



## ROLE OF INTERNATIONAL INSTITUTIONS AND LEGAL REGIMES IN ADDRESSING HUMAN TRAFFICKING: A STUDY

**Romana Lepcha**

*PhD Scholar, Department of International Relations, Sikkim University.*

### **Abstract**

*Human trafficking as a modern form of slavery affects people of every age, race and sex. It is one of the largest criminal activities in the world, together with arms and drugs trafficking. Human trafficking is internationally recognised as an organised crime and there have been many international laws passed against it. However, it is still a very serious issue around the world. This article looks at the conceptual aspects/side of human trafficking. It also examines the root causes of human trafficking and explores the impact of demand and supply side of globalization. The concept of trafficking and smuggling has been described to distinguish the differences between these two. The article also analyses important existing legal regimes and institutions of human trafficking at the international level. This has revealed the major limitations of law enforcement in the existing regimes and institutions.*

### **Human Trafficking: The Concept**

Human trafficking or trading in human beings or slavery existed in the world for last few centuries. The word 'slavery' starts with the Transatlantic Slave Trade or White Slavery abolished in the mid 19<sup>th</sup> century. The Transatlantic Slave Trade began around the mid 15<sup>th</sup> century when Portuguese interests in Africa moved away from the fabled deposits of gold to a much more readily available commodity called slaves (Behrendt 2010). By the 17<sup>th</sup> century, the trade was in full swing reaching its peak towards the end of the 18<sup>th</sup> century with its triangular trade. All three stages of the triangular trade proved profitable for European merchants.<sup>1</sup>

The discussion of slavery from the point of view of exploitation was started with the White Slavery. Or it could be said that human trafficking for sexual purposes was first legally recognised by the term 'white slavery'.<sup>2</sup> White slavery means the procurement by use of force, deceit or drugs of a white woman or a girl against her will for prostitution (Doezema 2000). The white slavery movement combined the aspirations of the national movement against prostitution with the movement against slavery. It has been argued that the discussion on white slavery and sexual exploitation of white women is closely connected to the fight against the exploitation of black slaves (Leppanen 2007).

The international definition of trafficking as a distinct phenomenon has emerged only in recent years. Until the mid-1990s, trafficking was often viewed as a form of human smuggling and a type of illegal migration. A clear and distinct global definition of trafficking has only been available since the December 2000 signing of the *United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children*. According to the Protocol "trafficking in persons" has been defined as:

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of the victim of trafficking in persons to the intended exploitation set forth in the subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth; and

(d) Child means any person under the age of 18 (UN Trafficking Protocol 2000).

The purpose or outcome for which people are moved to their destinations is for bonded labour, forced labour, child labour and sexual exploitation etc. However, human trafficking is a complex and multidimensional form of exploitation.

<sup>1</sup>The first stage of the triangular trade involved taking manufactured goods from Europe to Africa: cloths, spirit, tobacco, beads, cowrie shells, metal goods, and guns. These goods were exchanged for African slaves. The second stage involved shipping the slaves to the Americas. The third stage involved the return to Europe with the produce from the slave-labor plantations like cotton, sugar, tobacco, molasses and rum (Stephens 2010).

<sup>2</sup> "Trafficking" as it relates to human beings came into international use in the early twentieth century in connection with white slavery: a term that was initially used to refer to forcible or fraudulent recruitment to prostitution (Gallagher 2010).



Exploitation may take various forms including violations of human rights and fundamental freedoms, forced or bonded labour (e.g. in brick-kilns, mining or as camel jockeys), sexual exploitation (e.g. forced prostitution or forced marriage), the removal of organs, violence and discrimination against women and the sexual, labour and other exploitation of children etc.

The victims are trap into trafficking by various means. In some cases, false promises are made regarding job opportunities or marriages, false promises of new and luxurious life and in some cases, physical force is used to entrap the victims. Thus the core of human trafficking is the exploitation of human beings which is a high profit and relatively a low-risk business with ample and growing demand (UNODC 2008).

According to Stop Violence Against Women (SVAW)<sup>3</sup>, trafficking patterns has been divided into 'source', 'transit' and 'destination' countries. The source countries refer to the country of origin of a trafficking victim, the country where traffickers recruit women and girls. The transit countries are those where traffickers frequently move women through intermediary countries, often for extended periods when the women may be forced to work. Traffickers choose transit countries based near border areas. Such countries had their weak border controls, corruption on immigration officials and police personnel which eventually offer space for organized crime of human trafficking. Destination countries are those economically prosperous countries that receive trafficking victims and support the commercial sex industry.

### **Causes of Human Trafficking**

There are two side of human trafficking, the supply and the demand side (Kara 2011). In the supply side, conflict and post conflict situations, unstable economies as well as significant disruptions in socio-economic conditions due to natural disasters make many victims vulnerable to trafficking (Gupta 2010). Poverty, gender and caste discrimination, human right violations, corruption and unemployment etc. are typically the result of unstable economic and political environments and are likely to increase the supply of trafficking victims. In South Asia, women and girls are more vulnerable to human trafficking because of their subordinate positions in society. Therefore, they tend to be more prone to seemingly attractive promises of economic opportunities.

