



Human Trafficking – A curse to mankind

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Abstract: *The aim of this paper is to discuss the state's obligation under International Human Rights 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 paper discusses the conventions and the legal framework adopted by the International Labour Organizations. Further, this paper 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.*

Keywords: *Labour Law, United Nation, Human Trafficking, ILO.*

I. INTRODUCTION

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).¹

II. 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.² 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.

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"³ and Exploitation includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.⁴

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 1949.⁵

¹Fisher, J., *Human Trafficking: Law Enforcement Resource Guide*, Create Space Independent Publishing Platform (2009)

²US Department of State, *Trafficking in Persons Report 2010*

³United Nations General Assembly. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United National Convention against Transnational Organized Crime. (Palermo Protocol), Article 3.

⁴UNODC. Available from <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>. [Accessed on 19th September 2014]

⁵International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, amended by the Protocol signed at Lake Success, New York, 4 May 1949. Available from <http://treaties.un.org/pages/ViewDetails.aspx>[Accessed on 21st September 2014]



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.⁶ 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, are discussed under the subsequent points.

1. The Universal Declaration of Human Rights

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.⁷

2. 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.

1. Article 8 clearly states that⁸ –
2. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
3. 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 well-being 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.

3. The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights was also adopted in December 1966.⁹ Unfortunately, the ICESCR does not have any specific provision dealing with slavery or slave related trade although it does state 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.

4. The Convention on the Elimination of All Forms of Discrimination Against Women

The CEDAW or the Convention on the Elimination of All Forms of Discriminations Against Women was adopted on 18th December 1979 by the United Nations General Assembly and was entered into force on 3rd September 1981 as an international

⁶ Thomas, S. E., 'Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka', Review by UNODC – Regional Office for South Asia under the UN.GIFT. UNODC Publications, New Delhi (2011)

⁷ Ibid

⁸ International Covenant on Civil and Political Rights. Available from <http://www2.ohchr.org/english/law/ccpr.htm> [Accessed on 12th November 2014]

⁹ The International Covenant on Economic, Social and Cultural Rights. Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.



treaty.¹⁰ It was enforced in order to monitor and scrutinize the condition and the position of women and to promote their rights. CEDAW has been involved ensuring equality of women with men and denied all such areas which denied equality with men.

Article 6 of this convention is dedicated to trafficking in women and it provides that '*state parties shall take appropriate measures including legislations to suppress all types of trafficking in women and exploitation of prostitution of women*'.¹¹ During the drafting process, the proposal of Morocco to draft this measure in a way to fight against prostitution in all forms was not accepted. Such a proposal could have challenged the entire convention and would not have received ratification from many states. Another proposal was made by Denmark suggesting that it is unacceptable to accept the adding of the word illicit before the word trafficking. There was a committee set up for the Elimination of Discrimination against women and in 1992 this committee adopted General Recommendation No 19 on the issue of violence against women.

5. *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 1990.¹² 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*'.¹³

Article 31 of the CRC oblige 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.

6. *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 2002.¹⁴ 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.

¹⁰ The Convention on the Elimination of All Forms of Discrimination Against Women. Available from <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>. [Accessed on 14th October 2014]

¹¹ Ibid

¹² The Convention on the Rights of the Child. Available from <http://www.unicef.org/crc/>. [Accessed on 14th October 2014]

¹³ Ibid

¹⁴ The Protocol to the Convention on Rights of a Child, on Sale of Children and Child Prostitution and Child Pornography. Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>. [Accessed on 18th October 2014]



7. *International Convention on Elimination of All Forms of Racial Discrimination Against Women*

This convention was adopted in 1965 by the UN General Assembly.¹⁵ 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.

8. *International Convention against Torture, Cruel Inhuman Degrading Treatment and Punishment (Torture Convention)*

The International Convention against Torture, Cruel Inhuman Degrading Treatment and Punishment (CAT) was adopted by the UN General Assembly in 1984 and it entered into force three years later in 1987. Although, the Torture convention does not contain any measure specifically dealing with trafficking of women and children or any kind of slave trade, but it includes any kind of treatment against human beings which comes under the purview of torture which means ‘any act by which severe pain or suffering, whether physical or mental’.¹⁶

Since human trafficking involves torture of human beings for the purpose of slavery, servitude, prostitution, sexual slavery, labour and other forms of exploitation by force or coercion, the Convention has its share of responsibility in protecting human trafficking.

