

Trafficking Of Women: Perspectives in International Law

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ABSTRACT:

This research paper relates to the understanding of the term trafficking in the context of displacement of humans and the consequences that follow with regard to such trafficking in case of women and also to see and find out what the international legal instruments provide for as protection to the victims.

In this paper, the authors intend to indulge into a completely analytical discussion about the various international covenants and reports applicable to the topic of trafficking of women. At the very onset, the researchers decline to give a very clear understanding of trafficking, for the instruments which will be analyzed, are limited to that extent.

The paper will go into the historical backdrop of anti-trafficking regulations and their racial basis and then trace their development and evolution to the current international legal regimes.

In connection with such instruments, it will be shown how they fall far short of providing any kind of effective check to trafficking activities or any remedy to the victims because of their inherent weak composition. Such weaknesses of the international legal regime and its instruments will be pointed out and its connection with the expanding problem of trafficking will be highlighted too.

The paper will also seek to give certain inputs in its conclusion as to how the loop holes which are present can be remedied or how the entire system of operation of the instruments can be revamped and changed..

I. THE ROLE OF LAW AND INTERNATIONAL LAW

The existing legal frameworks in different countries as well as in the international level recognize trafficking as a grave problem which needs to be readily addressed¹. Many legal instruments in the regional level² and also in the international level³ have put a thrust on the need of effective action in matters of trafficking.

¹ For detailed account See: Maya Raghu, 'Sex Trafficking of Thai Women and the United States Asylum Law Response', 12 Geo. Immigration Law Journal 145, 145(1997)

² European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov 4, [1950], 213 UNTS 221 (entered into force Sept. 3, 1953); European Parliament Resolution on the Exploitation of Prostitution and the Traffic in Human Beings [1989] OJ C 120/352 (A2-52/89); European Parliament Resolution on Trafficking in Human Beings [1996] OJ C 32/88; 1997 Council Joint Action 04/03/1997 on Trafficking in Human Beings and Sexual Exploitation of Children [1997] O.J. L 63; European Parliament Resolution on the Communication to the Council and the European Parliament For Further Actions in the Fight Against Trafficking in Women O.J. C 59/307(2000).

³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, [1949] 96 UNTS 272 (hereinafter referred to as 1949 Convention); Convention on the Elimination of All Forms of Discrimination Against Women [1980] 1249 UNTS 14 (entered into force Sept. 3, 1981) (hereinafter CEDAW); see also United Nations, *Report of the Fourth World Conference on Women* (U.N. Doc. A/Conf. 177/20, 1995) (hereinafter Beijing Conference Report]

II. THE EARLY LAWS

The advent of trafficking laws in the international sphere occurred with the International Agreement for the Suppression of White Slave Traffic, 1904 which provided for the State Parties to collect information about the procurement of women abroad for immoral purposes⁴. Then came the International Convention for the Suppression of White Slave Traffic, 1910 under which the State Parties were required to punish such people who were involved in hiring, enticing or abducting women for immoral purposes or used violence, fraud, threats, or any compulsion on a woman for the same purpose⁵. This convention for the first time in the international sphere criminalized the procurement of women for the purpose of trafficking⁶. States that were a party to the Convention were Austria-Hungary, Brazil, Belgium, France, Denmark, Great Britain, Germany and Northern Ireland, Italy, Russia, Netherlands, Portugal, Spain, and Sweden. These two agreements were followed by two other instruments, the International Convention for the Suppression of the Traffic in Women and Children, 1921 and the International Convention on the Suppression of the Traffic in Women of Full Age, 1933. The 1921 convention is important for the reason that it included within its ambit the trafficking of non-whites and the 1933 Convention added the measure of procedure whereby the consent of the victim could not be used by the accused persons as a defense⁷.