Another factor is the demand side in the destination areas. The demand for trafficking victims is higher in countries that are more open to globalization or economically prosperous to support the commercial sex industry. It is also to be noted that globalization led to the large-scale migration of women and children within countries that indirectly contributed into the expansion of human trafficking. Therefore an economic factors or poverty were important in motivating people to migrate or in making them easy targets of trafficking. India and Nepal are a country where the vast majority of the people are directly dependent on agriculture and other unorganised sectors. However, loss of land/crops and other problems like improper infrastructure, insufficient productivity, drought, unseasonably heavy rains and hailstorms like situation in villages compelled farmers to move to other jobs/places. Farmers have been forced to sell/send their children to work as labourers to repay their debts. Hence, collapses of agricultural and other unorganised sector makes it easier for perpetrators to convince villagers where large scale of women and children are the victims of human trafficking<sup>4</sup>.

The practice of slavery is widespread even in the twenty-first century, but in a more hidden and secret forms. It has been argued that human trafficking or modern day slavery reflects the dark side of globalization (Ramo 2011). Human trafficking has inextricably linked to globalization with the cross border transportation of women/girl child for the purpose of exploitation. Globalization has generally created inequalities both across countries or regions and between social strata within them (Letschert and Dijk 2011). Such inequalities become one of the reasons behind the increasing crimes against humanity.

Globalisation is a process of transnational flow of capital, technology, goods and services, ideas and knowledge, the sharing of culture, labor etc. Intensification of networks, global consciousness, human or social interactions, social nobility and social changes are some of the characteristics of globalization (Scholte 2000). Globalisation promotes the intensification of the world-wide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice-versa (Giddens 1990). It is further intensified by two important features of globalisation; the new technology of communication for the easy availability of information and new forms of transportation system which facilitated cross-border mobility of people across the world. Thus, the process of globalization has strengthened

<sup>3</sup> The Stop Violence Against Women or a project of the advocates for Human Rights, is a forum for information, advocacy and change in the promotion of women's human rights in countries of Central and Eastern Europe and the Former Soviet Union.([www.stopvaw.org](http://www.stopvaw.org)).

<sup>4</sup> Activists claim the drought-like situation in trafficking-prone Jharkhand is working in favour of the local agents who sell young Jharkhand girls and boys to other parts of the country as slaves. At least 30,000 children are trafficked from Jharkhand to other parts of India every year (Saurav Roy 2015).



the movement of individual from the countries of origin to country of transit and to its final destination for the purpose of exploitation.

Globalization makes it very easy to facilitate trafficking because of many modern technology and communication such as the internet that make trafficking more efficient and accessible. Globally, Information and Communication Technology (ICT) have been accompanied by an increase in illegal exploitation and abuse of technology for criminal activities. Internet is used as a tool and medium for the transnational organised crime and assumed that human trafficking is an obvious form of organised crime that has been heavily affected by the use and misuse of ICT.

Legal and policy aspects like inadequate national and international legal regimes, poor law enforcement, poor immigration or migration laws and policies, inadequate partnership between government and NGOs etc. are the major weaknesses that has direct impact to enhance human trafficking (Breau 2009). Though, there are different laws that touch upon the issue of trafficking. It is not only the issue of human rights but also the issue of criminal law, social justice, labour laws, laws relating to immigration and public health etc.

Trafficking is connected with migration and it involves a number of issues. It should not be national problem rather it is an international problem. Thus it must be solved through various means like national, regional and global collaboration required fighting against this problem. Bilateral and multilateral arrangements may require coping with this problem. Among all an effective legal regimes and institutions, reform in the existing laws, ensuring adequate law enforcement response are an essential measures to deal with it.

#### **Legal Regimes/Institutions and Human Trafficking: Historical Overview**

Human trafficking has been an issue of international concern since last few decades. With the initiatives taken by the League of Nations and United Nations the responses to address the problem of human trafficking became more refined and have gain importance in international level.

The first concern of human trafficking was raised date back to the nineteenth century in response to the growth of cases of 'white slavery'<sup>5</sup>. Even though the reports of white slave trade were abundant the amount of cases was in fact, diminutive (Borges 2009). This means at that time the international community only very narrowly addressed the issue of trafficking.

The concept of 'white slavery' was originally developed by activists intent on abolishing systems of regulated prostitution in Europe (Gallagher 2010). By the second half of the nineteenth century, the concept of 'white slavery' was associated with recruitment to prostitution by force or fraud. The sensationalized image of young and innocent white women being coerced into prostitution in foreign lands was at least partially responsible for the internationalization of the abolitionist movement and the resulting emphasis on trafficking of women for purposes of sexual exploitation (Nadelmann 1990). It has been argued that the discussion on white slavery and sexual exploitation of white women is closely connected to the fight against the exploitation of black slaves. It means that attention to white slavery happened at the time of the legal abolition of black slavery.

Between 1904 and 1933, four different international conventions dealing with the (White slave) traffic in women and girls were concluded. There are: International Agreement for the Suppression of White Slave Traffic, 1904<sup>6</sup>; International Convention for the Suppression of White Slave Traffic, 1910<sup>7</sup>; International Convention for the Suppression of Traffic in Women and Children, 1921<sup>8</sup>; and International Convention for the Suppression of the Traffic in women in Full Age, 1933<sup>9</sup>. The 1904 Convention covered only situations in which women were forced or deceived into prostitution in foreign countries (Gallagher 2010). The focus was on the social obligations of the State- particularly as these related to the welfare of victims.

<sup>5</sup> The term "white slave trade" was derived from the French term "Traite des Blanches", which related to "Traite des Noirs", a term used in the beginning of the nineteenth century for the African slave trade (Derks 2000).

