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Explaining the international concerns and legal perspective for human trafficking

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Abstract

Around the world, thousands of individuals are victims of human trafficking as a result of political or economic instability, and Covid 19 Pandemic also intensifies the vulnerability. Regardless of whether his country is a source, an intermediate, or a destination, it affects every individual. To realize the grave consequences of the issue, the international community has formed six primary international instruments to address human trafficking since 1904. However, most anti-trafficking instruments punish the criminals and protect the victims of the problem but fail to define 'human trafficking' in its true sense. In 2000, the international community adopted the United Nations Protocol and tried to provide a comprehensive definition and fill the earlier gap. The present paper is divided into three parts. In the first part of the paper, the authors examine the extent of human trafficking at the global level. In the second part, there is the critical analysis of the fundamental international instruments, which are recognised to prevent human trafficking, prosecute offenders, and protect and rehabilitate victims of the crime. In the final part of the paper, there is a conclusion and suggestions for strengthening these legal instruments.

Keywords: Comprehensive, anti-trafficking efforts, intensifies, human trafficking, magnitude

Introduction

Human trafficking is a serious concern for the international community. It involves moving people illegally for profit. This often happens when individuals are forced or tricked through threats, lies, or by taking advantage of their difficult situations. Victims may be subjected to forced labor, mental and sexual exploitation, or other types of exploitation, such as sham marriages or illegal organ trafficking. Human trafficking is an organized crime operated by a group of traffickers who work within a structured hierarchy. It is recognized as a serious public health hazard and one of the most egregious human rights violations. This crime involves social, cultural, racial, religious, linguistic, and economic discrimination, which further infringes upon individuals' rights to freedom, quality of life, well-being, and safety (UN, 2014) ^[19]. Global developments are viewed as primarily advantageous for international criminals. Human trafficking and the illegal movement of people have become serious international issues due to the rising demand at the global level. This unlawful activity often remains hidden among the large number of displaced people (Shelley, 2010) ^[15]. Due to the conflict between the United States and the Soviet Union, local rivalries arose, and as a result, mass populations were displaced due to financial or political disturbances. White women from East Europe (Russia, Bulgaria, Romania, etc.) were transported throughout the world for sexual activities, which resulted in physical and mental exploitation, venereal diseases, and psychosomatic exploitation in hypertension and headache. Global developments also attract tourists and attract sex-addicted people to travel (Miko and Park, 2001) ^[12].

Extent of Human Trafficking at the International Level

Trafficking in persons is an international complex and a critical concern involving the exploitation of human resources, which causes uncertainty and workforce delivery shortages in several States. According to unofficial data, approximately 60 to 80 million people are trafficked per year worldwide for sex labor or organ removal (US Government Accountability Office, 2006) ^[20]. However, it is complicated to estimate the exact number of trafficked persons. Trafficking in persons is considered the most heinous and controlled global offense after drugs or arms (Gyamfi, 2016) ^[7].

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This problem demands the joint actions of the whole world, including all governments and non-governmental organizations (Laczko and Gramegna, 2003) ^[11]. To assess the current extent of trafficking in persons, the International Society of Scholars recommended that the International Labour Organization prepare a practical evaluation of the problem and provide a suitable solution (Gozdiak and Collett, 2005) ^[6]. The United Nations passed the resolution in the form of the Protocol relating to Suppression, Prevention and Punishment for human trafficking, especially in children and women. Like the United Nations, about 15 other important international organizations are also working to combat human trafficking, including the International Organization on Migration, the European Organization for Security and Cooperation, the International Labor Organization, the European Union, the World Bank, the Association of Southeast Asian Nations, etc. (US Government Accountability Office, 2006) ^[20]. A tremendous amount of money has been given to voluntary organizations to work in the field of "Triple Ps" (as coined by Bill Clinton, former President of USA), preventing human trafficking, protecting the victims and punishing the offender (Aradau, 2008) ^[11].