However, there existed certain problems in respect of these conventions. As already mentioned before, these conventions in the beginning were based on racial lines looking only into the concerns of the white women. It was only much later that the women from other racial backgrounds got recognition as victims too. Moreover, the conventions over-emphasize on prostitution as the end, the means of which is trafficking. This, in turn, shifts the focus completely from the other consequences which emerge from trafficking, like, forced labor and slavery. Even in regard to prostitution, the Conventions only bring into the International arena, the act of trafficking and not the prostitution which ensues from such activities. Control of prostitution was looked upon as a prerogative of the State and hence, there was no place for international interference. This, however, is a flawed argument for trafficking and the corollary consequences of such are so intertwined that unless all of it is looked at in a wholesome perspective it will be difficult to eradicate these inhuman practice.

The above-mentioned treaties today, however, seem to be overshadowed by the Convention for the Suppression of Traffic in Persons and of the Exploitation of Others, 1949 which has been widely considered as an

⁴ Art 1; Yashmine Rassam, *Contemporary forms of slavery and the evolution of the prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VaJIntIL 303, 216 (1999)

⁵ Arts. 1,2 International Convention for the Suppression of the White Slave Traffic 1910

⁶ International Convention for the Suppression of the White Slave Traffic 4th May,1910, 3 LNTS 278;

⁷ Katrin Corrigan, *Putting the brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to stop the flow of Traffic*, 25 FordhamIntLJ 151 (2001)

incorporating Convention, incorporating the basic outlines set out in the aforementioned International Agreements⁸.

A corollary development which has been induced in International Law through the 1904 Convention is the consideration of Trafficking and the following consequences within the ambit of Slavery⁹. For the first time, the 1904 Convention used the term 'white slavery'. It is argued that it connoted a new form of slave trade for forced prostitution¹⁰. Article 4 of Universal Declaration of Human Rights prohibits slavery and servitude in all its forms. Following this, prohibition of slavery and slave trade have been recognized as a part of customary international law¹¹ and its contemporary form being trafficking is also prohibited under customary international law¹².

However, it is felt that though, bringing in protections which are present for slavery is a welcome addition but trafficking cannot be looked as a contemporary form of slavery. At best, it can be looked at through analogies. The hesitation regarding trafficking as only a form of slavery is that such a view discounts the myriad of different reasons as to the existence of trafficking and the victimization which results from that. Moreover, it will be difficult to eradicate the practice which the different aspects of the problem are not redressed.

III. CONTEMPORARY LAWS

- **The Convention for the Suppression of Traffic in Persons and of the Exploitation of Others, 1949**

The Convention for the Suppression of Traffic in Persons and of the Exploitation of Others, 1949¹³ is the most important International Convention. It is viewed by many as an attempt to consolidate the provisions of the earlier agreements¹⁴.

The Convention provides substantive prohibitions against international sex trafficking which mandates punishment for traffickers¹⁵, suggests programs to assist victims of forced prostitution and prevent further victimization of others by trafficking networks¹⁶. The Convention also encourages increased collaboration

⁸ Radhika Coomaraswamy, *Report on Trafficking in Women, Women's Migration and Violence Against Women* (29 Feb., 2000), U.N.: Doc. E/CN.4/2000/68 & 21-26 <<http://www.unhcr.ch/html/menu2/7/b/mwom.htm>> accessed on (15.06.2018)

⁹ Tal Raviv, *International Trafficking in Persons: A Focus on Women and Children the Current Situation and the Recent International Legal Response*, 9 *Cardozo Women's L.J.* 659 (2003); Also *See* U.N. Doc. E/CN.4/Sub.2/1991/Add.1 (1999); U.N. Doc. E/CN.4/Sub.2/2000/3/Add. 1 & 25 (2000)

¹⁰ *Id.*

¹¹ *Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain)* [1970] ICJ Rep. 32; M. Cherif Bassiouni, *Enslavement as an International Crime* [1991] 23 *NYUJ International Law & Politics* 445, 449 (1991).

¹² U.N. Doc. E/CN.4/Sub.2/1991 /Add.1 (1999); U.N. Doc. E/CN.4/Sub.2/2000/3/Add.1 & 25 (2000)

¹³ It was established by the Commission on the status of women of the United Nations Economics and Social Council.

