chapter-4

human trafficking: international legal perspective

Globalisation has opened otherwise locked borders which resulted in the increase of human trafficking throughout the world in the recent years. Thus, the problem of trafficking in human beings is not only a national or regional issue but a global concern transcending borders. Trafficking in human beings violated well defined fundamental rights of the trafficked victims. Thus, it has become a legal obligation on international institutions to address the problem. In this regard the United Nations has taken an important step forward in coordinating an international response to human trafficking. The General Assembly of the United Nations has adopted various legal instruments to curb the various forms of the menace of human trafficking including the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. Among other organs of the United Nations UNIFEM, UNICEF, ILO, UNDP, UNODC and WHO play an active role in addressing the problem of human trafficking.

This chapter offers a global scenario of the various international legal instruments adopted in the last three centuries to flight slavery, prostitution, and trafficking in human beings. It highlights the international condemnation of this menace from the first Declarations and Conventions of 19th century. Therefore, it will focus on various international instruments that provide basis for the laws on human trafficking. This part of thesis will also address the problem and magnitude of human trafficking in various countries and their respective mechanisms to combat this heinous crime.

4.1 Magnitude of the Problem of Human Trafficking: International Estimates

As of now, there are no reliable estimates on trafficking in human beings. The difficulty of coming up with accurate figures related to trafficking stems from two inter-related factors:

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• Trafficking as a process is largely hidden and has become an organized crime.
• There is a nexus of the criminal syndicate with those in power.²

Nevertheless, some estimates can be made on the dimensions of the problem. The United States of America, State Department estimates that approximately 800,000 people are trafficked across national borders annually, approximately 640,000 (80%) of whom are women and girls.³ In contrast, the UN estimates that 700,000 to 2 million girls and women are trafficked across national borders annually.⁴ The largest numbers of victims are from Asia, with over 2,25,000 victims each year from the South East and over 1, 50,000 from South Asia. The former Soviet Union is now believed to be the largest new source of trafficking for prostitution and sex industry with over 100,000 trafficked each year from that region. An additional 75,000 or more are trafficked from Eastern Europe. Over 1, 00,000 are from trafficked from Latin America and the Caribbean, & over 50,000 victims are trafficked from Africa. Most of the victims are sent to Asia, the Middle East, Western Europe and North America.⁵

4.2 International Legal Regime

The international legal regime relating to the trafficking in human beings starts from the early conventions of human slavery and slave trade. Since 18th century there had been a wave against the human slavery and slave trade which in turn gives way to various international legal instruments. Presently there are large number of international legal instruments which directly or indirectly deal with the issue of slavery and human trafficking. The passage of abolition of the slavery, slave trade and human trafficking are as summarised below.

4.2.1 The Abolition of Slavery and Slave Trade

The word abolition from the Latin word 'aboiitio' is taken to mean the policy for the abolition of slavery and slave trade. From 1774, there were anti-slavery

² Aparna Srivastava, Human Trafficking with Special Reference to Delhi, A William Carey Study and Research Centre and Joint Women’s Programme Publication, (2006), p. 3
³ Mary Crawford, Sex Trafficking in South Asia, Routledge, New York, (2010), p. 5
⁴ Ibid.
⁵ Supra note 2.
associations in the United States of America. The abolitionist movement per se came into being in connection with the comprehensive reform efforts of the nineteenth century, when William Lloyd Garrison published the ‘Liberator’ in 1831 in Boston and then 1833 organised the American Anti-Slavery Society, which called for the immediate abolition of slave trade without payment of compensation. However, the first International condemnation of the slave trade was contained in the Declaration relative to the Universal Abolition of the Slave Trade annexed to the Act adopted during the Congress of Vienna in 1815, stating that the slave trade is repugnant to the universal morality and humanity. Austria, France, Portugal, Prussia, Spain, Sweden and United Kingdom were the eight powers which signed the Vienna Declaration.

Lord Castlereagh, Foreign Secretary of the British, had gone to Vienna with the proposal of a treaty that would have outlawed the slave trade within the three years and would have given a right to countries to search each other's ships. However, the European powers were reluctant to accept that far reaching plan. Consequently, at the Congress of Vienna it was only possible to obtain a general consensus on a declaration that did not set a time limit for the abolition of the slavery and that did not contain enforcement provisions either to abolish the slavery or to consider it as a criminal offence. Vienna Declaration although dead letter was the first step towards the existing human rights movement for the abolition of slavery and slave trade.

The Vienna Declaration was followed by many other international bilateral and multilateral treaties. More than 300 international instruments were adopted between 1839 - 1890 to abolish the slave trade practices but all of them were ineffective. All these instruments were aimed to abolish slave trade by sea. The first attempt to ban the slavery and slave trade by land was made in 1885 by the General Act of Berlin in the territories of Congo Basin. It recognises that slavery and the slave trade should be considered as forbidden and, consequently, the contracting powers exercising sovereign rights or influence in the Congo Basin region should have acted to put an end to the slave trade and to avoid the possibility that the mentioned territories could have become the market of the means of transit for such trade.

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8 Ibid.
9 The General Act of Berlin, 1885, Article 9.
Various other important international legal instruments are briefly summarised as under:

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

The United Kingdom along with other European Nations felt the need to adopt an agreement to secure women of full age who had suffered abuse, an ineffective protection against the criminal traffic. The agreement was literally formulated with the intention to end white slave traffic. For the purpose of this study various important provisions of the agreement are described hereunder.

- Each of the contracting governments undertakes to establish or name some authority charged with the coordination of all information relative to the procuring of women or girls for immoral purposes abroad, this authority shall be empowered to correspond direct with a similar department established in each of the other contracting States.

- Each of the governments undertake to have a watch kept, especially in railway stations, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life. With this object instructions shall be given to the officials, and all other qualified persons, to obtain, within legal limits, all information likely to lead to the detection of criminal traffic. The arrival of persons who clearly appear to be the principals, accomplices in, or victims of, such traffic shall be notified, when it occurs, either to the authorities of the place of destination, or to the diplomatic or consular agents interested, or to any other competent authorities.

- The governments undertake, when the case arises, and within legal limits, to have the declarations taken of women or girls of foreign nationality who are prostitutes, in order to establish their identity and civil status, and to discover who has caused them to leave their country. The information obtained shall be communicated to the authorities of the country of origin of the said women and girls, with a view to their eventual repatriation. The governments undertake, within legal limits, and as

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12 Id. Article 2.
far as can be done, to entrust temporarily, and with a view to their eventual repatriation, the victims of a criminal traffic when destitute to public or private charitable institutions, or to private individuals offering the necessary security. The governments also undertake, within legal limits, and as far as possible, to send back to their country of origin those women and girls who desire it, or who may be claimed by persons exercising authority over them. Repatriation shall only take place after agreement as to identity and nationality, as well as place and date of arrival at the frontiers. Each of the contracting countries shall facilitate transit through its territory. Correspondence relative to repatriation shall be direct as far as possible.\(^{13}\)

- Where the woman or girl to be repatriated cannot herself repay the cost of transfer, and has neither husband, relations, nor guardian to pay for her, the cost of repatriation shall be borne by the country where she is in residence as far as the nearest frontier or port of embarkation in the direction of the country of origin, and by the country of origin as regards the rest.\(^{14}\)

- The provisions of the foregoing Articles 3 and 4 shall not affect any private Conventions existing between the contracting Governments.\(^{15}\)

- The Contracting Governments undertake, within legal limits, to exercise supervision, as far as possible, over the offices or agencies engaged in finding employment for women or girls abroad.\(^{16}\)

- Non-signatory states can adhere to the present Agreement. For this purpose they shall notify their intention, through the diplomatic channel, to the French government, who shall acquaint all the contracting States.\(^{17}\)

- The present agreement shall come into force six months after the exchange of ratifications. If one of the contracting parties denounces it, this denunciation shall

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\(^{13}\) Id. Article 3.

\(^{14}\) Id. Article 4.

\(^{15}\) Id. Article 5.

\(^{16}\) Id. Article 6.

\(^{17}\) Id. Article 7.
only have effect as regards that party, and that only twelve months after the date of denunciation.\textsuperscript{18}

- The present agreement shall be ratified, and the ratifications shall be exchanged, at Paris, with the least possible delay.\textsuperscript{19}

From the beginning of the 19th Century the moral condemnation surrounding the slavery and the slave trade facilitated the development of international agreements in relation to these practices. International anti-slavery conventions, in turn, greatly contributed to the development of the international anti-trafficking framework through the development of international enforcement mechanisms, and recognition of the immorality of the exploitation of another human being.\textsuperscript{20}

4.2.3 International Convention for the Suppression of the White Slave Traffic, 1910\textsuperscript{21}

The international agreement for the Suppression of the White Slave Trade was ratified only by twelve nations. Moreover, it is said that this agreement was adopted mainly due to the stagnant economic conditions in Europe which led to the sale of women and girls into prostitution. This, gave way to another international legal instrument known as International Convention for the Suppression of the White Slave Traffic, 1910. Various important provisions of this Convention are herein under.

- Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.\textsuperscript{22}

- Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion,  

\textsuperscript{18} Id. Article 8.  
\textsuperscript{19} Id. Article 9.  
\textsuperscript{22} International Convention for the Suppression of the White Slave Traffic, 1910, Article 1.
procured, enticed, or led away a woman or girl over age, for immoral purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.\textsuperscript{23}

- The contracting parties whose legislation may not at present be sufficient to deal with the offences contemplated by the two preceding Articles (i.e. Articles 1&2) engage to take or to propose to their respective legislatures the necessary steps to punish these offences according to their gravity.\textsuperscript{24}

- The contracting parties shall communicate to each other, through the intermediary of the government of the French Republic, the laws which have already been or may in future be passed in their States relating to the object of the present Convention.\textsuperscript{25}

- The offences contemplated in Articles 1 and 2 shall, from the day on which the present Convention comes into force, be deemed to be lawfully included in the list of offences for which extradition may be granted in accordance with Conventions already existing between the Contracting Parties.\textsuperscript{26}

The analysis of International Convention for the suppression of the White Traffic by the researcher demonstrates the development of a moral condemnation surround the exploitation of human beings, which has been grafted onto the international trafficking in persons framework. It was public outrage against the evil of slavery and human trafficking, rather than any international impetus to criminalise these practices, which generated momentum for the adoption of international legal instruments in this area.

After the first World War, the League of Nations was established to guarantee peace and to prevent the outbreak of another devastating conflict among nations. The Covenant\textsuperscript{27} adopted by this new body nowhere mentions the abolition of the slavery or slave trade. However, the Covenant established the mandate system whose goal was to grant the administration of non-self governing territories to mandate powers in the mentioned case of Central Africa "the prohibition of abuses such as the slave trade"

\textsuperscript{23} Id. Article 2.
\textsuperscript{24} Id. Article 3.
\textsuperscript{25} Id. Article 4.
\textsuperscript{26} Id. Article 5.
\textsuperscript{27} Covenant of the League of Nations adopted on 28\textsuperscript{th} of June 1919.
had to be guaranteed.\textsuperscript{28} It also provided that the members of the League of Nations had to secure just treatment for the native inhabitants of territories under their control.\textsuperscript{29}

### 4.2.4 International Convention for the Suppression of Traffic in Women and Children, 1921\textsuperscript{30}

The International Convention for the Suppression of the Traffic in Women and Children of 1921 is a multilateral treaty of the League of Nations that addressed the problem of international trafficking of women and children. This International Convention prohibits the enticing or leading away of a woman or girl for immoral purposes, to be carried out in another country. Various important provisions are as under:

- The high contracting parties agree, in case they have not already taken licensing and supervision of employment agencies and offices, to prescribe such regulations as are required to ensure the protection of women and children seeking employment in another country.\textsuperscript{31}

- To undertake in connection with immigration and emigration adopt such administrative and legislative measures as are required to check the traffic in women and children. In particular, they undertake to make such regulations as are required for the protection of women and children travelling on emigrant ships, not only at the points of departure and arrival, but also during the journey and to arrange for the exhibition, in railway stations and imports of notices warning women and children of the traffic and indicating the places where they can obtain accommodation and assistance.\textsuperscript{32}

The Convention of 1921 set new goals for international efforts to end trafficking in human beings, primarily by giving the anti-trafficking movement further official recognition, as well as a bureaucratic apparatus to research and fight the problem. Thereafter, the assembly of League of Nations in 1922 requested its Council to submit a report on slave trade for the purpose of discussing the issue further. The

\textsuperscript{28} Covenant of the League of Nations, 1919, Article 16.

\textsuperscript{29} Id. Article 23(b).

\textsuperscript{30} For details see: [http://www1.umn.edu/humanrts/instree/women-traffic.html](http://www1.umn.edu/humanrts/instree/women-traffic.html), (Accessed on 17.07.2014)

\textsuperscript{31} The International Convention for the Suppression of the Traffic in Women and Children, 1921, Article 6.

\textsuperscript{32} Id. Article 7.
Council instructed the Secretary General to ask member States to provide data on the practices, but the results were totally unsatisfactory as only eleven States by providing the requisite giving information. Consequently, the Slavery Convention, 1926 was adopted on 25 September 1926.33

4.2.5 The Slavery Convention, 192634

The Slavery Convention or the Convention to Suppress the Slave Trade and Slavery, 192635 was an international instrument created under the auspices of the League of Nations. The main objective of the Convention was to confirm and advance the suppression of slavery and the slave trade practices. Slavery Convention was the first international legal instrument to refer to the undefined practices of forced and compulsory labour. State parties to the Convention undertook to adopt all necessary measures to prevent compulsory or forced labour from developing into condition analogous to slavery. League of Nations did not succeed in guaranteeing stability to the world at large but certainly paved way for the international abolition of slavery and the slave trade. The Slavery Convention established concrete rules and articles to advance the suppression of slavery and the slave trade. The 'Slavery' under this Convention was thus, defined as:

- the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.36

and the 'slave trade' was defined as:

- all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.37

33 Supra note 7 at 45.
34 For details see: http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx, (Accessed on 17.07.2014)
35 Signed on 25 September 1926 and came into force on 9 September 1927.
36 The Slavery Convention, 1926, Article 1.
37 Ibid.
- The parties agreed to prevent and suppress the slave trade and to progressively bring about, the complete elimination of slavery in all its forms.38

- The parties shall prevent the embarkation, disembarkation and transport of slaves in their territorial waters and on vessels flying their flags.39

- It further provides that State parties shall assist one another to succeed in the abolition of slavery and slave trade.40

- The parties undertook to promulgate severe penalties for slave trading, slaveholding, and enslavement.41

According to researcher the Slavery Convention of 1926 constituted a firm step forward in the fight against slavery and slave trade even if it did not completely wipe out these practices. The main loophole of this important Convention is the lack of an enforcement agency to monitor activities as State parties have only a mere duty to communicate with each other.

4.2.6 The Forced Labour Convention, 193042

The Convention Concerning Forced or Compulsory Labour 1930 also known as Forced labour Convention is one of the eight International Labour Organisation's (ILO's) fundamental Conventions. The Convention commits parties to prohibit the use of forced labour, admitting only five exceptions to it. Its object 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.

For the purpose of this Convention 'forced or compulsory labour' shall means:

- all work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily.43

Article 2 of the Labour Convention further provides forced or compulsory labour does not include:

38 Id. Article 2.
39 Id. Article 3.
40 Id. Article 4.
41 Id. Article 5.
43 The Forced Labour Convention, 1930, Article 2(1).
a. any work or service exacted in virtue of compulsory military service laws for work of a purely military character;\textsuperscript{44}

b. any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;\textsuperscript{45}

c. any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;\textsuperscript{46}

d. any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;\textsuperscript{47}

e. minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.\textsuperscript{48}

Various other important provisions relevant herein under are as follows:

- Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.\textsuperscript{49}

- With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an

\textsuperscript{44} Id. Article 2(2)(a).
\textsuperscript{45} Id. Article 2(2)(b).
\textsuperscript{46} Id. Article 2(2)(c).
\textsuperscript{47} Id. Article 2(2)(d).
\textsuperscript{48} Id. Article 2(2)(e).
\textsuperscript{49} Id. Article 1(1).
exceptional measure, subject to the conditions and guarantees hereinafter provided.\textsuperscript{50}

At the expiration of a period of five years after the coming into force of this Convention, and when the governing body of the International Labour Office prepares the report, the said governing body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the conference.\textsuperscript{51}

Forced or compulsory labour for the transport of persons or goods, such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority shall promulgate regulations determining, \textit{inter alia},\textsuperscript{52}

(a) that such labour shall only be employed for the purpose of facilitating the movement of officials of the administration, when on duty, or for the transport of government stores, or, in cases of very urgent necessity, the transport of persons other than officials,\textsuperscript{53}

(b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit and not suffering from any infectious or contagious disease,\textsuperscript{54}

(c) the maximum load which these workers may carry,\textsuperscript{55}

(d) the maximum distance from their homes to which they may be taken,\textsuperscript{56}

(e) the maximum number of days per month or other period for which they may be taken, including the days spent in returning to their homes,\textsuperscript{57} and

\textsuperscript{50} Id. Article 1(2).
\textsuperscript{51} Id. Article 1(3).
\textsuperscript{52} Id. Article 18(1).
\textsuperscript{53} Id. Article 18(1)(a).
\textsuperscript{54} Id. Article 18(1)(b).
\textsuperscript{55} Id. Article 18(1)(c).
\textsuperscript{56} Id. Article 18(1)(d).
(f) the persons entitled to demand this form of forced or compulsory labour and the extent to which they are entitled to demand it.58

- Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, 59 satisfy itself-

a. that the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service;60

b. that the work or service is of present or imminent necessity;61

c. that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service;62 and

d. that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work.63

- Forced or compulsory labour exacted as a tax and forced or compulsory labour was for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished.64

- Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself.65

57 Id. Article 18(1)(e).
58 Id. Article 18(1) (f).
59 Id. Article 9.
60 Id. Article 9(a).
61 Id. Article 9(b).
62 Id. Article 9(c).
63 Id. Article 9(d).
64 Id. Article 10(1).
65 Id. Article 10(2).
a. that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;  

b. that the work or the service is of present or imminent necessity; 

c. that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work; 

d. that the work or service will not entail the removal of the workers from their place of habitual residence; 

e. that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

The Convention of 1930 was later on supplemented by the Abolition of Forced Labour Convention, 1957 which cancelled a number of exceptions to abolishment in the 1930 Convention, such as a punishment for holding certain political views and punishment for strikes.

