

IMPACT OF INTERNATIONAL LAW ON THE PREVENTION OF WOMEN TRAFFICKING

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Abstract:

This paper provides a historical overview of the regulation and understanding of prostitution and human trafficking, highlighting how perceptions and policies have evolved over time. The Greek State and later others attempted to regulate prostitution, but despite these efforts, prostitution has persisted in large towns for over 2,500 years, illustrating its deep roots in human social life. The concept of trafficking, particularly in the context of women, emerged from early 20th century international efforts. The term initially referred to the “white slave trade,” which involved the movement of European women to Arab and Eastern countries for immoral purposes like prostitution. The first international effort to combat this was the 1904 agreement aimed at suppressing the white slave trade, which initially focused on cross border trafficking. By 1910, the understanding expanded to recognize trafficking within national borders. Over time, trafficking became closely associated with prostitution and slavery. The 1949 Convention explicitly addressed trafficking in persons and exploitation related to prostitution, reinforcing this connection. Despite these historical understandings, some governments and organizations continue to conflate trafficking with undocumented migration or prostitution, which can be problematic. Such policies often lead to stricter immigration controls under the guise of fighting trafficking, but they may actually harm the rights and interests of women, especially those involved in migration or prostitution. Historically, the concept of trafficking has sometimes ignored the human rights of trafficked persons.

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Universal Declaration of Human Rights

Universal Declaration of Human Rights (UDHR) in its Article 10 i.e., Right to a Fair Public Hearing states that every person in need & seeking justice is entitled to receive legal aid from the state. A crucial publication that covers the intricate issue of legal aid on a global scale is the “Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.”¹ They were adopted in 2012 by the Economic and Social Council and General Assembly and they specifically extend human rights to those who are unable to afford their own legal representation. The paper is notable because it elevates the issue of legal aid from a national to an international level, giving Member States a foundation

for a legal aid system in criminal justice. The principles improve everyone’s access to legal aid by urging States to offer quality representation regardless of a person’s financial situation, the charge, the punishment, or the difficulty of the case.

Convention on Right of Women:

The primary international convention relating to women is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

- **Definition of Discrimination:** It defines discrimination against women as any distinction, exclusion, or restriction based on sex that impairs or nullifies the recognition, enjoyment, or exercise

¹UniversalDeclarationofHumanRightsavailableat<http://undocs.org/E/RES/2012/15>

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by women of their human rights and fundamental freedoms.

- **Agenda for National Action:** CEDAW sets out an agenda for countries to take action to end discrimination against women.
- **Comprehensive Scope:** It covers women's equal rights in all areas, including political and public life, education, health and employment.
- **Unique Provisions:** It's the only human rights treaty that specifically affirms women's reproductive rights and addresses the impact of culture and tradition on gender roles and family relations.
- **State Obligations:** Countries that ratify CEDAW are legally bound to incorporate gender equality into their legal systems, abolish discriminatory laws and establish institutions to protect women against discrimination.

Beyond CEDAW several other international conventions and declarations address specific aspects of women's rights including as under:

- **Convention on the Political Rights of Women (1952):** Guarantees women the right to vote and stand for election on equal terms with men.
- **Convention on the Nationality of Married Women (1957):** Focuses on ensuring women's right to retain or change their nationality upon marriage and the nationality of their children.
- **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962):** Aims to ensure the free consent and legal registration of marriages and set a minimum age for marriage.
- **International Bill of Rights for Women:** Often described as such, it was adopted by the UN General Assembly in 1979 and entered into force in 1981.
- **Declaration on the Elimination of Violence against Women (1993):** Defines violence against women

and calls for measures to prevent and eliminate it.

- **The Beijing Declaration and Platform for Action (1995):** Emerged from the Fourth World Conference on Women held in Beijing. It is a landmark international agreement that outlines a comprehensive agenda aimed at achieving the empowerment of women worldwide. The platform emphasizes gender equality, women's rights and the elimination of obstacles that hinder women's full participation in all areas of life, including political, economic, social and cultural spheres. It also calls for concerted action by governments, civil society and international organizations to promote women's rights and gender equality to create a more just and equitable society globally.
- **Optional Protocol to CEDAW (1999):** Allows individuals and groups to submit complaints to the CEDAW Committee about violations of their rights under the Convention. These conventions and declarations, along with the work of UN Women and other international bodies, form a framework for promoting and protecting the rights of women and girls globally.