Assessment of International Instruments concerning to Trafficking in Persons

From the beginning of the 1900s and onwards, the worldwide movement to abolish systematic enslavement took place with the efforts of the international community under France's multi-party accord. After that, international organizations like the League of Nations and the United Nations started to tackle the modern form of enslavement, which is highly concealed in nature and very hard to discover as compared to old slavery, called trafficking in persons. However, since the 1904 convention, a range of laws have been framed against human trafficking in the form of global accords. For example, the Convention of 1904, the Convention of 1910, and others continue to this day in many conventions (Morehouse, 2009) ^[13]. However, in a systematized form, human trafficking was banned during the mid-19th century, and the Convention of 1949 has turned the direction and provided a broader perspective to tackle the problem. The UN Convention, 2000 is the most comprehensive in the direction of the prevention of human trafficking. In this Chapter, these significant instruments are discussed in chronological order:

International Agreement for the Suppression of the White Slave Traffic, 1904

Generally, women from Europe (due to fair skin) were trafficked for sexual exploitation (Pati, 2011) ^[14]. In May 1904, an international treaty for the Suppression of White Slavery (combating the trafficking of women) was formed. It was an agreement among 12 European countries (Morehouse, 2009) ^[13] and came into effect on July 18, 1905 (International Convention, 1904). Articles 1 to 3 imposed an obligation on member states to collaborate in prosecuting and punishing the offender and to offer legal support to the victim of trafficking (Articles 1-3, International Convention, 1904). Furthermore, the Convention stipulated that member states should maintain surveillance at ports, railways, and other relevant locations, and there should be proper supervision of job agencies that employ women in foreign countries (Articles 2 and 6, International Convention of

1904). However, this Convention remained ineffective in tackling the problem of human trafficking for many reasons. For example, the Convention is limited to only white women who encourage racial discrimination (Bassiouni *et al.*, 2010) ^[2].

International Agreement for the suppression of the White Slave Traffic, 1910

The Convention of 1904 was revised in 1910 in Paris, and it came into effect on 8 August 1912 (International Convention, 1910). It was formed as a result of the realization at the 1904 Convention. The Convention included the penalty for pimps who had trafficked young women by force, intimidation, cruelty, etc. (Article 1, International Convention, 1910) or who deceived or induced any woman of any age for prostitution purposes (Article 2, International Convention, 1910). This Convention also addressed the return of victims to their country of origin (Bruch, 2004) ^[4]. Between World War I (1914-18), the world community sought to establish an organization for world peace, and the League of Nations came into existence in 1920. It considered the trafficking of persons as a grave crime against humanity and formed the Convention of 1921.

International Convention for the Suppression of the Traffic in Women and Children, 1921

The 1921 Convention is not universal and only aimed to repress the trafficking of children and women only. It was endorsed on September 30, 1921, in Geneva. This Convention is enforced in respective states on the date of endorsement by them or any act-like agreement (Bassiouni *et al.*, 2010) ^[2]. It was the advancement of earlier Conventions. It also had almost the same clauses as the former conventions. However, the girl's age is increased up to 21 years under Article 5 of the Convention. It directed the member states to take all actions to prosecute the individuals who were involved in the trafficking of children (irrespective of any gender) (Article 2, International Convention, 1921). The Convention also provided for the extradition of the offender (Article 4, International Convention, 1921). However, it also had no enforcement mechanism.

International Convention for the Suppression of Traffic in Women of Full Age, 1933

The global treaty to suppress the trafficking of women of full age was adopted on 11 October 1933 in Geneva and enforced on 24 August 1934 (International Convention, 1933). As the Convention of 1921, this Convention also stressed the member state to legislate the laws if current laws are insufficient to criminalise the crimes relating to trafficking in persons (Article 2, International Convention, 1933). In addition to this, the Convention also forced the member state to collaborate the information or statistics related to offenders of any age or any gender, for example, his criminal records, his status whether he run away or extradited or convicted (Article 3 (a), (b), International Convention, 1933). However, this Convention has not defined the term "full age" and left the matter of enforcement on State's authority and it was also limited to trafficking of girls and women for sexual exploitation only, excluding children or other vulnerable classes of society (Bassiouni *et al.*, 2010) ^[2]. The League of Nations failed to prevent World War II, and regional conflicts led to

widespread disturbances. There was a massive cry for the individual's human rights, and world political actors agreed on the origin of the United Nations organisations (UNs) to protect the human race from destruction and provide a healthy environment for individual growth. It coordinates with the world community's actions in combating human trafficking, and a new comprehensive Convention was created under the United Nations' supervision, and that was called the Convention of 1949.