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

Being anxious to secure more completely the suppression of traffic in women and children, the League of Nations took note of the recommendations contained in the Report to the Council of the League of Nations by the Traffic in Women and Children Committee on the work of its twelfth session. Member States decided to adopt a new Convention to curb the traffic in women and girls. This Convention imposes a duty on the member states to prohibit, prevent, prosecute and/or punish those engaged in the trafficking of women. Various important provisions of this improvised Convention are mentioned hereunder:

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66 Id. Article 10(2)(a).  
67 Id. Article 10(2)(b).  
68 Id. Article 10(2)(c).  
69 Id. Article 10(2)(d).  
70 Id. Article 10(2)(e).  
72 Supra note 7 at 51.
- Whoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries. Attempted offences, and, within the legal limits, acts preparatory to the offences in question, shall also be punishable.73

- The high contracting parties whose laws are at present inadequate to deal with the offences specified in the preceding Article agree to take the necessary steps to ensure that these offences shall be punished in accordance with their gravity.74

- The high contracting parties undertake to communicate to each other with regard to any person of either sex who has committed or attempted to commit any of the offences referred to in the present Convention or in the Conventions of 1910 or 1921 on the Suppression of the Traffic in Women and Children, the various constituent acts of which were, or were to have been, accomplished in different countries, the following information (or similar information which it may be possible to supply under the laws and regulations of the country concerned)75

  a. Records of convictions, together with any useful and available information with regard to the offender, such as his civil status, description, finger-prints, photograph and police record, his methods of operation, etc.76

  b. Particulars of any measures of refusal of admission or of expulsion which may have been applied to him. These documents and information shall be sent directly and without delay to the authorities of the countries concerned in each particular case by the authorities named in Article 1 of the agreement concluded in Paris on 18 May 1904 and, if possible, in all cases when the offence, conviction, refusal of admission or expulsion has been duly established.77

73 The International Convention for the Suppression of the Traffic in Women of Full Age, 1933, Article 1.
74 Id. Article 2.
75 Id. Article 3.
76 Id. Article 3(a).
77 Id. Article 3(b).
The onset of the World War II has showed that the League of Nations had failed in its primary purpose, which was to prevent any future world war. The League of Nations lasted only for 27 years. It was replaced by the United Nations. The UN inherited a number of agencies and organisations founded by the League of Nations.

4.2.8 Universal Declaration of Human Rights, 1948

The United Nations Charter, which played a catalyst role in the human rights movement around the world failed somehow to define the fundamental freedoms and human rights. This task was fulfilled by the Universal Declaration of Human Rights, which elucidated the UN Charter provisions and defined various fundamental rights and freedoms which need to be protected. The Universal Declaration of Human Rights (UDHR) was the first international legal instrument to acknowledge in its very preamble that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. It provides that everyone is born free and with equal dignity and rights. From the language of the Article 1 that all human beings are born free and equal, the principle that slavery, the slave trade should be abolished must follow. Accordingly it provided:

“No one shall be held in slavery or servitude; slavery and slave trade should be prohibited in all forms.”

UDHR further provides:

“that everyone has the right to freedom of movement and residence in any state and right to freely choose employment and to obtain just and favourable conditions of work.”

Notwithstanding the number of loopholes in the Universal Declaration of Human Rights, it was the first step of the human beings in a space that had earlier always been reserved for sovereign countries.

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78 The United Nations was established on October 24th 1945 to promote international cooperation.
80 Adopted by the General Assembly of the United Nations on December 10, 1948.
81 Universal Declaration of Human Rights, 1948, Article 1
82 Id. Article 4.
83 Id. Article 13(1).
84 Id. Article 23(1).
4.2.9 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949\textsuperscript{86}

This UN Convention of 1949 is more or less a compilation of earlier four International Legal Instruments viz. 1904, 1910, 1921 and 1933 convention. The most important feature of the Convention is that it utilises race and age neutral terminology and removes the transnational element of trafficking in persons, thereby extending the definition and conceptualisation of human trafficking. The Convention is a resolution of the UN General Assembly. The preamble of the Convention states:

"Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community\textsuperscript{87}"

Various important provisions of this Convention relevant herein under are as follows:

- The parties to the present Convention agree to punish any person who, to gratify the passions of another:

  - procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person\textsuperscript{88}
  - exploits the prostitution of another person, even with the consent of that person\textsuperscript{89}

- The parties to the present Convention further agree to punish any person who:

  - keeps or manages, or knowingly finances or takes part in the financing of a brothel\textsuperscript{90}
  - knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others\textsuperscript{91}

\textsuperscript{85} Supra note 7 at 86.
\textsuperscript{86} It was approved by the General Assembly of the United Nations on 2 December 1949 and came into effect on 25 July 1951. As on December 2013 only 82 states were party to this convention. There are additional 13 states who had signed this convention but had not yet ratified it.
\textsuperscript{87} For details see: http://www.ohchr.org/EN/ProfessionalInterest/Pages/TraffidnPersons.aspx (Accessed on 19.07.2014)
\textsuperscript{88} Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, Article 1(1).
\textsuperscript{89} Id. Article 1(2).
\textsuperscript{90} Id. Article 2(1).
\textsuperscript{91}
The parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations there under and so far as possible:\(^{92}\):

- Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance:\(^{93}\);

- To repatriate persons referred to in Article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers. Each party to the present Convention shall facilitate the passage of such persons through its territory.\(^{94}\)

- Here the persons referred to cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of embarkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.\(^{95}\)

- The parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.\(^{96}\)

The International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949 to a great extent highlighted the issue of human trafficking. However, researcher audits the Convention focuses much
on sex industry rather than actual problem of human trafficking. The approach assumes that prostitution was the sole precursor for trafficking in human beings, thereby relegating all women in the sex trade to the status of victims of human trafficking requiring rescue and rehabilitation. Therefore, it can said focus of convention on prostitution rather than human trafficking limits its application and scope.

4.2.10 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956 (Slavery Convention)\(^{97}\)

The United Nations Supplementary Convention on the Abolition of Slavery, the full title of which is the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956. This Convention builds upon the earlier Slavery Convention, which is still operative and which proposed to secure the abolition of slavery and of the slave trade.\(^{98}\) Important provisions of this supplementary Conventions relevant herein are:

- The parties commit to abolish and abandon debt bondage, serfdom, servile marriage and child servitude.\(^{99}\)
- The parties commit to enacting minimum ages of marriage, encouraging registration of marriages, and encouraging the public declaration of consent to marriage.\(^{100}\)
- Criminalisation of slave trafficking.\(^{101}\)
- Runaway slaves who take refuge on flag vessels of parties shall there by ipso facto attain their freedom.\(^{102}\)
- Criminalisation of the marking (including mutilation and branding) of slaves and servile persons.\(^{103}\)

\(^{97}\) For details see: [http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx), (Accessed on 18.07.2014)


\(^{99}\) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, Article 1.

\(^{100}\) Id. Article 2.

\(^{101}\) Id. Article 3.

\(^{102}\) Id. Article 4.

\(^{103}\) Id. Article 5.
- Criminalisation of enslavement and giving others into slavery.\textsuperscript{104}
- Definition of "slave", "a person of servile status" and "slave trade".\textsuperscript{105}
- No reservations may be made to this Convention.\textsuperscript{106}

The Supplementary Convention of 1956 to a larger extent broadened the scope of human trafficking by focusing on slavery and slave trade, forced labour and servitude. However, researcher examines the Supplementary Convention did not establish a monitoring mechanism. Article 8 of this Convention contains only a general obligation for state parties to cooperate with each other.

\textbf{4.2.11 Abolition of Forced Labour Convention, 1957}\textsuperscript{107}

Abolition of Forced Labour Convention, 1957, the full title of which is Convention concerning the Abolition of Forced Labour, 1957. This Convention is one of the eight fundamental conventions of the International Labour Organization. The development of conventions by the International Labour Organisation in relation to human trafficking has to some extent shifted attention away from the sole focus on trafficking for the purpose of prostitution. It abolishes certain forms of forced labour which are still allowed under the Forced Labour Convention of 1930, such as punishment for strikes and as a punishment for holding certain political views. In order to implement the Forced Labour Convention of 1930 and the Abolition of Forced Labour Convention of 1957, the Special Action Programme to Combat Forced Labour was set up. Under this Convention state parties are under an obligation to abolish forced or compulsory labour. Important provisions for the purpose of this research are as follows:

- Each member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour\textsuperscript{108}.

\begin{footnotesize}
\textsuperscript{104} Id. Article 6.
\textsuperscript{105} Id. Article 7.
\textsuperscript{106} Id. Article 8.
\textsuperscript{107} This Convention of the International Labour Organisation was signed on 25th June 1957 and came into force on 17\textsuperscript{th} January 1959.
\end{footnotesize}
a. as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; \(^{109}\)

b. as a method of mobilising and using labour for purposes of economic development; \(^{110}\)

c. as a means of labour discipline; \(^{111}\)

d. as a punishment for having participated in strikes; \(^{112}\)

e. as a means of racial, social, national or religious discrimination. \(^{113}\)

- Each member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention. \(^{114}\)

The Abolition of Forced Convention, 1957 institute measures to prevent compulsory labour from degenerating into conditions analogous to slavery. However, there is significant overlap between conceptualisation for forced labour and human trafficking for the purpose of the exploitation if labour.