<sup>6</sup> International Agreement for the Suppression of the White Slave Traffic, 1 LNTS 83, done May 4, 1904, entered into force July 18, 1905.

<sup>7</sup> International Convention for the Suppression of the White Slave traffic, 3 LNTS 278, done May 4, 1910, entered into force Aug. 8, 1912.

<sup>8</sup> International Convention for the Suppression of Traffic in Women and Children, 9 LNTS 415, done Sept. 30, 1921.

<sup>9</sup> the International Convention for the Suppression of the Traffic of Women of Full Age of 1933, in Article 1, described the offender as a person who "in order to gratify the passions of another person, has procured, enticed or led way even with her consent a woman or girl of full age for immoral purposes to be carried out in another country." In Article 2 of the Convention state signatories "agree to take the necessary steps to ensure that these offences shall be punished in accordance with their gravity. Available from: [http://www.oas.org/Juridico/mla/en/traites/en\\_traites-inter-women\\_1933.pdf](http://www.oas.org/Juridico/mla/en/traites/en_traites-inter-women_1933.pdf).



The 1904 Convention also emphasized the centralization of information as a means of facilitating cross-border cooperation (Ibid). The 1910 Convention extended its scope to situations of enticement and procurement not necessarily involving force, and within as well as across national boundaries toward the criminalization of procurement and related acts, as well as the prosecution and punishment of offenders (ibid).

With the creation of League of Nations in 1920, the two other agreements attempted to address the issue of human trafficking with a focus on women and children. The 1921 Convention also further enhanced the scope of its protection to include non white women (Borges 2009). The 1921 Agreement avoided any references to ‘white slavery’ and applied a new notion of ‘immoral trafficking’ to individuals of both sexes under the age of twenty-one, as well as women over twenty-one years if they had been constrained or deceived (Gallagher 2010). The 1921 Convention continued the earlier emphasis on emigration and immigration controls, as well as on the prosecution of all those involved in the trafficking process (ibid).

The 1933 Convention expanded the concept of trafficking that included all sexual and immoral purposes, not just prostitution. Under Article 1 of 1933 Convention, described the offender as a person who “in order to gratify the passions of another person, has procured, enticed or led way even with her consent a women or girl of full age for immoral purposes to be carried out in another country” (International Convention for the Suppression of Traffic in Women of Full Age, 1933). In Article 2 of the Convention state signatories “agree to take the necessary steps to ensure that these offences shall be punished in accordance with their gravity”<sup>10</sup>. Under this Convention, the offense of trafficking involved the procuring, enticing, or leading away of any women of any age across an international border for immoral purposes (Gallagher 2010).

With the creation of the United Nations, the international community became more conscious and committed to address the issue of human trafficking. Human rights are protected by a number of international instruments. These international instruments provide powerful tool to combat trafficking in persons. The Charter of the United Nations is “at the pinnacle of the human rights system”<sup>11</sup>. The United Nations charter recognizes “fundamental human rights... the dignity and worth of the human person...the equal rights of men and women” and “fundamental freedoms for all”<sup>12</sup>. Human trafficking violates fundamental human rights, fundamental freedoms and the dignity and worth of the equal rights of women and therefore goes against the very objectives of UN.

### **Important International Conventions/Acts of Human Trafficking and its related Crime**

Human trafficking as a heinous crime is one of the complex and transnational problems that every state observes. While there are various international tools or approaches in the fight against human trafficking. Some of the important international Convention/Acts that deals with human trafficking and its related crime are described below:

#### **(a) United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949.**

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>13</sup> was adopted by the United Nations on December 2, 1949, one year after the Universal Declaration of Human Rights<sup>14</sup>. The adoption of this Convention was in fact the “most comprehensive treaty addressing trafficking till date” (Bruch 2004, p.4). The Convention is one of the international human rights instruments of the United Nations that addresses “slavery and slavery like practices”. The Convention aims to prohibit and control the (undefined) practices of trafficking, procurement, and exploitation, whether internal or cross-border, and irrespective of the victim’s age or consent (Article 1). It declares both trafficking and prostitution to be “incompatible with the dignity and worth of the human being” and a danger to “the welfare of the individual, the family and the community”. It not only aimed at complementing the previous agreements but it also underlined the anti prostitution and law enforcement approach and made prostitution or trafficking governable by international law.

<sup>10</sup> Available from: [http://www.oas.org/Juridico/mla/en/traites/en\\_traites-inter-women\\_1933.pdf](http://www.oas.org/Juridico/mla/en/traites/en_traites-inter-women_1933.pdf).

<sup>11</sup> Available at Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices (United Nations 2003)[www.unescap.org/uni/press/2003/dec/n35.asp](http://www.unescap.org/uni/press/2003/dec/n35.asp).

<sup>12</sup> United Nations Charter, Preamble and Article 1.

<sup>13</sup> The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others sought to (Article 1) “punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person”. Available from: <http://www.unhcr.ch/html/menu3/b/33.htm>.

<sup>14</sup> The 1949 Convention was the result of an abolitionist and feminist struggle in England, begun and led by Josephine Butler in 1866. She not only abolished in most of the European countries but considered the system of prostitution to be a contemporary form of slavery that oppressed women and was injurious to humanity in general.