Convention for Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others, 1949

The League of Nations developed the draft from an amalgamation of the Conventions of 1904, 1910, 1921, and 1933 in 1937. Moreover, it included all punitive provisions from the abovementioned Conventions (Brand, 2010) [3]. This Convention was rectified on 21 March 1950 in Lake Success and came into operation on 25 July 1951. However, the Convention of 1949 particularly cited trafficking in the name of the Convention, but it focused on sexual exploitation (prostitution) and had no more new provisions. However, this Convention stated that prostitution and its associated wrongs are severe crimes against human dignity.

United Nations Convention and Protocol related to Prevention, Suppression of Human Trafficking in Persons, 2000 (Palermo Protocol, 2000)

1949 Convention proved a milestone in the anti-trafficking efforts at the international level and it open the door for the movements against trafficking in persons. Even after a long period of 50 years, this problem was again raised as a core concern at the global level (Wong, 2005), and the global community was forced to review its approaches to the issue. Therefore, in December 2000, the the international community adopted the Convention against Cross border Organized crime, and three Protocols. The first Protocol, companied by Convention, is drafted to prevent human trafficking, specifically dealing with children and women also known as the United Nations Protocol (UN Protocol) or Palermo Protocol. Second Protocol aimed to protect the migrant from smuggling, and the third Protocol also dealt with the prevention of illegal production and smuggling of arms and their ingredients (UNODC, 2004). This is the first international instrument which defined the "human trafficking." It defined the term as enrollment, relocation, or receiving of any person through any modes like force or intimidation or offering of money for the purpose of exploiting a person in prostitution, bonded labour, or organ removal etc. The Protocol also states that the consent of the victim is immaterial in case of human trafficking. It even further asserts that any enrollment, shipping, relocation or receiving of a child for manipulation will be deemed the human trafficking of a child (Article 3, United Nations Protocol, 2000).

This Protocol also criminalizes trafficking and punishes the assistant who participated in structured illegal groups (Article 5, United Nations Protocol, 2000). The Protocol avers that the state government may take the help of non-governmental organizations for this task. The provision further state that member states should consider the age, gender of the victim during the implementation of said section (Article 6, United Nations Protocol, 2000). In addition, the Protocol directs the home states to provide the

permanent residential facility to the victim after his repatriation and secure the identity of him. (Article 8, United Nations Protocol, 2000). The Protocol also focuses on strengthening the boundaries to control trafficking in persons (Article 11, United Nations Protocol, 2000).

The entry of Protocol is astounding in the era of human rights conventions. Most countries have enacted trafficking laws for its prevention after enacted the United Nations Protocol. And many international and regional instruments came into existence to combat human trafficking (Gallagher, 2006) [5].

Apart from these specific international conventions, agreements, regarding trafficking in persons, there are many other general and regional instruments on human rights like Universal Declaration of Human Rights, 1948, Complementary Convention on the Abolition of Slavery, 1956, International Covenant on Civil and Political Rights, 1966, Covenant on Economic, Social and Cultural Rights, 1966, Convention related to the Elimination of Discrimination against Women, 1979, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, United Nation Special Rapporteur on Human Trafficking, 2004 etc. which prohibit human trafficking and protect the victims of trafficking.

Conclusion and Suggestions

Even though, there is a large range of human rights conventions or treaties or protocols at the international or local levels to address human trafficking, and many of them are specially deal with vulnerable sections of society such as women, children or labourers. Most of instruments focuses of 3Ps+ 2Rs (Prevention of Human trafficking, Prosecution of culprits, Protection to victims, Rehabilitation and reparation of victims). Therefore, we can say that most of international instruments are human right oriented and have done so much for suppressing the human trafficking. Yet, these instruments have lack of enforcement mechanisms. Most of these have no provision for individual complaint in case of violation of human rights; there is also lack of collaboration among the member states etc. Beside these hitches, a huge amount of money and human capital have been expended on these efforts, but the result is not found satisfactory due to inclusion of other crimes in anti-trafficking efforts. Nevertheless, these instruments give a new dimension to anti trafficking dialogs at the global or regional level. Therefore, to find the satisfactory outcomes of the anti-trafficking efforts, all the states and non-state actors should stand at one dais against this heinous crime. They should formulate the strict strategy against it and make efforts for strict implementation of those and it is urgent demand of time that along with strict execution of the anti-trafficking efforts, these should be human rights centered.

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