4.2.12 International Covenant on Civil and Political Rights, 1966 \(^{115}\)

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the General Assembly of the United Nations. This Covenant mostly elaborates various civil and political rights mentioned in the Universal Declaration of Human Rights, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. The Covenant till May 2013 had 74 signatories and 167 parties. The ICCPR is considered as a part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights, 1966

\(^{109}\) Id. Article 1(a).
\(^{110}\) Id. Article 1(b).
\(^{111}\) Id. Article 1(c).
\(^{112}\) Id. Article 1(d).
\(^{113}\) Id. Article 1(e).
\(^{114}\) Id. Article 2.
\(^{115}\) Adopted on 16 December 1966, and came into force from 23 March 1976.
and the Universal Declaration of Human Rights 1948. For the purpose of this research the Covenant is thus, very important. The Covenant does not contain any definition of the slave trade, slavery or human trafficking. However, it expressly prohibits such practice in all forms. Some of the relevant provisions of the Covenant for the purpose of this research are as:

**Article 8** of the Covenant states that:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.\(^{117}\)

2. No one shall be held in servitude.\(^{118}\)

3. (a) No one shall be required to perform forced or compulsory labour;\(^{119}\)

   (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;\(^{120}\)

   (c) For the purpose of this paragraph the term 'forced or compulsory labour' shall not include\(^{121}\)

   i. Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;\(^{122}\)

   ii. Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;\(^{123}\)

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\(^{117}\) The International Covenant on Civil and Political Rights, 1966, Article 8(1).

\(^{118}\) *Id.* Article 8(2).

\(^{119}\) *Id.* Article 8(3)(a).

\(^{120}\) *Id.* Article 8(3)(b).

\(^{121}\) *Id.* Article 8(3)(c).

\(^{122}\) *Id.* Article 8(3)(c)(i).

\(^{123}\) *Id.* Article 8(3)(c)(ii).
iii. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community.\textsuperscript{124}

iv. Any work or service which forms part of normal civil obligations.\textsuperscript{125}

As a matter of fact, considering that the terms slave, slave trade, forced or compulsory labour had already been defined by other international legal instruments viz. Slavery Convention and ILO Convention Concerning Forced or Compulsory Labour, it is very evident that those definitions apply to the Covenant on Civil and Political Rights as well.\textsuperscript{126} Article 8 of the Covenant did not mention trafficking in human in women and children. However, the Human Rights Committee formally stated that State parties should report on measures taken to eliminate both the domestic and transnational phenomenon, to protect women and children and to prevent the violation of their fundamental human rights.\textsuperscript{127} Therefore, human trafficking can be considered as falling within the ambit of the slavery and slave trade.

\textbf{4.2.13 International Covenant of Economic, Social and Cultural Rights, 1966}\textsuperscript{128}

The International Covenant on Economic, Social and Cultural Rights like the Covenant on Civil and Political Rights is a multilateral treaty adopted by the General Assembly of United Nations.\textsuperscript{129} The Covenant commits its parties to work towards the granting of economic, social, and cultural rights to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. The Covenant had 160 parties as on 2013. Further seven states, including the United States of America, had signed it but are yet to ratify it. Like the Covenant on Civil and Political Rights this Covenant too is a part of the International Bill of Human Rights.\textsuperscript{130} The UN Committee on Economic, Social and Cultural Rights is a monitoring body of this Covenant.

\begin{footnotes}
\footnote{124}{Id. Article 8(3)(c)(iii).}
\footnote{125}{Id. Article 8(3)(c)(iv).}
\footnote{126}{\textit{Supra} note 6 at 87.}
\footnote{127}{Id. at 88.}
\footnote{128}{For details see: \url{http://www.ohchr.org/EN/ProfessionalInterest/Pages/cescr.aspx}, (Accessed on 19.07.2014)}
\footnote{129}{Adopted on 16 December 1966, and came into force from 3 January 1976.}
The International Covenant on Economic, Social and Cultural Rights does not contain any express provision dealing with the slavery or slave trade practices. However, it provides few provisions dealing with the fair and just conditions of work that may apply to persons slaved or trafficked for forced or compulsory labour. For this research various relevant provisions of the Covenant are:

**Article 6**

1. The state parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.131

2. The steps to be taken by a state party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.132

**Article 8**

1. The states parties to the present Covenant undertake to ensure:

   a. The right of everyone to form trade unions and to join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;133

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131 International Covenant of Economic, Social and Cultural Rights, 1966, Article 6(1).
132 Id. Article 6(2).
133 Id. Article 8(1)(a).
b. The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations;\textsuperscript{134}

c. The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;\textsuperscript{135}

d. The right to strike, provided that it is exercised in conformity with the laws of the particular country.\textsuperscript{136}

2. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the state.\textsuperscript{137}

3. Nothing in this Article shall authorize states parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.\textsuperscript{138}

\textbf{Article 9}

The states parties to the present Covenant recognize the right of everyone to social security, including social insurance.\textsuperscript{139}

\textbf{Article 13}

1. The states parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society,
promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.140

2. The states parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

a) Primary education shall be compulsory and available free to all;141

b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;142

c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;143

d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;144

e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.145

3. The states parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.146

140 Id. Article 13(1).
141 Id. Article 13(2)(a).
142 Id. Article 13(2)(b).
143 Id. Article 13(2)(c).
144 Id. Article 13(2)(d).
145 Id. Article 13(2)(e).
146 Id. Article 13(3).
4. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.\footnote{Id. Article 13(4).}

As already mentioned above that there is no express provision of slavery, slave trade or human trafficking in this Covenant. Nonetheless, more recently the Committee on Economic, Social and Cultural Rights made comments on the issue of human trafficking to Slovenia and Uzbekistan for the protection of the victims. Therefore, the Covenant plays an important role in the prohibition of exploitation of human beings.

\textbf{4.2.14 The Convention Concerning Minimum Age for Admission to Employment, 1973}\footnote{Adopted on June 26, 1973.}

The Convention Concerning Minimum Age for Admission to Employment or simply Minimum Age Convention was adopted in 1973 by the International Labour Organization (ILO). It directs ratifying States to enact a national policy designed to ensure the effective abolition of child labour and restrict the engagement of child in hazardous work. This Convention replaces several similar ILO Conventions regarding abolition of child labour. Relevant provisions of this important convention are:

- Each member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.\footnote{The Convention Concerning Minimum Age for Admission to Employment, 1973, Article 1.}

- \textbf{Article 2} provides:

1. Each member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its
territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.\textsuperscript{150}

2. Each member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.\textsuperscript{151}

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.\textsuperscript{152}

4. Notwithstanding the provisions of paragraph 3 of this Article, a member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.\textsuperscript{153}

5. Each member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation a statement--

\begin{enumerate}
\item[a)] that its reason for doing so subsists;\textsuperscript{154} or
\item[b)] that it renounces its right to avail itself of the provisions in question as from a stated date.\textsuperscript{155}
\end{enumerate}

- Article 3 provides:

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely
to jeopardise the health, safety or morals of young person's shall not be less than 18 years.  

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young person concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Thus, States are free to specify a minimum age for labour, with a minimum of 15 years. A declaration of 14 years is also possible but for a specified period of time. Laws may also permit light work for children aged 13–15 but such work must not harm their health or school work. The minimum age of 18 years is specified for work which is likely to affect the health, safety or morals of young persons.

4.2.15 **Convention on the Elimination of All Forms of Discrimination Against Women, 1979**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 is an important international legal instrument adopted by the General Assembly of United Nations. This Convention is considered as Bill of Rights for Women. As on 2013 there were 187 members of this Convention. The object of this important convention is to implement equality between men and women and to prevent discrimination against women, mostly such forms of discrimination

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156 *Id. Article 3(1).*
157 *Id. Article 3(2).*
158 *Id. Article 3(3).*
159 Adopted on 18 December 1979 and came into force on September 3, 1981.
such as domestic violence, less access to education, health care and discrimination at work place.\textsuperscript{160}

Article 17 of the Convention establishes a committee known as the Committee on the Elimination of Discrimination Against Women. This Committee considers reports from member parties regarding the compliance with the provisions of the Convention. The committee makes general recommendations on the specific Article of the Convention. Various recommendations of the committee identifies poverty, unemployment, violence against women, armed conflicts as few contributory factors of trafficking in women.\textsuperscript{164} Important provisions of this Convention are:

- For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.\textsuperscript{162}

- States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake\textsuperscript{163}:

  a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;\textsuperscript{164}

  b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;\textsuperscript{165}

\textsuperscript{160} For details see: \url{http://en.wikipedia.org/wiki/Convention_on_the_Elimination_of_All_Forms_of_Discrimination_against_Women}, (Accessed on 19.07.2014)
\textsuperscript{161} Ibid.
\textsuperscript{162} The Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 1.
\textsuperscript{163} Id. Article 2.
\textsuperscript{164} Id. Article 2(a).
\textsuperscript{165} Id. Article 2(b).
c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;\(^{166}\)

d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;\(^{167}\)

e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;\(^{168}\)

f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;\(^{169}\)

g) To repeal all national penal provisions which constitute discrimination against women.\(^{170}\)

- States parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.\(^{171}\)

- States parties shall take all appropriate measures\(^ {172}\):

  a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

\(^{166}\) Id. Article 2(c).