9. *International Convention on the Protection of the Rights of Migrant Workers and Members of their Families*

It was in the year 1990 that the United Nations General Assembly adopted the International Convention on the protection of the Rights of Migrant Workers and Members of their Families, however, it finally came into force on 1st July 2003. The convention provides for elimination of the exploitation of migrant workers throughout the entire process of migration and for the protection of the human rights of both documented and undocumented migrants. This treaty also contributes to the fight on transnational trafficking in human beings. As per Article 2 of this convention, a migrant worker is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state where he or she is not a national.¹⁷ Till date only 37 states have ratified this convention and the most unfortunate thing is that the countries which are the destination hubs of trafficking are not signatories to this convention. It took 13 years for this convention to come into force because of less ratification as it required minimum 20 states to ratify the convention to come into force. Unfortunately, there are other issues such as fight against illegal migrants which are generally on the top of the agenda of these states.

The Committee on the Protection of the rights of all Migrant Workers and Members of their Families is a monitoring and a supervising body under this convention. This Committee monitors the proper implementation of this Convention in the member States. All the State parties to this Convention are required to submit their reports to this Committee within one year of their ratification and are also obliged to send their periodic reports after every 5 years regarding the implementation of the Convention in their States and conformation to the Convention. Their reports also contain the present scenarios in the individual countries and the activities being undertaken to protect the rights of all Migrant Workers. The Committee after receiving the reports examines and gives its recommendations and also expresses its concerns to the State Parties in the form of ‘Concluding Observations’. The Committee holds two sessions in a year and meets in Geneva every year.¹⁸

10. *Convention and Protocol relating to the status of Refugees*

The 1951 Convention and the 1967 Protocol relating to the status of Refugees are the most important international steps taken for the protection of the Refugees. Article 1 of the Refugee Convention defines ‘Refugee’ as being any individual who is outside the country of his or her nationality or a habitual resident who has a well founded fear of persecution for reasons of race, religion, membership of a particular social group, nationality or a political opinion and is unable or unwilling to avail himself of the protection of that country or return to it. In 2002, the UNHRC adopted guidelines dealing with the issue of gender persecution and recognized that it did not mention gender among the list of the five persecutions. Further, UNHRC recognized that even if being a victim of trafficking is not sufficient to claim the recognition of the refugee status, there are some cases in which the well founded fear of persecution and the inability or unwillingness of the state to act and justify the claim exists.¹⁹ Although the guideline is restricted to women and children trafficked for the purpose of forced prostitution or other forms of sexual exploitation, it is recommended that the state parties to the convention extend their purpose to all the victims i.e. women and children who are trafficked for the purpose of exploitation (sexual, labour or other)

¹⁵ International Convention on Elimination of All Forms of Racial Discrimination Against Women. Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> [Accessed on 20th October 2014]

¹⁶ The International Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Available from <http://www2.ohchr.org/english/law/cat.htm>. [Accessed on 21st October 2014]

¹⁷ The International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. Available from <http://www2.ohchr.org/english/law/cmwf.htm>. [Accessed on 21st October 2014]

¹⁸ Committee on Migrant Workers. Available from <http://www2.ohchr.org/english/bodies/cmwf/>. [Accessed on 25th October 2014]

¹⁹ Convention and Protocol Relating to the Status of Refugees. Available from. <http://www.unhcr.org/3b66c2aa10.html>. [Accessed on 25th October 2014]