Human Trafficking is not a New Crime:

What is new is its global expansion and menace. One of the reasons for the global expansion of human trafficking is that it is increasingly becoming a market-driven industry based on the demand and supply concept, where profits are great and danger is low in relation to profit. The Constitution of the International Labor Organization (ILO) was established on April 1, 1919, as Part XIII of the Treaty of Versailles that officially ended World War I. The ILO, a tripartite organization, was created to promote social justice and decent work for all. Its core mission is to set labor standards, develop policies and create programs that promote decent work for both men and women.

Components required for Human Trafficking for Labor Exploitation:

This section outlines the components involved in human trafficking for labor exploitation. The presence of these elements recruitment, movement and exploitation are critical indicators. If all three criteria are met, it is reasonable to conclude that human trafficking has occurred. This framework helps in identifying and understanding human trafficking cases, emphasizing that the combination of recruitment, coercion and exploitation constitutes trafficking.

Impact on a Broader Scale and in other areas:

The impact of human trafficking is determined by the reason for the trafficking, whether it is for sexual gain, commercial gain, or any other reason. The impact of human trafficking on victims has been documented in several studies. Victims of human trafficking are frequently subjected to terrible physical conditions, such as forced labor or the use of force by traffickers. Not only has the physical and outer bodily state deteriorated, but sex has trafficking also harmed the sexual and mental health of the victims. The situation deteriorated. Sex trafficking has a significant impact on victims, making them vulnerable to diseases such as HIV/AIDS, infections and substance misuse. All kinds of human trafficking result in social ostracism, which detaches victims from social circles and deprives them of rights and responsibilities allocated or provided by the Constitution, as well as violations of several laws.

Bride Trafficking:

This passage provides a comprehensive overview of the societal context, historical background, and factors contributing to human trafficking, particularly focusing on women in India and South Asia. In India's patriarchal society, women are often treated as commodities, undervalued, and deprived of freedom and opportunities for a dignified life. Women are frequently regarded as chattels, with limited autonomy. Inter country and intra-country trafficking are common

issues. Bride trafficking is a form of human trafficking where women are sold for marriage, sex or perpetual servitude, similar to sex trafficking. The core motive behind all forms of trafficking is monetary gain, often driven by the demand for sexual exploitation. The formalization of marriage makes it difficult for authorities to monitor and estimate bride trafficking. Trafficking activities often go unnoticed because they are taken for granted or occur covertly. The passage underscores the deeply rooted social, cultural and historical factors that sustain human trafficking, highlighting the need for comprehensive legal, social and educational measures to combat this persistent issue.

Gender Ratio and Human Trafficking:

Trafficking of women and girls for sexual exploitation and other purposes contributes directly to this imbalance. The UNODC has identified organized gangs operating in states like Haryana, Punjab, and Uttar Pradesh, involved in bride trafficking. A 2013 survey of 92 villages in Haryana revealed that traffickers bought approximately 10,000 families and 9,000 previously married women from underprivileged communities for sexual exploitation and pleasure. This data underscores the scale of exploitation and the widespread nature of bride trafficking in India. Women and children constitute the majority of trafficking victims, but men and boys are also affected. Women's trafficking significantly contributes to gender imbalance issues. Around 71 percent of women and girls worldwide are identified as trafficking victims, with many more at risk if circumstances persist.

Motivations and Recruitment of Trafficked Women:

Women are lured from countries that are impoverished, war-torn, strongly patriarchal or lacking in adequate police forces. Most are disadvantaged in their home countries, where women face severe social and economic disadvantages. If they can find work in

struggling economies, they often are paid much less than are men and are easily lured by promises of high-paying jobs in other countries. For instance, in Russia women's earnings are only 50 percent of men's. Because many societies still value sons more highly than daughters, some families sell their daughters to brothels or traffickers to get quick money and eliminate the need to pay a daughter's marriage dowry. Once they are in the new country, all documentation is taken from them and they are put to work, often forced to repay the high costs of transportation in addition to lodging and other expenses. Other women are recruited in bars, cafés or clubs, where men offer them seemingly legitimate jobs in other countries.