\(^{167}\) Id. Article 2(d).

\(^{168}\) Id. Article 2(e).

\(^{169}\) Id. Article 2(f).

\(^{170}\) Id. Article 2(g).

\(^{171}\) Id. Article 3.

\(^{172}\) Id. Article 5.
inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;\textsuperscript{173}

b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.\textsuperscript{174}

Most significantly, Article 6 provides:

- States parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Hence, the Convention on the Elimination of all forms of Discrimination against the Women reinforced and reiterated traditional conceptualisation of the women victim of human trafficking for the purpose of commercial sexual exploitation.

4.2.16 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984\textsuperscript{175}

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 also known as Convention against Torture is an international human rights instrument of the United Nations. The aim of the Convention is to prevent torture and cruel, inhuman degrading treatment or punishment around the world. The Convention directs states to take effective steps to prevent torture within their borders, and forbids states to transport people to any country where there is reason to believe they will be tortured. As of 2013 the Convention has 154 State members.\textsuperscript{176} Relevant provisions herein are as under:

\textsuperscript{173} Id. Article 5(a).

\textsuperscript{174} Id. Article 5(b).

\textsuperscript{175} This Convention was adopted by the United Nations General Assembly on 10 December 1984 and following ratification by the 20\textsuperscript{th} state party, it came into force on 26 June 1987. 26 June is now recognised as the International Day in Support of Victims of Torture, in honour of the Convention.

- For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.  

- **Article 2** provides:

  1. Each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.\textsuperscript{178}

  2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.\textsuperscript{179}

  3. An order from a superior officer or a public authority may not be invoked as a justification of torture.\textsuperscript{180}

- **Article 4** provides:

  1. No state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.\textsuperscript{181}

  2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations

\textsuperscript{177} The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Article 1

\textsuperscript{178} Id. Article 2(1).

\textsuperscript{179} Id. Article 2(2).

\textsuperscript{180} Id. Article 2(3).

\textsuperscript{181} Id. Article 4(1).
including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.  

- Each state party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

- Each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

Apparently the Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment does not contain any measure dealing specifically with the problem of human trafficking, but as with the Convention on Racial Discrimination, its monitoring body has also recently dealt with the issue of human trafficking.

4.2.17 Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child (commonly abbreviated as the CRC, CROC, or UNCRC) is an international human rights legal instrument which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a 'child' as any human being under the age of eighteen, unless the age of majority is attained earlier under a state's own domestic legislation. States that ratify this Convention are bound by it. Convention is monitored by the UN Committee on the Rights of the Child.

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182 Id. Article 4(2).  
183 Id. Article 13.  
184 Id. Article 14.  
186 The General Assembly of the United Nations adopted this Convention and opened it for signature on 20 November 1989). It came into force on 2 September 1990, after it was ratified by the required number of nations. Currently, Convention has 193 member countries.
Although mention of abolition of traffic in children and of their exploitation was already contained in the Declaration on the Right of the Child adopted by the General Assembly of United Nations on 20th Nov. 1959. This convention emphasises this issue by expressly banning the illicit transfer of children abroad, their exploitation and trafficking.\textsuperscript{187} For the purpose of this research various relevant provisions of this Convention are as under:

- **Article 3** of the convention provides:

  In all actions concerning children, the best interest of the child shall be primary consideration.\textsuperscript{188}

- **Article 11** provides:

  1. State parties shall take measures to combat the illicit transfer and non-return of children abroad.\textsuperscript{189}

  2. To this end, state parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.\textsuperscript{190}

- **Article 34**: State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

  a) The inducement or coercion of a child to engage in any unlawful sexual activity;\textsuperscript{191}

  b) The exploitative use of children in prostitution or other unlawful sexual practices;\textsuperscript{192}

  c) The exploitative use of children in pornographic performances and materials.\textsuperscript{193}

\textsuperscript{187} Supra note 7 at 99.
\textsuperscript{188} Supra note 186 at Article 3.
\textsuperscript{189} Id. Article 11(1).
\textsuperscript{190} Id. Article 11(2).
\textsuperscript{191} Id. Article 34(a).
\textsuperscript{192} Id. Article 11(b).
\textsuperscript{193} Id. Article 11(c).
- **Article 35**: State parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.\(^{194}\)

- **Article 39**: State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.\(^{195}\)

Hence, CRC is the first major instrument to consider trafficking of child as a separate phenomenon, requiring specific preventive and victim rehabilitation measures. However, this Convention does not establish a relationship between human trafficking and forced prostitution, rather extends the concept of child trafficking to various exploitative purposes.

**4.2.18 Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, 1990\(^{196}\)**

The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is an international legal instrument for the protection of migrant workers and their families. The Convention is monitored by the Committee on Migrant Workers. This convention seeks to put an end to the illegal and clandestine recruitment and trafficking of migrant workers and lays down binding international standards for the treatment, welfare of victims.\(^{197}\) The relevant provisions are discussed hereunder:

- Migrant workers and members of their families shall be free to leave any state, including their state of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order public health or morals or the rights and freedoms of

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\(^{194}\) *Id.* Article 35.

\(^{195}\) *Id.* Article 39.

\(^{196}\) Signed on December 18, 1990, it came into force on July 1st, 2003.

others and are consistent with the other rights recognized in the present part of the Convention. 198

- No migrant worker or member of his or her family shall be held in slavery or servitude. 199

- No migrant worker or member of his or her family shall be required to perform forced or compulsory labour. 200

- Before their departure, or at the latest at the time of their admission to the state of employment, migrant workers and members of their families shall have the right to be fully informed by the state of origin or the state of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage. 201

The Migrant Workers Convention addresses the elimination of the exploitation of migrant workers throughout the entire process of migration and attempts to institute measure for the protection of documented and undocumented migrants. However, regretfully, this legal instrument relating to migrant workers have received few ratifications. 202 Hence, there is lack of concern by states regarding the treatment and possible exploitation of migrant workers through human trafficking.

International migration has become an important feature of globalization. On these issues, former UN Secretary General, Kofi Annan, has said:

"It is time to take a more comprehensive look at the various dimensions of the migration issue, which now involves hundreds of millions of people, and affects countries of origin, transit and destination. We need to understand better the causes

198 The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, Article 8(1).
199 Id. Article 11(1).
200 Id. Article 11(2).
201 Id. Article 11(3).
of international flows of people and their complex interrelationship with
development."203

4.2.19 The UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, 1990204

The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography works on for the United Nations Human Rights Council to investigate the exploitation of children around the world and make recommendations to respective governments on how to end such practices. The Special Rapporteur was created in 1990 by the former United Nations Commission on Human Rights amidst growing international concern over the commercial sexual exploitation and the sale of children. On 20 November 1989 it was followed by the adoption of the Convention on the Rights of the Child by the General Assembly of United Nations. This international legal instrument recognizes that in all countries of the world there are children living exceptionally in difficult conditions, and that such children need special attention. The Special Rapporteur is aimed to investigate the exploitation of such children around the world and to submit reports on the findings to the General Assembly and the United Nations Commission on Human Rights for making recommendations to the protection of the rights of the children. These recommendations are primarily helpful to governments, other United Nations bodies and non-governmental organizations.205

4.2.20 The ILO Convention on the Worst Forms of Child Labour, 1999206

The Convention regarding the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 is also known as the Worst Forms of Child Labour Convention adopted by the International Labour Organization. This convention is one among the eight fundamental conventions of ILO. By ratifying this Convention the state commits itself to taking immediate action to prohibit and eliminate the worst forms of child labour. Furthermore, this Convention creates ILO's

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For the purpose of this convention, the term the 'worst forms of child labour' comprises:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;\footnote{The Convention regarding the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, Article 3(a).}

b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;\footnote{Id. Article 3(b).}

c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;\footnote{Id. Article 3(c).}

d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.\footnote{Id. Article 3(d).}

Thus, this Convention enables individuals or group of individuals who are not satisfied with the national remedies to directly approach the committee of the protocol for the redress their grievances.


The UN Convention against Transnational Organized Crime, 2000 is a multilateral legal instrument against transnational organized crime. This Convention
was adopted by a resolution of General Assembly of the United Nations on 15 November 2000. It is known as the Palermo Convention, and its three Protocols are known as the Palermo Protocol including, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air and Protocol against the Illicit Manufacturing and Trafficking in Firearms. As on September 2013 Convention had been ratified by 178 states.