¹⁴ *Supra note* 8

¹⁵ Art 1, Art 2

¹⁶ Art. 16

amongst nations with respect to anti-trafficking norms¹⁷. Under the terms of this Convention, prostitution and trafficking contravene human dignity and endanger not only the individual, but also the family and the community.¹⁸ Moreover, this Convention brought about a very significant change in the perspective of viewing trafficking. *Firstly*, it was completely race-neutral following the path shown by the 1921 Convention¹⁹, and *secondly*, it was gender-neutral. This allowed bringing forth the aspect of trafficking of male members of the community also for immoral purposes among others. The Convention created a positive obligation on the signatory states to punish procurement of women for the purposes of trafficking, irrespective of whether consent had been given to the traffickers²⁰. Another significant thing about its working is that it does not differentiate between international and domestic trafficking. Under it both are to be similarly proscribed. Moreover, the Convention is commendable (as already mentioned above) for the detail and substantive provision on different aspects of trafficking and related activities.

Article 1 of the Convention prohibits procuring and enticing any person for the purpose of prostitution, irrespective of consent. Article 2 prohibits all activities associated with pimping and brothel management²¹. In accordance with these ideas on international sex trafficking and forced prostitution, and following the declared approval of abolition, the 1949 Convention establishes three categories of obligations on State Parties²². At *first*, the State Parties are made to adhere to a general anti-trafficking principle that requires them to eradicate sex trafficking²³. The Convention places a duty on the States to punish procurers and individuals who exploit prostitution²⁴. Further, the 1949 convention places an obligation on the signatories to punish procurers and the individuals who misuse prostitution, while abstaining from subjecting females who take part in prostitution to exceptional supervision or registration. *Second*, per Articles 8 through 15, signatory States pledge participation in collaborative enforcement measures. *Third*, the 1949 convention under Article 16 expects States to rehabilitate and help the trafficking victims socially.²⁵

¹⁷ Arts. 13-15

¹⁸ *Supra note 7*

¹⁹ *Ibid* [The author refers to how the 1921 Convention for the Suppression of the Traffic in Women and Children broke away from the prior racial practice of only including white woman]

²⁰ Katrin Corrigan, 'Putting the brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to stop the flow of Traffic' 25 *Fordham Int'l LJ* 151 (2001).

²¹ Article 2 of the 1949 convention states: "*The Parties to the present Convention further agree to punish any person who:*

(1) *Keeps or manages, or knowingly finances or takes part in the financing of a brothel;*

(2) *Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others*"; For an extensive discussion see: Susan Jeanne Toepfer & Bryan Stuart Wells, 'The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women' 2 *Mich. J. Gender & L.* 83,96 (1994)

²² *Supra note 7*; Also see. Janie Chuang, 'Redirecting the debate over Trafficking in Women: Definitions, Paradigms, and contexts' 11 *Harv. Hum. Rts.J.* 65, 76 (1998)

²³ Susan Jeanne Toepfer & Bryan Stuart Wells, 'The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women' 2 *Mich. J. Gender & L.* 83,96 (1994)

²⁴ *Ibid*

²⁵ *supra note 7*

The 1949 Convention, however, is not the kind of inspirational agreement which is required to cure the disease of trafficking. It is riddle with technical as well as substantive problems which affect its working and leave a void in the international sphere for action to be taken against trafficking of women.

Firstly, the Convention does not provide for a definition of Trafficking. This is problematic as it becomes difficult to determine the true ambit and scope of application of the Convention.

Secondly, the Convention like the earlier Conventions²⁶ sees trafficking only in the light of prostitution. This coupled with the fact that trafficking as such is not defined in the Convention can lead to a situation where the scope of trafficking under this Convention may get limited only to those cases where the consequence of the trafficking operation leads to forced prostitution.