Reasons for Increased Women Trafficking:

Women are not only trafficked for prostitution but also bought and sold like commodity in many regions of India where female ratio is less as compared to male due to female infanticide. These are then forced to marry. Forced marriage is a marriage in which one or more of the parties are married without their consent or against their will.² A marriage can also become a forced marriage even if both parties enter with full consent if one or both are later forced to stay in the marriage against their will. United Nations Human Rights Office of the High Commissioner (OHCHR)³ has put forth a defining document for victim-centric justice & victim compensation and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁴ These guiding principles lay down the 3 most important pillars for victim-centric justice & victim compensation which are:

- Restitution

- Compensation
- Assistance

The Suppression of Immoral Traffic in Women and Girls Act, 1956 now Immoral Traffic (Prevention) Act, 1986 was enacted in pursuance of India's commitment on ratifying the International Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of others signed at New York on 9th May, 1950 (hereinafter referred to as "the Convention"). According to Articles 1 & 2 of the Convention countries are bound to punish persons who, to gratify the passions of another procures, entices or leads away, for purposes of prostitution, another person, even if it is with the consent of that person. By section 3 of the Suppression of Immoral Traffic in Women and Girls Act 1956 the nomenclature of the Act has been changed to The Immoral Traffic (Prevention) Act with effect from January 26, 1987 (hereinafter referred to as ITPA). It is pertinent to point out here that the Convention has proven to be a redundant and an ineffective international agreement, which only 72 had ratified or acceded to as of October 14, 1997. The Indian Constitution specifically bans the traffic in persons. Article 23, in the Fundamental Rights section of the constitution, prohibits 'traffic in human beings and other similar forms of forced labor'. Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement/ transportation, of a person by means of coercion or deceit and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers,

²https://en.wikipedia.org/wiki/Forced_marriage (Last visited on May 15,2025)

³United Nations Human Rights Office of the High Commissioner *available at* <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

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⁴*DeclarationofBasicPrinciplesofJusticeforVictimsofCrimeandAbuseofPoweravailableat* <https://www.ohchr.org/sites/default/files/victims.pdf>(Last visited on May 15,2025)

the buyers, the end users etc., exploit the vulnerability of the trafficked person.

Principles of Human Rights and Human Trafficking:

- The human rights of trafficked persons shall be at the Centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
- States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.
- Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked and of migrants, internally displaced persons, refugees and asylum-seekers.

Preventing trafficking:

- Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.
- States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.
- States shall exercise due diligence in identifying and eradicating public sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.

Criminalization, punishment and redress:

- States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts i.e. For the purposes of the present Principles and Guidelines, the “component acts” and “component offences” of trafficking are understood to include the recruitment, transportation, transfer, harboring or receipt of persons over eighteen years of age by

means of threat, force, coercion or deception for the purpose of exploitation. The recruitment, transportation, transfer, harboring or receipt of a person under eighteen years of age constitute component acts and component offences of trafficking in children. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, articles 3 (a) and 3 (c) and related conduct i.e. For the purposes of the present Principles and Guidelines, conduct and offences “related to” trafficking are understood to include: exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery and servitude. States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.

- States shall ensure that trafficking, its component acts and related offences constitute extraditable offences under national law and extradition treaties. States shall cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law.
- Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking of its component or related offences.
- States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking.
- States shall ensure that trafficked persons are given access to effective and appropriate legal

remedies.⁵ Their passports and immigration papers are frequently seized by their new owners once they reach Kuwait, leaving them completely vulnerable and without legal recourse. Though Kuwait, according to investigations by the United States State Department, is one of the worst centers for trafficking in women, it is far from the only one. As of 2009, 17 countries were listed as Tier 3 by the US State Department, meaning that not only do they suffer high amounts of human trafficking, but that the government does not meet minimum standards for eliminating the trade.

- The present study is a critical analysis of Women Trafficking in India. It is important to consider the many instruments around trafficking that are not strictly law. These include the Principles and Guidelines on Human Rights and Human Trafficking guidelines on child trafficking, issued by the United Nations Children's Fund (UNICEF) and on trafficking and asylum, issued by the Office of the United Nations High Commissioner for Refugees (UNHCR), resolutions adopted by the General Assembly and the Human Rights Council; findings and reports of international human mechanisms such as treaty bodies and special procedures; and non-treaty agreements between countries regarding issues such as the repatriation and reintegration of trafficked persons.

Foreign Cases:

The following cases helped the research to understand the ratio decided of the International Courts in order to grant compensation to the victims. These landmark judgments also aided the research to comprehend role

of international conventions on human rights pertaining to legal aid & access to speedy justice.