States Parties that have ratified the 1949 Convention must take measures for the prevention of trafficking and prostitution and protection and rehabilitation of victims. Countries are encouraged to use both public and private social, economic, health and other related services to facilitate these goals (Article 16). Protection of victims of trafficking is a key provision of the Convention and each Parties should adopt strict measures to fight trafficking and the exploitation of others for purposes of prostitution (Article 18).

However, like other predecessors this Convention also has weaknesses that it did not have any monitoring or enforcement mechanisms. In spite of the provisions of Convention requiring States to communicate to the Secretary General of the United Nations their laws and regulations relating to the Convention, as well as measures taken by them concerning the application of the Convention, and the obligation of the Secretary General to publish “periodically” “the information received” (Article 21), these provisions have not been followed. Thus many States who have signed the 1949 Convention are not adhering to its provisions, and some have even changed their laws, in opposition to the principles of the Convention. Even many human rights activists and States have criticised the Convention for not focusing sufficiently or solely on the more serious, coercive forms of sexual exploitation and for failing to distinguish between consensual and forced prostitution (Coomaraswamy 2000). Both India and Nepal have signed/rectified this Convention but in general this law is not implemented properly to protect the interest of the victims<sup>15</sup>.

#### **(b) United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

In 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>16</sup>, which obliges States Parties to take all appropriate legislative and other measures to “suppress all forms of traffic in women and exploitation of the prostitution of women<sup>17</sup>.” Articles 11 and 12 of CEDAW also recognize conditions essential to women’s livelihood such as the right to work, the right to the free choice of profession and promotion, job security, the right to receive training, equal remuneration, social security and protection of health (Corrigan 2001). Thus it has been examined that the victims of trafficking are deprived of these rights. As far as enforcement is concerned, article 18 states that States Parties on the legislative, judicial, administrative and other measures taken to give effect to the Convention’s provisions and the progress they have made.

The CEDAW Convention marks a departure from the earlier treaties including the 1949 Convention in several respects. This Convention shows a new path by requiring States to address not just the phenomena of trafficking and exploitation of prostitution, but also the underlying causes of human trafficking. The CEDAW convention committee confirmed the reference that “all forms of traffic” expands from the meaning provided by the 1949 Convention to other typical end purposes, such as forced labour or forced marriage as well as forced prostitution (Gallagher 2010).

#### **(c) The Convention on the Rights of the Child (CRC), 1989**

The Convention on the Rights of the Child (CRC), 1989<sup>18</sup> and its Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, 2000<sup>19</sup> adopted by General Assembly is the only contemporary international human rights treaty apart from the CEDAW to refer explicitly to trafficking. It should be considered as a tool for understanding and responding to the trafficking and related exploitation of children. The CRC provides a complete outline for the protection of the rights and dignity of children as well as of their empowerment.

Article 35 of CRC addresses that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form. Under Article 32, States Parties “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development (ibid).” Similarly, Article 34 states that State must also “undertake to protect the child from all forms of economic exploitation, sexual exploitation and sexual abuse.” Thus the CRC comprehensively deals with the well-being of children as a useful tool for the protection of children victims of trafficking.

<sup>15</sup> India has signed the convention on 9 May 1950 and has rectified on 9 Jan 1953. Nepal has rectified on 10 Dec.2002.

<sup>16</sup> Convention on the Elimination of All forms of Discrimination Against Women, done Dec. 13, 1979, entered into force Sept. 3, 1981.

<sup>17</sup> Article 6 of CEDAW stipulates that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

<sup>18</sup> Convention on the Rights of the Child, 1577 UNTS 3, done Nov. 20, 1989, entered into force Sept. 2, 1990 (CRC).

<sup>19</sup> Optional Protocol to the Child Convention on the Sale of Children, Child Prostitution and Child Pornography, GA Res. 54/263, Annex I, 54 UN GAOR Supp. (No. 49), 7, UN Doc. A/54/49, Vol. III (2000), done May 25, 2000, entered into force Jan. 18, 2002 (CRC Optional Protocol).



Addressing the well-being of children, CRC recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development makes it a very useful instrument for the protection of children from being trafficked. States Parties should take all appropriate national, bilateral, and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials; and the illicit transfer and non return of children abroad (Article 34 of CRC). This provision in the Convention is enlarged by the Optional Protocol to CRC on the sale of children, child prostitution child pornography.

#### **(d) An Optional Protocol to CRC, 2000<sup>20</sup>**

Despite some opposition, including from the CRC Committee itself, an Optional Protocol to CRC was concluded through the United Nations Commission on Human Rights in 2000. According to the preamble, the protocol is intended to achieve the purposes of certain articles in the CRC, where the rights are defined with the provision that parties should take "appropriate measures" to protect them. It goes beyond the CRC in several aspects such as the Sale of Children, Child Prostitution and Child Pornography by recognizing several activities as offences that must be punishable under domestic law, whether committed domestically or at a transnational level including child prostitution and the sale of children for sexual exploitation, organ transfer or forced labour (Article 1).

For this protocol, the sale of children means any act or transaction whereby any person or group of persons transfers a child to others for remuneration or any other consideration (Article 3 a). Child Prostitution means use of a child in sexual activities for remuneration or any other form of consideration (Article 2 b). Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes (Article 2 c).