III. DEFICIENCIES IN LAW TO DEAL WITH HUMAN TRAFFICKING

During the drafting of the United Nations protocol for combating human trafficking, especially trafficking of women and children, all stakeholders of the Protocol have taken into account the human trafficking for prostitution (whether forced or voluntary) and sexual slavery, since it has been a major concern worldwide. Countries all over the world have tried to deal with it through various legislations at the domestic level but ultimately a legislation / protocol was sought internationally to stop cross border trafficking and also within the borders of the country. The trafficking of human is also a violation of human rights as it involves forced prostitution and slavery and damage to human dignity. The difference in the economic conditions prevailing in the nations has been a major cause behind this crime. The UNHRC has taken several steps in controlling this violation considering it as a major issue and ultimately with a target of abolishing this exploitation.²⁰

Many activists and members of various organizations who are dealing with human trafficking, human rights, gender advocacy etc. have mentioned in their reports that the protocol itself has contradictory definitions which is interpreted differently in different countries. According to many such members of organizations and lobbies working for the protection of human rights, consider all forms of prostitution, whether voluntary or forced, as a violation of human rights and the sex workers and migrants are the victims of human trafficking. The study reveals that the word ‘exploitation’, which is mentioned in the protocol, is understood by some organizations as well as, some countries as all acts of migration involving exploitation of people sexually is trafficking and the persons being migrated are victims of trafficking and the same term excludes all other forms of trafficking involving exploitation. Whereas, in some countries it has included all types of exploitation including forced prostitution and has taken various steps towards abolishing it. Such misinterpretations by various countries, organizations and people have raised a question – how far is this protocol going to address the issues of human trafficking in any form and also those involving women and children. It has become a matter of major concern. It has also been observed that the lack of proper explanation and misinterpretations of the terms such as ‘trafficking’ and ‘exploitation’ by different countries has helped traffickers to move around and commit such crimes without any legal complications. Such ambiguous and contradictory definitions and laws have given opportunities to traffickers to further flourish and given rise to disagreement among the members and law makers.²¹

A question also arises, how far are the victims of such crime of trafficking and exploitation being protected and given their basic and fundamental human rights? It has been noticed that the most important person, the victim, in this heinous act is being ignored. This has revealed a flaw in the protocols of UN in the prevention of this crime. It has also been noticed that the enforcement of various international laws to prevent trafficking of women, to prevent gender bias and to protect women’s rights of equality, non-discriminations and to ensure economic stability are dependent on the UN protocols which have been framed based on the predominant concepts of male dominated governments of various countries. This very dependency permeates the United Nations system for enforcement of laws, protocols and conventions to protect the organized crime against women.²²

Further studies of laws enforced in prohibiting human trafficking have revealed that there is a deficient of integrated laws in combating human trafficking among many countries, despite the fact that most of the countries have enforced laws against trafficking. It has also been noticed that various countries interpret laws against human trafficking differently. In some countries of Europe, laws against trafficking were used to prosecute victims of both trafficking and smuggling whereas in some countries, trafficking in persons is referred to victims of trafficking for prostitution only. It is a big flaw in the laws that consider trafficking equivalent to prostitution and this has created an adverse impact on the persons who are being trafficked and are subjected to other forms of exploitation and hence prosecution of the perpetrators are not really noticed. Further, most of the women traffickers are seen that they have been previously victims of trafficking and have faced sexual exploitation themselves and the traffickers rescue and employ these women in an agreement that they will facilitate in trafficking other women from their country of origin and community.

IV. CONCLUSION

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. But not much has happened in effectively dealing with human trafficking.

This discussion now poses a need of a proper and effective legal response in dealing with human trafficking, especially of women and children. This paper dealt with the importance of a strong legal response, how effective are the international legal responses towards human trafficking, and pointed out the flaws and deficiency in the laws in prosecuting human trafficking cases and the need for providing an effective legal response to deal with this heinous form of organized crime and combat trafficking of women and children.

²⁰UNHCHR, principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1 (2002). Available from <http://www1.umn.edu/humanrts/instree/traffickingGuidelinesHCHR.html>. [Accessed on 15 October 2014]

²¹ILO, *Human Trafficking and Forced Labour*, Guidelines for legislation and Law Enforcement, Special Action Programme to combat Forced Labour (2005)

²²Phyllis Coontz and Catherine Griebel, *International Approaches to Human Trafficking: The Call for a Gender-Sensitive Perspective in International Law*, Women’s Health Journal 4 (2004)