- The US Supreme Court in this **Brown v/s. Board of Education**⁶ case declared that segregation in public schools was unconstitutional, stating that "separate educational facilities are inherently unequal." This decision paved the way for desegregation efforts and provided compensation for the victims of racial discrimination in education.
- The US Supreme Court in this **Gideon v/s. Wainwright**⁷ case ruled that all criminal defendants are entitled to legal representation, even if they cannot afford it. This decision provided greater protection for the rights of criminal defendants, including the right to a fair trial and compensation for victims of wrongful convictions.
- The US Supreme Court in this **Roe v/s. Wade**⁸ case legalized abortion nationwide, citing woman's right to privacy. This decision provided greater autonomy for women to make their own reproductive choices and also protected the health and safety of victims of sexual assault and rape.
- The US Supreme Court in **Texas v/s. Johnson**⁹ this case ruled that flag burning was a form of symbolic speech protected by the First Amendment. This decision provided greater freedom of expression for individuals and groups seeking to peacefully protest or advocate for social justice causes.
- The UK Supreme Court in **Campbell v/s. MGN Ltd**¹⁰ case held that a newspaper had breached the

⁵Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1).
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument). (Last

visited on April 19, 2025)

⁶347U.S.483 (1954)

⁷372U.S.335 (1963)

⁸410U.S.113 (1973)

⁹491U.S.397 (1989)

¹⁰[2004]UKHL22

privacy rights of Naomi Campbell by publishing photographs of her leaving a Narcotics Anonymous meeting. The Court awarded Campbell damages for the infringement of her privacy rights, which set a precedent for future privacy cases.

- UK Supreme Court held that **R (Lumba) v/s. Secretary of State for the Home Department**¹¹ the government had acted unlawfully by detaining foreign nationals without proper legal process. The Court awarded compensation to the detainees for the violation of their rights, which helped establish a framework for the protection of human rights in the UK.
- UK Supreme Court held that **CN & GN v/s. Poole Borough Council**¹² a local authority was not liable for the abuse suffered by two children from their neighbors. However, the Court clarified the law on the duty of care owed by public authorities to vulnerable individuals, which could have implications for future claims involving child protection.
- UK Supreme Court held that **Barclays Bank Plc. v/s. Various Claimants**¹³ a bank could be held vicariously liable for the sexual assaults committed by a doctor employed by the bank to conduct medical examinations of staff. The Court clarified the law on the scope of vicarious liability in cases involving non-employee wrongdoers, which could have implications for future claims involving sexual harassment and assault.
- **Sla Grand (Germany v/s. United States of America), 27 June 2001**
The International Court of Justice (ICJ) awarded

compensation to the United States in 2001 in this case. The ICJ held that the United States had violated the Vienna Convention on Consular Relations by failing to inform two German nationals of their right to contact their consulate upon arrest. The Court ordered the United State stop provide “restitution in the form of an effective review and reconsideration of the convictions and sentences of the LaGr and brothers” and to “provide for the payment of an appropriate amount of compensation” to Germany.

- **Prosecutor v/s. Lubanga, 10 July 2012**
The International Criminal Court (ICC) awarded collective reparations to the victims of war crimes committed by the Congolese warlord Thomas Lubanga. The reparations included individualized psychological support, material support and symbolic reparations such as public apologies and memorials.
- **Prosecutor v/s. AlMahdi, 27 September 2016**
The ICC ordered the convicted war criminal and former leader of a jihadist group in Mali, Ahmad Al Faqi Al Mahdi, to pay €2.7 million in reparations to his victims. The reparations were to be distributed among the victims of the destruction of cultural heritage sites in Timbuktu.
- **Prosecutor v/s. Bemba, 8 June 2018**
The ICC ordered the convicted war criminal and former Congolese vice president Jean- Pierre Bemba to pay €300,000 in reparations to his victims. The reparations were to be distributed among the victims of sexual violence committed by Bemba’s troops in the Central African Republic.

¹¹(2011)UKSC12¹²[2019]UKSC25¹³[2020]UKSC13

Conclusion:

The international legal framework plays a crucial role in the prevention of women trafficking by providing binding obligations, normative standards, and cooperative mechanisms among states. Instruments such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and various human rights treaties have laid a solid foundation for combating this global issue. However, the effectiveness of international law depends significantly on the domestic implementation, enforcement mechanisms, and the political will of individual states. While progress has been made in increasing awareness, criminalizing trafficking, and supporting victims, gaps remain particularly in areas such as cross-border cooperation, victim protection, and addressing root causes like poverty, gender inequality, and conflict. In conclusion, while international law provides essential tools and frameworks to prevent the trafficking of women, its full potential will only be realized through stronger enforcement, better victim-centered approaches, and greater global collaboration. Continuous evaluation, reforms, and capacity-building are vital to ensure that these laws not only exist on paper but also create real change on the ground.

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