Thirdly, the Convention has failed to deliver and would continue to do so due to ineffective enforcement structures²⁷. The Convention does not provide for any kind of independent supervisory body to look into the reports which are sent periodically by the signatory states. Ideally, there should be an independent body to look into the reports of the various states and evaluate them. It would be further advisable to empower such a body to take up and investigate individual petitions brought in by trafficking victims²⁸.

Fourthly, continuing from the above point the Convention is inadequate as to the measures that may be taken by the international community in respect of a State's failure to act in accordance with the mandates of the agreement. This results in a kind of situation where the State has no incentive to follow the provisions and allows for non-action²⁹. Such when coupled with the lack of political will in many countries to make such laws applicable³⁰ as well as the many reservations³¹ which have been signed on the strictures of the Convention, the situation becomes quite murky. One can simply hope that in such corridors of darkness something will move and something may happen.

Fifthly, the Convention fails to specify or provide a glimpse of the kind of punishment structure which is required. Ideally, the Convention should describe the manner in which the government or State should punish the people associated with the trafficking operations.

²⁶ International Agreement for the Suppression of White Slaves Traffic 1904; International Convention for the Suppression of White Slaves Traffic 1910; International Convention for the Suppression of the Traffic in Women and Children 1921; and International Convention on the Suppression of the Traffic in Women of Full Age, 1933.

²⁷ Maya Raghu, *Sex trafficking of Thai Women and the United States Asylum Law Response*, 12 Geo. Immigr.LJ 145,164 (1997); Stephanie Farrior, *The international Law on Trafficking in Women and Children for Prostitution: Making it live up to its potential*, 10 HarvHumRtsJ 213, 220 (1997).

²⁸ 'In 1974, the Economic and Social Council of the U.N. ("ECOSOC") declared that 1949 Convention signatories would present periodic trafficking status reports to the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, which in turn reviews the reports, but is not authorized to act upon them'; Katrin Corrigan, *Putting the brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to stop the flow of Traffic*, 25 FordhamInt'lL. 151 (2001)

²⁹ *Supra* note 23 at 92

³⁰ *Supra* note 27 at 167

³¹ *Supra* note 7

Lastly, the most important limitation is non-applicability of individual petitions for redress. Under the Convention, complaints may be brought before the ICJ but only by the State Parties., This limitation effectively takes the life out of the Convention. The requirement prevents individuals from seeking remedy for their own State's human rights violation or inaction³². Besides, due to a lack in the individual access to petitions alleging violation of the provisions of treaties, victims of trafficking are left subject to the priorities of different political agendas. Usually, signatories are unwilling to address these infringements in order to prevent diplomatic relations. In other words, it is done to advance positive foreign relations³³. Also, it is improbable that States will react to another State's claimed human rights infringement when they are violating their own treaty obligations³⁴.

- **Convention on the Elimination of All Forms of Discrimination Against Women**

The primary focus of the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as 'CEDAW') is the elimination of all forms of discrimination against women³⁵. The CEDAW tries to see the root causes of trafficking and eradicate it by eliminating any form of discrimination that may exist against women and also promoting equality between men and women³⁶. This is a very sound approach for it takes into account the various social and economic factors which leads to a situation where there exists trafficking. Many authors have expressly noted that the social and economic discrimination against women resulting in inequality to a large extent leads to trafficking³⁷. Hence the Convention clearly shows the path of a very wholesome approach in combating trafficking of women.

The Preamble of the Convention indicates that CEDAW's drafters regarded trafficking of women as a form of sex discrimination³⁸. It recognizes that despite earlier anti-trafficking treaties, widespread discrimination against women persists³⁹. The creators of CEDAW aspired to build upon and consolidate the preceding anti-trafficking treaties⁴⁰. CEDAW aims to outlaw all sexually discriminating activities, including trafficking and

³² *Supra note 23 at 114; supra note 7*

³³ *Id.*

³⁴ *Supra note 22 at 104; Supra note 7.*

³⁵ The CEDAW preamble states that 'all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.'; See also: Jo Lynn Southard, *Protection of Women's Human rights under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 Pace Int'l L. Rev. 1,26 (1996)

³⁶ Jennifer L. Ulrich, 'Confronting gender Based Violence with International Instruments: Is a solution to the pandemic within reach?' 7 Ind.J.GlobalLegalStud. 629, 642 (2000).