The Protocol supplements the United Nations Convention on Organised Crime. For the purpose of this research, we are here concerned more about the Protocol than its Parent Convention. The United Nations Protocol is one of most important protocols as it is much concerned with trafficking in women and children, assistance to victims and its prevention. The UN Trafficking Protocol provides the first internationally accepted definition of the term human trafficking. Article 3(a) defines trafficking in human beings as:

"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 other or other forms of sexual exploitation, forced labour or services, slavery or practices, similar to slavery, servitude or the removal of organs."

Article 3(b) further specifies that if one of the means mentioned in Article 3(a) is used, it is irrelevant whether the person trafficked expressed his/her consent or not. On the contrary, the definition of trafficking in minors contained in Article 3(c) does not take into account the issue of consent, so that the recruitment, transportation, transfer, harbouring and receipt of a child followed by his/her exploitation has to be

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215 The UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000, Article 3(a).
considered as child trafficking. Finally, Article 3(d) defines a child as a person who is under the age of eighteen.\(^{216}\)

The United Nations Protocol makes reference to some specific forms of exploitations. However, the list is not exhaustive and it may include other forms as well. The attempt made was expound as much as possible to the definition of trafficking in persons to include any possible known or still unknown form of exploitation. Thus, the UN Trafficking Protocol’s definition is well equipped to fight against any new form of exploitation that may arise in future.\(^{217}\) The protocol further provides for preventive measures,\(^{218}\) victim compensation and privacy protection,\(^{219}\) repatriation\(^{220}\) and strengthened border control measures.\(^{221}\)

However, the Protocol does not provide protection from prosecution for the acts that victims may be forced to perform. Therefore, victims could be prosecuted for a crime they were coerced into committing, such as commercial sexual exploitation, working without a valid permit, or having fake identification documents. Also most of the preventive measures especially for victim assistance are discretionary. Thus victims who remain in a country in order to serve as witness for the prosecution could be detained for months without the availability of critical services or employment. This could create unwillingness in the victims to offer testimony, which would be detrimental to the case, thus, undermining the law enforcement objectives of this Protocol. Also these victims are still at the risk of physical harm from the traffickers at any point of time. There is no mention of reintegration or providing services on their repatriation, to ensure that a victim is able to re-enter the mainstream world. The Protocol refers only to cooperation between state parties to ensure the safe repatriation of victims to their countries of origin. The victims are in effect, likely to slip back into the same condition from which they were trafficked and therefore are again at the risk of re-trafficking.\(^{222}\)

\(^{216}\) *Id.* Article 3(b), 3(c) & 3(d).
\(^{217}\) *Supra* note 197 at 5.
\(^{218}\) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000,* Article 9.
\(^{219}\) *Id.* Article 6.
\(^{220}\) *Id.* Article 8.
\(^{221}\) *Id.* Article 11 & 12.
\(^{222}\) *Supra* note 197 at 188.


According to the preamble of the Protocol, it is intended to achieve the purposes of certain provisions of the Convention on the Rights of the Child, mostly to take appropriate measures to protect children from various forms of exploitations. The protocol requires parties to protect the rights and interests of child victims of trafficking, child prostitution and child pornography, removal of organs, illegal adoption, child labour and especially the worst forms of child labour. Other provisions in the protocol outline the standards for international law enforcement covering diverse issues such as jurisdictional factors, extradition, mutual assistance in investigations, criminal or extradition proceedings and seizure and confiscation of assets as well. Further, it obliges parties to pass laws within their own territories against these practices punishable by appropriate penalties that take into account their grave nature.

Hence, it can be said that the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography extended the scope of Convention of the Rights of Children by reiterating state to criminalise national and transnational practices relating to child trafficking.

4.2.23 Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002

These principles and guidelines were developed by the United Nations Commission for Human Rights in 2002. These principles were basically developed to
strengthen the human rights principles and perspective of the Trafficking Protocol. This document provides 17 principles and 11 guidelines which are meant to facilitate the effective implementation of the main provisions of the protocol. For the purpose of this research following are few such principles and guidelines:

1. The promotion and protection of human rights.
2. Preventing trafficking in human beings.
3. Protection and assistance to the victims of trafficking.
4. Criminalisation, Punishment and redress.

4.3 Other International Mechanisms

4.3.1 United Nations

The United Nations makes comprehensive guidelines and recommendations for governments, regional and international organisations, with regard to law reform and law enforcement, measures to address the root factors that boost trafficking in women and girls for commercial sexual exploitation and other forms of violations. It further provides resources for programmes to heal and rehabilitate victims of trafficking in to the society. The United Nations through its agencies like UNIFEM, UNICEF, UNDP, and UNESCO encourages governments to develop systematic data collection methods and continuously update information on trafficking in human beings, including the analysis of the modus operandi of trafficking syndicates, and to strengthen national policies and programmes to combat this problem through sustained bilateral, regional and international cooperation. Given below is the work done by the agencies of the United Nations in the field of trafficking in human beings.

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228 Ibid.
229 Ibid.
230 Ibid.
231 Ibid.
232 Ibid.
233 The United Nations (UN) came into existence on 24th October 1945 as a nongovernmental organization to promote international co-operation.
4.3.2 UNIFEM\textsuperscript{235}

The United Nations Development Fund for Women provides mostly financial support and technical assistance to innovative programmes promoting women’s human fundamental rights and issues related to women's empowerment and gender equality. UNIFEM works primarily at the country level but it is moving towards regional programmes in which individual country projects are linked in terms of a common focus and an approach adapted to national situations and capacities. At the regional level, UNIFEM undertakes advocacy as well as sponsoring action research in the area of trafficking in persons.\textsuperscript{236}

4.3.3 UNESCO\textsuperscript{237}

One of the main objectives of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) is to promote human rights and fundamental freedoms. UNESCO as an important body of United Nations takes action in international standard setting, in the preparation and adoption of international legal instruments and statutory recommendations. From time to time it convenes meetings and prepares reports revolving around the issue of human trafficking and slavery like practices. UNESCO has official relations with more than 600 NGOs worldwide, and about 1,200 NGOs cooperate with UNESCO on projects on an occasional basis.\textsuperscript{238}

4.3.4 UNICEF\textsuperscript{239}

The United Nations Development Fund for Children (UNICEF)\textsuperscript{240} looks at child labour and sexual exploitation of children as a gross violation of children’s rights. It has regional and country level projects on trafficking. UNICEF works closely with other UN agencies such as the UNCHR, the Committee on the Rights of the Child, ILO and UN Special Rapporteur on the Sale of Children, Child Prostitution and Pornography in its projects on the sale of Trafficking. In the area of child labour and child sexual exploitation, UNICEF holds regular consultations with NGOs to discuss research findings, programme implementation findings and to develop

\textsuperscript{235} The United Nations Development Fund (UNIFEM) was established in December 1976.
\textsuperscript{236} Supra note 234.
\textsuperscript{237} United Nations Educational, Scientific and Cultural Organization (UNESCO) was established in November 4, 1946 as a special agency of United Nations.
\textsuperscript{238} For details see: http://unesco.org, (Accessed on 08.12.2013)
\textsuperscript{239} United Nations Children's Fund (UNICEF) was established on December 1946.
\textsuperscript{240} For details see: http://www.unicef.org/, (Accessed on 08.12.2013)
complementary policies and programmes. For example, in West Africa, UNICEF has been networking regularly with NGOs on child trafficking.  

4.3.5 UNDP

The United Nations Development Programme (UNDP) has taken projects on trafficking focusing on areas of gender and HIV/AIDS in some regions of the world. For example, in South East Asia, UNDP has initiated a project between six countries “UN Inter-agency project on Trafficking in Women and Children in the Mekong Sub-Region” under its Gender Division. Under a UNDP HIV and Development project in South Asia, trafficking and related issues are key areas of concern. In Europe, a regional programme to support gender development also focuses on trafficking in women and children. In each of these programmes there is a partnership with relevant NGOs in the respective regions.

4.3.6 UNCHR

The Commission on Human Rights comes under the Office of the High Commission of Human Rights alongside the Sub-Committee on Prevention of Discrimination and Projection of Minorities. Under the Commission, various working groups and Special Rapporteurs are given a mandate to investigate certain areas of human rights violations including trafficking in human beings.

Special Rapporteurs are expert groups appointed by the High Commission of Human Rights. They examine, monitor and publicly specify issues of human rights violations worldwide. Special Rapporteurs produce yearly reports on their theme area and produce it before the Commission on Human Rights. Three of the thematic mandated Special Rapporteurs are especially relevant to human trafficking viz. the Special Rapporteur on Violence Against Women, the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. Recently, the 60th Session of

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241 Ibid.
242 United Nations Development Programme (UNDP) was formed in 1965.
244 United Nations Commission on Human Rights (UNCHR) was established in 1946. However UNCHR was replaced by United Nations Human rights Council in 2006.
the UN Commission on Human Rights appointed a Special Rapporteur on Trafficking in Persons, especially Women and Children.  

The Special Rapporteur on Trafficking is rather a generic mandate to gather, request, receive and exchange information and communication from all relevant sources, including governments, victims of trafficking themselves and organisation, on violations of their human rights and fundamental freedoms; formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of victims of trafficking inhuman beings; and work in close association with other Special Rapporteurs, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.