The CRC Protocol deals much in criminal justice instruments, for instance States Parties required to prohibit, criminalize, and appropriately punish the relevant acts (Article 1,3); to establish appropriate jurisdiction over offenses; and to extradite offenders (Article 4-5). It also locates specific obligations with regard to prevention and international cooperation, legal assistance and confiscation of proceeds, rights of child victims and witnesses in the criminal justice process and the protections to be afforded them (Gallagher 2010). Therefore, the primary aim of this instrument is to eliminate child prostitution, the sale of children and child pornography for the promotion and protection of the rights of the child.

#### **(e) Conventions of International Labour Organization (ILO) on Human Trafficking**

Labour trafficking is one form of human trafficking where different types of forceful works are exercised to an individual that may be hazardous to the physical, mental, spiritual, moral or social development. To tackle with the issue of labour as the fastest growing activities, International Labour Organisations has formulated several Conventions.

International Labour Organizations (ILO) Conventions<sup>21</sup> applicable to trafficking are the Forced Labour Convention<sup>22</sup> (No.29) adopted in 1930; the Abolition of Forced Labour Convention (No.105)<sup>23</sup> and the International Labour Organization (ILO) Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999). Under these Conventions, States Parties undertake to suppress the practice of forced labour.

The Forced Labour Convention is one of 8 ILO fundamental conventions of the International Labour Organization. The Convention commits parties to prohibit the use of forced labour. Its objective and purpose is to suppress the use of forced labour in all its forms irrespective of the nature of the work or the sector of activity in which it may be performed. The Convention defines forced labour "as all work or service which is done from a person under the threat of a penalty and for which the said person has not offered himself voluntarily" (Article 2).

---

<sup>20</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002.

<sup>21</sup> Constitution of the International Labour Organization (ILO) Art. 22 at [http://training.ilo.org/ils/foa/library/constitution/iloconst\\_en.html#a22](http://training.ilo.org/ils/foa/library/constitution/iloconst_en.html#a22)

<sup>22</sup> Forced Labour Convention ILO Convention 29 June 28 1930 39 UNTS 55.

<sup>23</sup> Abolition of Forced Labour Convention 25 June 1957 320 UNTS 291.



The Convention was supplemented by the Abolition of Forced Labour Convention, 1957 (not revised the 1930 Convention) which cancels certain forms of forced labour under Forced Labour Convention of 1930, such as punishment for strikes and as a punishment for holding certain political views. As a result, and due to the obligations which State Parties have undertaken within the 1957 Convention “to secure the immediate and complete abolition of forced or compulsory labour as specified in article 1 of this Convention”, States which are party to both instruments are obliged to end forced or compulsory labour as set out in the 1957 Convention.

The 1930 Forced Labour Convention and the 1957 Abolition of Forced labour Convention are the two organisational frameworks or an infrastructure that has allowed the ILO to champion the cause of the eradication of forced labour over time.

The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, known in short as the Worst Forms of Child Labour Convention, was adopted by the International Labour Organisation in 1999 as ILO Convention No 182. By ratifying this Convention No.182, a country commits itself to taking immediate action to prohibit and eliminate the worst forms of child labour which include all forms of slavery or practices similar to slavery including trafficking<sup>24</sup>.

#### **(f) United Nations Convention against Organized Crime, 2000**

Human trafficking is associated with an organised crime. According to National Crime Agency (NCA)<sup>25</sup>, organized crime is a serious crime planned, coordinated and conducted by people working together on a continuing basis. Human trafficking as an organized crime affects millions of victims worldwide by hindering dignity and basic rights of an individual.

The United Nations Convention Against Organized Crime, 2000<sup>26</sup> is an instrument of international cooperation, its stated purpose being to promote interstate cooperation in order to combat transnational organized crime more effectively (Article 1). The Organised crime Convention is supplemented by three additional treaties (Protocols): Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>27</sup>; Trafficking in Persons, Especially Women and Children; and the Protocol against the Illicit Manufacturing of and trafficking in Firearms, Their Parts and Components and Ammunition<sup>28</sup>.

The goal of Organized Crime Convention is to enlarge the number of States taking effective measures against transnational crime and to forge and strengthen cross-border links (Gallagher 2010). More specifically, the Convention seeks to eliminate “safe havens” where organized criminal activities or the concealment of evidence or profits can take place by promoting the adoption of basic minimum measures (UNODC 2009).

According to article 26 of the Convention a range of measures was adopted by States Parties to enhance effective law enforcement against transnational organized crime through improving information flows and enhancing coordination between relevant bodies (Article 26). The Convention contains several important provisions on victims of transnational organized crime. States Parties are also to endeavour to take certain legal and financial steps to prevent transnational organized crime (Article 30). States Parties are to take appropriate measures within their means to provide assistance and protection to victims, particularly in cases of threat of retaliation or intimidation (Article 25 (1)).

The Convention establishes a Conference of the Parties to promote and review its implementation as well as to improve more generally the capacity of States Parties to combat transnational organized crime. The Conference of States Parties is envisaged to have a special role in facilitating several of the cooperative measures visualized under the Convention, including: the provision of technical assistance; information exchange; and cooperation with international and non-governmental organizations (Article 32(3) (a)-(c)).

<sup>24</sup> The worst forms of child labour includes: the sale of a child, trafficking of children, debt bondage, forced or compulsory labour, commercial sexual exploitation of children, the production of pornography, etc.(Article 3 (a) of Worst Forms of Child Labour Convention).

<sup>25</sup> The National Crime Agency (NCA) leads UK law enforcement's fight to cut serious and organized crime.