³⁷ It has been noted that due to discrimination and prevalent inequality women try to improve their position by moving to other places and this gives their traffickers the opportunity to poach on the innocence of the victims. See: 337

³⁸ Billie Heller, *International Convention on Women's Rights: Bringing About Ratification in the United States*, 9 Whittier L. Rev. 431,431(1987)

³⁹ *Supra note 7*

⁴⁰ *Supra note 23 at 102*

exploitation of prostitution, because such activities violate women's fundamental equality rights⁴¹. The Convention, under Article 6, requires the State Parties to take all appropriate action to eliminate both trafficking of women and the exploitation of women for prostitution, irrespective of whether the violations are the result of governmental or private action⁴². The anti-trafficking provision of CEDAW mandates that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of women⁴³.

Additionally, in 1993, the CEDAW⁴⁴ adopted General Recommendation 19, which expressly states that the objective of the Convention is to prohibit gender-based violence. General Recommendation 19 states that violence committed against women comes within the ambit of discrimination which is talked of in Article 1 of the said Convention. Thus, gender based violence may abuse provisions of CEDAW, irrespective of whether provisions expressly denote violence against women. The CEDAW Committee described violence against women as infringement of their human rights and prevents them from enjoying freedoms at an equal level with men⁴⁵.

The General Recommendation 19 also emphasizes that CEDAW forbids violence perpetrated by a state as well as violence carried out by private entities⁴⁶. Article 2(e) of CEDAW declares that State Parties must take all appropriate actions to eradicate all forms of gender-based discrimination, regardless of the source⁴⁷. Customary International Law and Human Rights agreements place an obligation on State Parties to work diligently towards prevention of private acts of violence failing which they will be held responsible⁴⁸. Trafficking has been addressed under the head of violence against women and the Committee called for elimination of the same through the Declaration on the Elimination of Violence Against Women and General Recommendations on Violence Against Women⁴⁹. Additionally, the Beijing Declaration and Platform for Action also calls for the elimination of trafficking and assistance to the victim⁵⁰.

⁴¹ *Supra* note 40; Elizabeth M. Misiaveg, *Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women*, 52 Wash. & Lee L. Rev. 1109, 1119 (1995)

⁴² *Supra* note 7 at 85

⁴³ *Supra* note at art. 732

⁴⁴ Art. 17 of CEDAW; Katrin Corrigan, *Putting the brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to stop the flow of Traffic*, 25 Fordham Int'l L.J. 151 (2001)

⁴⁵ General Recommendation 19 U.N. GAOR, committee on the elimination of discrimination against women 11th Sess., U.N. Doc. A/47/38 (1992). General Recommendation 19 states that "[g]ender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of (CEDAW)"; *id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ G.A. Res. 34/180, U.N. Doc. A/Res/34/180 (1980).

⁵⁰ Optional Protocol to the Convention on the Elimination of Discrimination against Women, Article 2, 5, 11 (1999), Strategic Objective D.3. Eliminate trafficking in women and assist victims of violence due to prostitution and trafficking; Shelley Case Inglis,

Despite the above provisions, many of the problems relating to the 1949 Convention remain in this treaty as well. It continues to have a weak enforcement mechanism and the recommendations provided above for the 1949 Convention is applicable to this treaty (CEDAW) as well. Moreover, similar is the case with the non-applicability of individual petitions for redress which needs to be addressed if this treaty is to have any significant impact in curbing the trafficking of women. However, this is in the original Convention. There has been a significant shift in this regard towards the acceptability of individual petition. The Optional Protocol to CEDAW now provides a mechanism through which victims of trafficking and others can communicate a complaint against a State party and seek enforcement of States parties' obligations under the convention⁵¹.