4.3.7 Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice has reviewed the trends in the smuggling of illegal migrants in different parts of the world. The trafficking in human beings has been considered within the overall context of violence against migrants. The General Assembly of the United Nations adopted work undertaken by the Commission on the formulation of model strategies and practical measures and the elimination of violence in the field of crime prevention and criminal justice. These represent an internationally agreed set of strategies and measures to upgrade and insure a fair treatment response on the part of criminal justice systems to women victims of all forms of violence and additional areas of victim support assistance, health and social services, training and research and evaluation.

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246 Ibid.
247 Supra note 234 at 50.
248 The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council resolution 1992/1, upon request of General Assembly resolution 46/152, as one of its functional commissions.
249 Supra note 234 at 51.
4.4 Inter-Governmental Organisations

4.4.1 ILO

The International Labour Organisation perceives with serious concern the increasing number and complexity of trafficking in human beings worldwide especially migrant women and children. It identifies an imperative need to highlight it at national, regional and global levels by promoting bilateral, regional and multilateral cooperation to curb it.

The International Labour Organisation takes trafficking as a form of forced and compulsory labour, one of the worst forms of child labour, among the worst forms of exploitation of migrant workers, and lastly as an focal issue involving a significant number of women workers. It recognises that trafficking in women and children exist not only in the commercial sex industry, but also in other sectors such as domestic service, work in plantations, construction sites, sweatshops and begging and soliciting.

It also considers it important to improve the role of the labour market in increasing employment opportunities and improving working conditions for affected families in source countries, and in particular for women members. Providing everyone with full, productive and freely chosen decent work can attack the root cause of trafficking in persons. In addition, it considers the sensitisation of gender equality as one of the most important means to reduce trafficking since there is a strong link between women employment, child labour and trafficking. Indeed, gender discrimination in society and in the labour market is one of the main causes of trafficking.

Within the ILO’s mandate, trafficking in persons for purposes of labour exploitation, in particular, forced and compulsory labour and other slavery like practices is covered by a number of ILO Conventions, which have already been covered in the earlier part of this chapter. ILO has a well developed supervisory

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250 International Labour Organization (ILO) is a special agency of United Nations. ILO was established in 1919.
252 Ibid.
253 Ibid.
system for the application of ratified conventions. All countries, which have ratified ILO Conventions, owe periodic reports of their application in law and in practice.\footnote{Ibid.}

ILO’s major projects carried out by the International Programme for the Elimination of Child Labour to reduce labour exploitation and combating trafficking in children at regional levels,\footnote{Ibid.} include:

- South Asia (Bangladesh, Nepal and Sri Lanka)
- South East Asia (Philippines, Indonesia, Thailand, Cambodia)
- West and Central Africa (Benin, Burkina Faso, Cameroon, Cote d’Ivoire, Gabon, Ghana, Mali, Nigeria and Togo)
- Central America (El Salvador, Nicaragua, Honduras, Costa Rica, Guatemala, and the Dominican Republic)
- South America (Brazil and Paraguay)

4.4.2 IOM\footnote{International Organization for Migration (IOM) was established in 195, to resettle the people by World War II.}

The International Organisation for Migration’s activities on trafficking in human beings covers various information campaigns, research programmes, capacity building for Government and other institutions, and the provision of assisting and protection, including return and reintegration of victims of human trafficking. IOM is also implementing a Global Assistance Program that creates a mechanism for swift case by case assistance to women and children who are victims of trafficking outside their countries of origin who require immediate protection and support.\footnote{Supra note 234 at 52.}

IOM sees human trafficking especially of women and children as a part of a larger irregular migration issue. Therefore, in order to search for longer term solutions to this phenomenon, the root cause of poverty, lack of opportunities, scarce resources, low status of women in society and political and economic instability need to be
strongly highlighted. IOM has traditionally focussed on addressing two stages in the trafficking process.\textsuperscript{258}

- Firstly through prevention before victimisation occurs by providing potential victims of trafficking with information about trafficking, so that they will be in a better position to make an informed decision.

- Secondly through direct assistance and support to victims of trafficking in persons.

In order to provide assistance and support to victims of human trafficking, IOM is spreading the awareness that this group of people be primarily recognised as victims of crime and exploitation, rather than as illegal migrants or offenders.\textsuperscript{259}

4.5 Regional Instruments

At the regional level, there have been several steps undertaken by the governments of the South Asia and Asia-Pacific regions. The Bangkok Accord and Plan of Action to Combat trafficking in Women 1998, Asian Regional Initiative Against Trafficking in Persons, Especially Women and Children, 2000, the ASEM (Asia Europe Meeting) Action Plan to Combat Trafficking in Persons Especially Women and Children 2000, the Bali Conference Co-Chair's Statement on people Smuggling, Trafficking in Persons and Related Transnational Crime 2002 are illustrations of their concerned efforts.\textsuperscript{260} These are briefly discussed below:

4.5.1 SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution, 2002\textsuperscript{261}

The main objective of this Convention is to promote cooperation amongst member countries to deal effectively with the various aspects of the prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of the victims of trafficking of the use of women and children in international prostitution networks, particularly if the SSARC member countries (Bhutan, Bangladesh, India, Maldives, Nepal, Sri Lanka, and Pakistan) are the

\textsuperscript{258} For details see: \url{http://www.iom.int}, (Accessed on 08.12.2013)
\textsuperscript{259} Supra note 234 at 53.
\textsuperscript{260} Supra note 197 at 188.
\textsuperscript{261} Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored.
countries of origin, transit and destination. This legal instrument is legally binding on its signatory parties and is the first regional anti trafficking treaty to emerge from Asia. As on March 2004, the Convention was ratified by all member countries of the SAARC except Nepal and Sri Lanka.\footnote{262}{For details see: \url{http://www.saarc-sec.org/userfiles/conv-trafficking.pdf}, (Accessed on 20.07.2014)}

Article 1 of the SAARC Convention, 2002 defines child, prostitution, trafficking, traffickers, and persons subject to trafficking. It provides for aggravating circumstances, which are factual circumstances that enhance the gravity of the offence (Article 4). It also provides for the protection of victims (Article 5), mutual legal assistance (Article 6) training and sensitisation of enforcement of officials (Article 8) and the rehabilitation of victims (Article 9). Offences under the Convention are extraditable (Article 7). Article 8(3) requires the State parties to establish a regional task force comprising officials from the member states, in order to facilitate the implementation of the provisions of the convention and to undertake periodic reviews. The main criticism against the SAARC Convention is its narrow definition of trafficking, which is limited to prostitution. It is also criticised for making no distinction between women and children. Trafficking has been defined to include the moving, selling or buying of a person, but does not include their recruitment, labour, transfer or receipt that does not form a part of the buying or selling process.\footnote{263}{Ibid.}


The Convention on the Regional Arrangement for the Promotion of Child Welfare seeks to create regional arrangements among SAARC countries in order to promote the understanding and awareness about the rights, duties and responsibilities of children and to develop the full potential of the South Asian child.\footnote{265}{Pursuant to the decision of the Ninth SAARC Summit, the SAARC Convention on Regional Arrangements on the Promotion of Child Welfare in South Asia was signed in January 2002, (during the Eleventh Summit in Kathmandu). The Convention envisages to facilitate the development of full potential of the South Asian child.}

4.6 Government Mechanisms

The regional human rights system further provides the necessary push to the operationalisation of human rights issues for the trafficked persons. Regional
mechanisms applicable to trafficking vary widely from region to region. Some of these regional mechanisms would be taken up here for analysis.

4.6.1 Europe

4.6.1.1 European Convention on Human Rights, 1950

It mainly incorporates the civil and political rights enshrined in the Universal Declaration of Human Rights. All members of the Council of Europe are parties to the Convention, which is also applicable to their overseas territories.

4.6.1.2 European Social Charter, 1961

The European Social charter deals with the economic, social and cultural rights. The State parties resolve to make every effort in common to improve the standard of living and to promote the social well being of both their urban and rural populations by means of institutions and appropriate actions. The relevant provision of this Charter provides for the right of migrant workers and their families to fair wages, just conditions of work, protection and assistance.

4.6.1.3 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987

The rights and freedoms guaranteed by the Convention are enforced by the European Commission of Human Rights, European Court on Human Rights and the European Committee on Prevention of Torture.

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266 The European Convention on Human Rights (ECHR) is an international treaty to protect human rights and fundamental freedoms in Europe. It was drafted in 1950 by the then newly formed Council of Europe.


268 European Social Charter was adopted in 1961 and revised on 1996.


270 This Convention was adopted by the member states of the European Council on November 26, 1987.

4.6.1.4 European Union

Apart from the above mentioned mechanisms, European Union citizens can bring legal cases to the European Court of Justice. Complaints calling for investigations or policy actions can be made to the relevant EU bodies. In 1997, the EU released, the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation. The guidelines focus on the field of prevention, prosecution, assistance and support at the National and European Level.

4.6 2 North and South America

The American Convention on Human Rights, 1969 draws upon the European Convention of Human Rights, the American Declaration of the Rights and Duties of Man, 1948 and the International Covenant on Civil and Political Rights, 1966. Only State members of the Organisation of American States have the right to become parties. Apart from this, the Organisation has the inter American Convention for the Punishment, Eradication and Prevention of Violence against Women and Children.