<sup>26</sup>United Nations Convention against Transnational Organized Crime, 2225 UNTS 209, done Nov. 15, 2000, entered into force Sept. 29, 2003 (Organized Crime Convention).

<sup>27</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, done Nov. 15, 2000, GA Res. 55/25, Annex III, UN GAOR, 55th Sess., Supp. No. 49, at 62, UN Doc. A/45/49 (Vol. I) (2001), entered into force Jan. 28, 2004 (Migrant Smuggling Protocol).

<sup>28</sup> Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime GA Res. 255, Nov. 15, 2000, UN Doc. A/RES/55/255 (2001), done May 31, 2001, entered into force July 3, 2005 (Firearms Protocol).



A lack of communication and cooperation between national law enforcement authorities has been identified as one of the principal obstacles to effective action against transnational organized crime, including both trafficking and migrant smuggling.

**(g) The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children, 2000**

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children also known as Palermo Protocol was adopted in 2000. The document appeared at a time when the international community was of the opinion that the actual human rights framework did not respond adequately to the problems of child and women's trafficking but requires increased international efforts within the context of international organised crime (Gallagher 2001). The Purposes of this Protocol are: (a) to prevent and combat trafficking in persons, paying particular attention to women and children; (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and (c) to promote cooperation among States Parties in order to meet those objectives (Article 2).

The trafficking Protocol is the first international instrument to define trafficking, in a comprehensive manner (Hyland 2001). Under this Protocol, trafficking comprises three separate elements: an action, a means and a purpose. The definition includes a provision to the effect that the consent of a victim to the intended exploitation is irrelevant where any of the means set out above have been used (Article 3 (b)). The intention behind this definition is to facilitate common national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting human trafficking cases (Fredette 2009). The major objective of the Protocol is to protect and assist the victims of human trafficking with full respect for their human rights.

The stated purpose of the Trafficking Protocol is threefold; first, to prevent and combat trafficking in persons, paying particular attention to the protection of women and children; second, to protect and assist victims of trafficking; and third, to promote and facilitate cooperation among States Parties to this end (Gallagher 2010).

The true force of the document lies in the law enforcement provisions. Article 5 obliges States Parties to criminalize trafficking, attempted trafficking, participating as an accomplice, and organizing and directing trafficking. Additionally, in the area of law enforcement, States Parties accept a general obligation to cooperate through information exchange aimed at identifying perpetrators or victims of trafficking, as well as methods and means employed by traffickers (Article 10). States Parties are also to provide or strengthen training for law enforcement, immigration, and other relevant personnel aimed at preventing trafficking as well as prosecuting traffickers and protecting the rights of victims (Article 10 (1)). Article 11 and 12 mandate strengthened border control measures, such as checking travel documents, boarding vehicles for inspection, and increasing the quality of travel documents to reduce fraud.

Hence, according to the protocol countries have to adopt measures to prosecute and punish international traffickers; boost co-operation among countries to combat trafficking more effectively; protect the victims of trafficking and help them return safely to their own or another country; inform the public about trafficking and to make it aware of its negative consequences for both traffickers and victims (Gallagher 2001).

**International Institutions and Human Trafficking**

To eliminate the issues of human trafficking and related forms of exploitation, various international institutions established with the aim to eliminate such kind of heinous crime from society. The following institutions are:-

**(a) Amnesty International<sup>29</sup>**

Amnesty international considers that the trafficking of women into forced prostitution is one of the most widespread and pervasive forms of violence against women. The organisation identifies trafficking as a series of abuses and violations of the human rights of trafficked women and girls, both at the hand of their traffickers and subsequently, within the criminal justice system.

Amnesty International proposed international initiatives to promote cooperation and partnership among the governments, NGOs, international organizations, private sector, and civil society organization in prevention, protection, reintegration and prosecution aspects of trafficking in persons. It was also suggested that countries should build regional cooperation networks, including cooperation through the internet, to combat the issue of human trafficking. The Amnesty International has its centre

<sup>29</sup>Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.



in India and Nepal to promote and defend human rights issues specially violence against women within both the countries. For e.g, it has created several measures or campaign access to justice for survivors of sexual violence. 'Ready to report' is one campaign in India, aims to change the perception people have about reporting by addressing different challenges survivors of sexual violence face (Amnesty International 2014). This organisation has an effort to ensure that women who choose to report sexual violence can do so safely, with dignity and without facing prejudice<sup>30</sup> (ibid).

#### **(b) Coalition against Trafficking in Women**

Coalition against Trafficking in Women (CATW) is an international non-governmental organization opposing human trafficking, and other forms of commercial sex. CATW was founded 1988 as the outcome of a conference titled "Trafficking in Women" organized by several American feminist groups. CATW was the first international non-governmental organization (NGO) working against trafficking and gained consultative status with Economic and Social council ECOSOC (UN) in 1989.

The organization consists of regional networks and affiliated groups. It is an umbrella organization that is directed by the regional networks. The following is a list and brief description of some of CATW's global campaigns:

- (a) Measures to Combat Trafficking in human beings- addresses perceived gaps in current anti-trafficking programs and policies with a focus on gender equality, demand and the links between trafficking and prostitution,
- (b) The Prevention Project-multi-tiered project to prevent sex trafficking and sexual exploitation by developing standard practices
- (c) Project to Curb Male Demand for Prostitution-
- (d) Human Rights Documentation Project- conducts training sessions that instruct women's organizations in what the organization describes as "feminist research methods" (CATW 2013).