- **The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000**

Also known as the Palermo Protocol, the objective of the said Protocol is two-fold: *first*, to combat trafficking in persons and children with a special focus on protection of women and children; and *second*, to promote and facilitate cooperation among State parties to this end⁵². Article 3 of the Convention defines “trafficking in person”. It provides ‘*Trafficking in persons shall mean the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.*’

This is the first time a proper definition of trafficking was laid out in the international sphere. The definition has three distinctive elements⁵³:

- I) There has to be an action, consisting of: *recruitment, transportation, transfer, harboring or receipt of persons*⁵⁴;
- II) There has to be: *threat or use of force or other forms of coercion, of abduction, fraud, deception,*

Expanding International and National Protections against Trafficking for Forced Labor using a Human Rights Framework, 7 Buff. Hum. Rts. L. Rev. 55 (2001).

⁵¹ *Id.*; Optional Protocol to the Convention on the Elimination of Discrimination against Women, Article 2, 5, 11 (1999).

⁵² Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 Human Rights Quarterly 975,983, (2001).

⁵³ *id*

⁵⁴ *Supra note 50 at 987*; The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime ,2000, Art. 3(c)

*abuse of power or a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person*⁵⁵;

- III) The purpose being: *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)*⁵⁶

All three elements must be present for the Convention to become operational within the given fact situation⁵⁷. This clearly is an improvement over the treaties where the term trafficking was not defined (as discussed above). As a result, the ambit and application of the present treaty becomes clear.

Moreover, another extremely commendable feature of this Protocol is its holistic approach⁵⁸. In this context, reference must be made of Art. 6 of the Protocol whereby the States are obliged to protect the privacy and identity of trafficking victims and to ensure that they receive information on legal as well as administrative procedures⁵⁹. However, it only obliges them to consider implementing physical, psychological and social recovery programs, including housing, counselling, material assistance, employment, education and training opportunities. It required both host and home States to take into account the victims' safety, especially in regards to their repatriation⁶⁰. The Protocol mentions that repatriation 'shall preferably be voluntary', and calls upon states to consider adopting measures to enable victims to remain in their territories, temporarily or permanently 'in appropriate cases', 'given appropriate consideration to humanitarian and compassionate factors.'⁶¹ The Protocol also reserves all rights that victims have under other international conventions, including right to seek asylum and apply for refugee status. Article 7 of this Protocol says that States shall allow the victim to stay in the State that they were trafficked, either temporarily or permanently. Further, it has been noted by the United Nations High Commissioner for Refugees (UNHCR) that some victims who are at the risk of being trafficked are entitled to the refugee status under the Convention relating to the Status of Refugees of 1957. The victim may also be entitled under the 1967 Protocol if the victim has a fear of persecution for reasons of nationality, gender etc⁶². Article 8 talks about repatriation of victims. This is in consonance with the Convention on Status of Refugees (1957). It puts a duty on the state to ensure the safety of the victim who is

⁵⁵ Tal Raviv, *International Trafficking in Persons: A focus on women and children the current situations and the Recent International Legal Response*, 9 *Cardozo Women's L.J.* 659 (2003).

⁵⁶ *Id.*

⁵⁷ Art. 8, The Protocol to prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Conventions Against Transaction Organized crime, 2000

⁵⁸ *Supra note 33.*

⁵⁹ *Id.*

⁶⁰ Art 8, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime 2000, Art. 8

⁶¹ *Supra note 56.*

⁶² Women's Rights and Gender Section, 'International Instruments Concerning Trafficking in Persons (OHCHR, Aug 2014), accessed on 16 June 2018.

being returned. Repatriation should, preferably, be voluntary. The International Convention on Civil and Political Rights affirm a person's right to return to their country⁶³.

