizations but they should also take an active part in the legislation, policy and progress indicators. They can be entrenched in UN reporting tools, national SDG reviews, and program evaluation so that the reforms are based on what is going on the ground. On the same note, it can enhance accountability by expanding partnerships with NGOs and women movements and seek culturally-relevant solutions and deconstruct paternalistic rescue frameworks.

Overall, to fulfill the pledge of SDG 5.2, states, donors, and international agencies should reconsider the politics of protection. The future of anti-trafficking reforms resides in the change of the state-focused approach to the survivor-focused justice, the symbolic compliance to the real change. It is only at this point that the eradication of trafficking can be achieved not only as a world-wide obligation, but as a daily life experience of women and girls in many settings.

Recommendations

- Engage survivors in the process of formulating, enacting, and enforcing anti-trafficking legislations and policies to achieve actual empowerment.
- Be aware of racial, class, caste, and migration dissimilarities to develop more all-encompassing and context-sensitive interventions.
- Fund and legalize survivor networks and grass root women groups, and allocate decision-making powers.
- Assure survivors of access to healthcare, psychosocial support, legal services, education and livelihoods.
- Limit immigration and reinforce labor standards to combat the causes of trafficking.
- Incident command survivor voices and experiences in UN and national SDG evaluation systems to improve accountability.
- Empower Community-based partnerships: personnel: enable multijurisdictional, local, and non-governmental organizations and organizations to provide culturally sensitive, long-term justice responses.

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