The important campaigns, programs and projects of CATW include:

- a) Measures to combat trafficking in Human Beings- by addressing perceived gaps in current anti-trafficking programs and policies with a focus on gender equality, demand, and the links between trafficking and prostitution.
- b) Aiding victims of trafficking and sexual exploitation- by providing multi-level services, financial aid, psychological support, housing, and legal advocacy for victims of sex trafficking and commercial sexual exploitation.
- c) The Prevention Project- multi-tiered project to prevent sex trafficking and sexual exploitation by developing standard practices.
- d) Human Rights Documentation Project- conducts training sessions that instruct women' organizations in feminist research methods (CATW 2015). CATW is one of the oldest organization to fight human trafficking and the commercial sexual exploitation of women and girls internationally (CATW 2013).

#### **(c) ECPAT**

ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) is a non-governmental organization and a global network of civil society organizations exclusively dedicated to ending the commercial sexual exploitation of children. It focuses on ending four main manifestations of CSEC: child pornography (child sex abuse materials), the exploitation of children in prostitution, the trafficking of children for sexual purposes and the sexual exploitation of children in travel and tourism (ECPAT 2015).

ECPAT international has a mission to seek to encourage the world community to ensure that children everywhere enjoy their fundamental rights free and secure from all forms of commercial sexual exploitation. ECPAT as a global non-governmental organization is mandated to monitor the commitments of governments around the world in their legal obligations to protect children from sexual exploitation.

The "Stop Sex Trafficking of Children and Young People" Campaign, launched by ECPAT international, engaged the public as advocates and called on governments to safeguard the rights of children and adolescents to protect them from sex trafficking. The campaign has three main advocacy goals:

- Community-based prevention programmes to stop child trafficking for at-risk populations;
- Incorporating international legal standards for protecting children from trafficking into the national legal framework; and

---

<sup>30</sup> Surveys show that an estimated 30.53% of women who experience sexual violence actually tell someone about the incident, but only 1% out of these end up reporting to the police, due to concerns of security, social stigma & discrimination (Amnesty International 2014).



- Integrating specialised government services for child victims of trafficking into national policies (ECPAT 2015). This campaign aims to provide immediate relief to child victims and create long-term changes through public awareness raising and to lobby decision makers to strengthen concerted action against child trafficking for sexual purposes (Sakulpitakphon 2011).

#### **(d) Global Alliance against Traffic in Women**

Global Alliance against Traffic in Women (GAATW) is a network of more than 100 non-governmental organizations from all regions of the world, who share a deep concern for the women, children and men whose human rights have been violated by the criminal practice of trafficking in persons. GAATW is committed to work for changes in the political, economic, social and legal systems and structures which contribute to the persistence of trafficking in persons and other human rights violations in the context of migratory movements for diverse purposes, including security of labour and livelihood. It was founded in 1994 as a result of the international Workshop on Migration and Traffic in women (GAATW 2010).

GAATW aims at improving legal frameworks, policies, practices and venues for trafficked persons to access the justice system focusing on compensation avenues for trafficked persons. GAATW applies a human rights approach to trafficking, which means centring the human rights of trafficked persons and those in vulnerable situations, in all anti-trafficking activities; acknowledging the equality of all persons to exercise, defend and promote their inherent, universal and indivisible human rights; non discrimination on any grounds, including ethnic descent, age, sexual orientation or preference, religion, gender, nationality and occupation (UNGIFT 2010).

GAATW made significant contributions to the anti-trafficking movement. It has conceptualised trafficking as both a consequence and cause of human rights violations. GAATW advocated for change at the national level to implement the UN Trafficking Protocol, and continues as a group to review, analyse, propose, and monitor changes in the anti-trafficking scene from human rights based perspective (GAATW 2015).

GAATW has three thematic strategic issues to deal with human trafficking:

1. Accountability: increasing the accountability of all anti-trafficking stakeholders involved in the design or implementation of anti-trafficking responses, towards the persons whose human rights they purport to protect.
2. Access to justice- broadening spaces for trafficked persons and migrant workers to practice their human rights by improving access to justice and combating all forms of discrimination that impact women's ability to exercise their human rights as they relate to trafficking.
3. Power in migration and work- centring an analysis of women's power in their labour and migration to better assess migration and labour policies impact on women, and to work towards labour and migration processes that reflect migrants' needs, aspirations and capabilities (ibid).

#### **Conclusion**

This article explore and explain the international legal frameworks of human trafficking by identifying a series of legal regimes/institutions of special relevance to current debates and practice and subjecting each forms of trafficking into detailed analysis.

Human trafficking is an international problem and one of the world's most shameful crimes, affecting the lives of millions of people around the world. To combat human trafficking as a multidimensional problems or contemporary forms of exploitation will require not only legal regimes and institutional framework around trafficking but international criminal law, international humanitarian law, labour law, migration law, are all relevant to a greater and lesser extent to the issue of trafficking. As noted above, treaties on drug trafficking and corruption, the Organised Crime Convention and its Protocol on trafficking in persons also has relevance in the field of trafficking. The international laws, Covenant, Acts, Human Rights system and Institutions adequately revealed that they are capable of taking serious steps toward eliminating trafficking and other forms of exploitation. The legal instruments developed over the past decade have been effective, relevance and resilience tools to tackle with the issue of human trafficking. The above mentioned Acts, laws, covenant, institutions added additional measures to prevent and deter human trafficking and other forms of exploitation.