Notably, the host Convention Against Transnational Organized Crime itself will provide tools to combat trafficking as a form of transnational crime, even for States that would not adopt the trafficking protocol or before the trafficking protocol is in force. Articles 24 and 25 of the Convention include important provisions regarding the treatment of victims and witnesses. Article 25(1) contains a general obligation, on the countries to provide victims with assistance and protection. Article 25(2) presents an unconditional obligation to provide victims with access to compensation and restitution. This article is particularly important since the protocol does not speak of restitution. Article 25(3) allows, subject to domestic laws and rights of the defense, for the views and concerns of the victims to be presented and considered during the criminal proceedings against the offenders. Article 24 is dedicated to witness protection obligations.⁶⁴

In this treaty, too, certain problems set in. Firstly, unlike the 1949 Convention, this agreement is limited to international trafficking and hence, fails to apply in cases of domestic trafficking.⁶⁵ Moreover, this being a Protocol to the United Nations Convention Against Transnational Organised Crime, 2000, for it to apply, the definition of Transnational Crime in the original Convention has to be complied with and those instances of international or cross-border trafficking which does not fall within that definition will not be covered. Secondly, the Protocol has also been criticized for the optional nature of the provisions dealing with victim protection. The United Nations Working Group on Contemporary Forms of Slavery and the United Nations Secretary General for example, called upon states to provide protection and assistance to victims of trafficking based on humanitarian considerations even beyond the protocol obligations and not just in connection to their cooperation with the prosecution of their traffickers.⁶⁶

- **Human Rights Covenants**

The Human Rights Covenants have a significant role to play in the framework of International law in relation to trafficking. These take effect either directly or indirectly⁶⁷. The International Covenant on Civil and Political Rights (the ICCPR) and the International Covenant on Economic, Social and Cultural Rights (the ICESCR) are relevant to framing trafficking as a human rights issue, as they detail and ensure the collection of core human rights⁶⁸. Victims of trafficking experience multiple violations of individual rights guaranteed them through

⁶³ *Id.*

⁶⁴ *Supra note 9.*

⁶⁵ *Id.*

⁶⁶ *Report of the U.N. Secretary General*, UN Doc.E/CN.4/2002/80 (2002).

⁶⁷ *Supra note 50.*

⁶⁸ *Supra note 18.*

these documents⁶⁹.

For example, rights violated through the trafficking process include, among others, the right to life, and the right not to be tortured or subjected to cruel and degrading treatment (ICCPR Art. 9), the right to liberty and security of person and to be free from physical violence (ICCPR Art. 6,9), the right to freedom of choice of residence and movement (ICCPR Art. 12.1), the right to consensual marriage, equal rights in divorce and marriage (ICCPR 23.2- 4; ICESR 10.1), the right to work and just, fair and safe work conditions (ICESR Art 6, 7), and the right to education, health and social services (ICESCR Art. 12)⁷⁰. Regional treaties, specifically the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) and the American Convention on Human Rights (the American Convention) prohibit trafficking either implicitly or explicitly⁷¹. The American Convention explicitly prohibits "traffic in women" in Article 6(1) and the European Convention prohibits slavery, servitude and forced labor in Article 4. The practice of trafficking clearly fits within this prohibition⁷². Reference also needs to be made of United Nations Convention on the Rights of the Child. This Convention is more important in cases related to women less than 18 years old. There are four specific articles in the above mentioned Convention which contain direct obligation on the part of the State Parties to protect children from trafficking, sale, exploitation of their labor and their sexual exploitation. A positive obligation is put on the State Parties to take legislative, administrative, social and educational measures to ensure implementation of the provisions of the Convention. The CRC Second Protocol prohibits the sale of children, child prostitution and child pornography⁷³. As for the sale of children - offering, delivering and receiving are all equally forbidden. State parties must penalize by legislation, the sale of children for sexual exploitation, organs removal or forced labor⁷⁴. The CRC Second Protocol covers all relevant aspects including prevention, criminalization, international cooperation, extradition, and victim support⁷⁵.