4.6.3 Africa

The Heads of the Organisation of African Unity adopted the African Charter on Human Rights. This is the first human rights document that stresses upon the people's rights, that is third generation group rights. However, for the enforcement of these rights and duties under the Charter, there is an absence of any judicial or quasi-judicial organ. There exist the African Commission on Human and People's Rights whose function, to a large extent, is only promotional, though it also has the role of enforcement. Further, the African Union drafted Action Plan to Combat Trafficking in

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272 European Union: a politico-economic union operates through a system of supranational independent institutions.
274 Supra note 234 at 55.
275 African Charter on Human Rights was adopted on June 1981.
Human Beings, especially Women and Children (2006). This plan of action to a larger extent helps in the highlighting of human trafficking problem in the Africa.\(^{276}\)

### 4.6.4 Asia

There is no such equivalent regional human rights mechanism in Asia. However, two sub-regional mechanisms are working on trafficking.

#### 4.6.4.1 South Asian Association for Regional Cooperation (SAARC)\(^{277}\)

SAARC member countries include Bhutan, Bangladesh, India, Maldives, Nepal, Sri Lanka and Pakistan. Among these countries India, Nepal and Bangladesh are at the top of the human trafficking menace especially with regard to women and children. Each country serves as a demand, supply and transit zone. Therefore in order to counter the menace of trafficking in women and children, the SAARC member countries have signed a Convention on the prevention and Combating Trafficking in Women and Children for Prostitution in 2000. This Convention emphasises, the rehabilitation and repatriation to victims of human trafficking for commercial sexual exploitation.\(^{278}\)

#### 4.6.4.2 Asian Regional Initiative against Trafficking (ARIAT)

The Asian Regional Initiative against Trafficking declared a regional plan of action for 23 countries in the Asia-Pacific region at its first meeting in Manila in March 2000. This Plan of Action encourages countries to cooperate with one another and with the civil society at all levels in the strategic areas of prevention, protection, prosecution, rehabilitation and reintegration of trafficked victims.\(^{279}\)


\(^{277}\) The idea of regional political and economical cooperation in South Asia was first coined in 1980 and the first summit was held in Dhaka on 8th December in 1985.

\(^{278}\) For details see: [http://en.wikipedia.org/wiki/South_Asian_Association_for_Regional_Cooperation](http://en.wikipedia.org/wiki/South_Asian_Association_for_Regional_Cooperation) (Accessed on 22.07.2014)

\(^{279}\) For details see: [http://www.humantrafficking.org/events/88](http://www.humantrafficking.org/events/88), (Accessed on 21.07.2014)
4.7 Legal Framework against Trafficking in South Asian Countries

4.7.1 Bangladesh

The Constitution of Bangladesh guarantees equal rights and equal protection to everyone irrespective of gender. The Fundamental principles of state policy require the state to prevent prostitution. Article 34(1) prohibits all forms of forced labour. The Penal Code of 1860 deals with the sheltering of girls forced into prostitution and the punishment for offenders who procure minor girls, both from within and outside the country. Sections 364A, 366A and 373 provide protection to women who are victims of sexual offences or illicit intercourse by punishing the kidnapper and abductor. The Child Restraints Act, 1929 prohibits the marriage of girls under the age of 18 years and boys under the age 21 years and punishes parents who violate this prohibition.\(^{280}\)

The Cruelty to Women (Deterrent Punishment) Ordinance, 1983 increased the punishment to life imprisonment and death penalty for kidnapping or abducting women, trafficking of women and children, attempt to cause death, acid throwing and rape. The Suppression of Immoral traffic Act 1993 provides punishment for forcing girls into prostitution and for detaining girls below the age of 18 years against their will, in any house, room or place in which prostitution is carried. In Bangladesh, the Women and Children Repression Prevention Act 2000 recognises the different motives for trafficking and provides several victim protection measures and compensation.\(^{281}\)

4.7.2 Bhutan

According to US Department of State, Bhutan is a destination country for men, women, and children vulnerable to forced labour and sex trafficking, and Bhutanese children are subjected to forced labour and sex trafficking within the country. Bhutanese girls who work as domestic servants and entertainers in karaoke bars, are subjected to sex and labour trafficking.\(^{282}\) There is very little information available on the laws of Bhutan on trafficking. In 2001, the UN Committee on the

\(^{280}\) Supra note 197 at 190.
\(^{281}\) Ibid.
\(^{282}\) Trafficking in Persons Report, 2013, p. 97
Rights of the Child considered Bhutan's initial report and noted the absence of legislation on the minimum age for employment. There is insufficient data and awareness regarding the sexual exploitation of children. The Committee suggested amendments in laws to address the problem.  

4.7.3 Maldives

The existing provisions of the law in Maldives bar children younger than 14 years of age from places of wages work and from work that is not suitable for that child's age or physical ability. There is not much data and information available about the trafficking in human beings to, from or within the country. The government of Maldives has drawn up a national plan of action on the basis of Beijing Platform for Action and the Commonwealth Plan of Action on Gender and Development.

4.7.4 Nepal

Nepal is the worst hit by the menace of human trafficking. Women and children from Nepal are trafficked to India mostly for commercial sexual exploitation and forced labour. The Constitution of Nepal enshrines the principle of equality and justice for every citizen without any discrimination on the basis of race, caste, sex, creed, etc. and safeguards human rights for all citizens. The Human Trafficking (Control) Act of 1986 establishes territorial jurisdiction for offences committed outside Nepal. The National Action Plan against Trafficking in Children and their Sexual Exploitation contemplates interventions in the following areas- rescue and reintegration, income and employment generation, awareness creation, advocacy, networking and social mobilisation, health and education, Legislation and enforcement, policy research and institutional development.

4.7.5 Pakistan

One of major problems in Pakistan is the smuggling of children to countries mostly the Gulf for camel racing. The high profits and the lessening fear of harsh punishment have bolstered the syndicate of human traffickers across Asia. The Zina

283 Ibid.
284 Ibid.
285 Supra 197 at 191.
Hudood Ordinance of 1979 criminalizes extra marital sex rape and selling, hiring, buying or disposal of any person for prostitution. The Prevention and Control of Human Trafficking Ordinance, 2002 has been promulgated to deal with all types of human trafficking. It is considered as one of the comprehensive legislation and first of its kind in the SAARC region. However, the legislation suffers from certain limitations. There is no specific attention paid to child trafficking as distinct from others.

4.7.6 Sri Lanka

Sri Lanka too faces a major problem of human trafficking. The Constitution of Sri Lanka prohibits the employment of children under the age of 12, although there are reports that child labour is widespread. The Sri Lankan Penal Code under Section 360 deals with the offence of trafficking. The National Protection Authority Act 1998 focuses on the prevention of child abuse and on the protection and treatment of children who are victims of such abuse. A National Child Protection Authority was established under the Act to monitor its implementation and to advice the government on the issue concerning welfare of children.

4.7.7 Thailand

Thailand is worst hit by the menace of human trafficking because of its brothel culture. It has been seen that most of the foreign nationals prefer Thailand not because of the attraction of tourism but because of cheap sex. The Anti-Trafficking Act of Thailand has specific provisions under Section 7 which states that women and girls who are trafficked into Thailand will be exempted from imprisonment or fines. The Suppression of Prostitution Act of 1960 is intended to eliminate prostitution, by making it an illegal activity. Under the Penal Code prostitution is not illegal but procurement for the same is. Thailand has recently set up a National Secretariat on Trafficking in Women and Children. It has also joined the Association of Southeast Asia Nations (ASEAN).

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286 Id. at 192.
287 Ibid.
Asian Nations to develop and implement an ASEAN plan of action to prevent and combat trafficking in women and children.  

4.8 Concluding Remarks

This Chapter of the research study has shown that the international legal regime provides a well formulated legal framework and monitoring mechanism to tackle the problem of human trafficking. The concept of state responsibility ensures that the state not only protects the victims of their own state but non-state actors as well. In fact, states under the international instruments are under an obligation to protect both citizens as well as non-citizens from the menace of human trafficking.

A perusal of the various international conventions and protocols has brought to fore a fundamental point. The basic rights related to the human trafficking are safeguarded and protected under these laws. Most of these conventions abolish human slavery, servitude, bonded labour and practices similar to slavery. Among such conventions the Slavery Convention of 1926 was the first international legal document to highlight the practices of forced and compulsory labour. The 1949 Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others seems more of an anti-prostitution document rather than an anti-human trafficking one. It calls for eradication of human trafficking without defining it and equates human trafficking with prostitution. However, Trafficking Protocol of 2000, provides detailed provisions to counter the issue of human trafficking.

Apart from the conventions and protocols, the United Nations and its various agencies have contributed immensely in protecting the rights of the victims of human trafficking. Furthermore, regional mechanisms in Europe, America, Africa and Asia have also strengthened and complemented the present machinery on trafficking in human beings.

288 Id. at 193.
290 Various such agencies include UNESCO, UNICEF, UNDP, ILO, IOM etc.
All the afore mentioned international legal instruments and mechanisms are important tools to increase the standards of the United Nations Trafficking Protocol and their importance should in no case be underestimated in the opinion of the researcher. Therefore, all those states that have not yet ratified these international legal instruments should ratify them, and contracting parties should fully implement their provisions.