All the international legal frameworks, Conventions, Acts and institutions together confirm the existence of a strong if not fully formed body of relevant primary rules of human trafficking. Hence, there are both successes and failures in the existing international human trafficking laws and institutions.



## References

### Books

1. Aas, Franko Katja (2007), *Globalization and Crime*, London: Sage Publications Ltd.
2. Aronowitz, Alexis A. (2009), *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport: Praeger publishers.
3. Behrendt, Stephen D. (2010) 'The Transatlantic Slave Trade', in Robert Paquette and Mark Smith (eds.), *The Oxford Handbook of Slavery in the Americas*, Oxford University Press.
4. Gallagher, Anne T. (2010), *The International Law of Human Trafficking*, New York: Cambridge Press.
5. Giddens, Anthony (1990), *The Consequences of Modernity*, Cambridge: Polity Press
6. Letschert, Rianne and Jan Van Dijk (2011), *the New Faces of Victimhood: Globalization, Transnational Crimes and Victim Rights*, London: Springer Dordrecht Heidelberg.
7. Nair, P.M. (2010), *Human Trafficking: Dimension, Challenges and Responses*, New Delhi: Konark Publishers Pvt. Ltd.
8. Pickering, Sharon (2011), *Women, Borders, and Violence: Current Issue in Asylum, Forced Migration and Trafficking*, London, Springer Science+Business Media, LLC.
9. Piotrowicz, R. (2008) "The UNICR's Guidelines on Human Trafficking" *Oxford University Press*
10. Scholte, Jan Aart (2000), *Globalization: A Critical Introduction*, New York, Palgrave Macmillan Ltd.

### Article

1. Batsyukova, Svitlana. (2012), "Human Trafficking and Human Smuggling: Similar Nature, Different Concepts." *Studies of Changing Societies: Comparative & Interdisciplinary Focus* 1, no. 1: 39-49.
2. Borges, Isabel. (2009), "The challenges of the Current Legal Regime to Trafficking in Women", *The BSIS Journal of International Studies*, Vol 6.
3. Breau, Susan C. (2009), "Legal Issues relating to Human Trafficking", *Journal of Commonwealth Law and Legal Education*, Vol.6, No.2, pp.217-238, <http://dx.doi.org/10.1080/14760400902969867>, accessed: 16/03/2012
4. Bruch, E. (2004), "Models Wanted: The Search for an Effective Response to Human Trafficking", *Stanford Journal International Law*, 40, 1-42.
5. Claude, D'Estree. (2013) "Human Rights and Human Trafficking" [www.du.edu/.../research\\_digest/trafficking/Introduction.pdf](http://www.du.edu/.../research_digest/trafficking/Introduction.pdf).
6. Corrigan, K. (2001), "Putting the Breaks on the Global Trafficking of Women for Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic", *Fordham International Law Journal*, 25, 1-50.
7. Doezeima, J. (2000) "Loose women or lost women? The re-emergence of the myth of white slavery in contemporary discourses of trafficking in women", *Gender Issues*, 18 (1), 23-50.
8. Ezeilo, J.N. (2009), *Report of the Special Rapporteur on trafficking in persons, especially women and children*, A/HRC/10/16, submitted to the fourth session of the Human Rights Council in 2009.
9. Fredette, Kalen. (2009), "Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation." *Cardozo Journal of International & Comparative Law* 17, no. 1: 101-34.
10. Gallagher, Anne (2001), "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis", *Human Rights Quarterly*, Vol.23, No. 4, pp.975-1004, <http://www.jstor.org/stable/4489368>, accessed: 21/11/2011.
11. Gupta, Ruchitra. (2010) 'Human Trafficking in Asia: Trends and Responses' in Ellen Laipson & Amit Pandya (ed.), *On the Move: Migration Challenges in the Indian Ocean Littoral*. New York, Stimson Pragmatic Steps for Global Security.
12. Haddadin. Youla and Klimova Alexander (2013), "Human Rights-Based Approach to Trafficking the Work of the United Nations Office of the High Commissioner for Human Rights", *The Judges' Journal*, Vol. 52 No.1 .
13. Hyland, Kelly E. (2001), "The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children." *Human Rights Brief*, no. 2, 30-31, 38.
14. Kara, Siddharth. (2011) a, "Supply and Demand" *Harvard International Review* Vol. 33, No. 2 : 66-71.
15. Leppanen, K. (2007) "Movement of women: Trafficking in the interwar era", *Women's Studies International Forum*, 30, 523-533.
16. Nadelmann, E.A. (1990) "Global Prohibition Regimes: The Evolution of Norms in International Society" *International Organisation*.
17. Pandey, Sonal. et.al (2013) "Antecedents and Reintegration of Sex Trafficked Victims in India: A Conceptual Framework" *International Journal of Criminal Justice Sciences (IJCJS)*, Vol.8 (1): 47-62.
18. Rhoten, Kimberly (ed.) (2015), *India's Human Trafficking Laws and Policies and the UN Trafficking Protocol: Achieving Clarity*, Jindal Global Law School (India), [www.jgu.edu.in/.../Indias-Human-Trafficking-Laws-Report-Book-Feb-2015](http://www.jgu.edu.in/.../Indias-Human-Trafficking-Laws-Report-Book-Feb-2015).