The ILO Convention 182 is another Convention that aims at combatting trafficking of girls⁷⁶. Article 3 of the Convention defines the worst forms of child labor including slavery, debt bondage, trafficking, child prostitution, forced labor, child and child pornography. It also prohibits the use of children for illicit activities, like production and trafficking of drugs and using children for any work which by the nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children. In all of these

⁶⁹ *Supra note 63.*

⁷⁰ *Id.*

⁷¹ Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 Mich. J. Gender & L. 83, (1994) at 113-128 for a broader discussion of these documents' applicability to trafficking.

⁷² *Id.*

⁷³ *Supra note 56.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Women under the age of 18.

instruments trafficking and prostitution are forbidden by their own means; one does not depend on the other. Along with this, one also needs to look at the ILO Convention 29⁷⁷ and the ILO Convention 105⁷⁸. These Conventions define the broad phenomenon of trafficking and are integral in providing the international legal definitions of forced labor and mandate the end to forced labor practices⁷⁹.

Moreover, the League of Nations Slavery Convention of 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1957) also indirectly address various aspects of trafficking by prohibiting slavery⁸⁰, debt bondage⁸¹ and forced marriages.

IV. CONCLUSION

In light of the issue raised and on observing the working of the various covenants, it is possible to arrive at certain particular conclusions:

The primary problem is that the covenants suffer from certain inherent structural weaknesses which erode their effectiveness. In order to remedy this, following are the things to look at:

Firstly, to combat trafficking of women it is required to understand that the same cannot be stopped unless complete co-operation between different states is established. The co-operation should not only be in the exchange of information and helping the victims of trafficking but also in assumption of jurisdiction over the crime as such and punish the perpetrators. Hence, what the researcher proposes is a tenor of universal jurisdiction needs to be bestowed on all countries in relation to enforcing of trafficking laws. An even better and rigorous approach would be to appreciate trafficking laws as a *jus cogens* norm and the subsequent rise of an obligation *erga omnes* in cases relating to trafficking. This will have two effects: a) it will make the requirement of a state accepting the international norms a mere formality and an issue of no significance; and b) other states would be able to assume jurisdiction even if a concerned state is reluctant to exercise its right.

Secondly, the enforcement mechanism of the Covenants should be more rigorous to make sure the member states comply with the provisions of the Covenant and also establish similar provisions within their domestic

⁷⁷ International Labor Organizations Forced Labour Convention, 1930.

⁷⁸ Abolition of Forced Labor Convention, 1957.

⁷⁹ *Supra note 56*.

⁸⁰ Slavery is defined in the 1926 Convention as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." 60 LNTS 253, reprinted in 21 Am. J.Int'l. 171 (Supp. 1927). Traditional forms of slavery are practiced today in places such as the Sudan and Mauritania., *Supra note 50*.

⁸¹ Debt-Bondage is defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined." In the trafficking context, debt-bondage is used to hold victims in slavery-like conditions. Victims are told that they must pay off the debt of their transportation by working. Usually, victims are not told how much they owe, how much their work is bringing into the exploitative establishment, nor how long they will need to work to pay off the debt"; *Supra note 50*.

jurisdiction. This has not been done till date and hence, the countries have not been very eager to oblige with the mandate of the trafficking conventions. This is an unfortunate state of things as thousands of women get trafficked yearly as the state sits and watches. In addition, the covenants should provide for the victims to apply for redressal independent of the state there are from or where they presently are situated. They should also be empowered to apply against individual states which at times through the state machinery are fully a part of the trafficking process or even ignore the same for reasons of bringing in foreign capital through the channel of trafficking.

There have been regional agreements which supplement the international agreements and are required to further the objective of abolition of trafficking. But the national laws also play a very vital role in the entire process. A rigorous and overarching law as present in the US clearly works better than the half-baked approach of the legislature as seen in India.

Another important consideration in this regard is the role of education and exposure. The source areas for trafficking of women have been rural backyards in places of poverty. International law and organizations should take this matter with extreme seriousness and in their dealing with the independent states should impose obligations as to promote education and awareness about trafficking among all their nationals.

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