

Trafficking in Persons: Faulty Regulations, Pervasive Corruption and Flawed Prevention in Pakistan

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Abstract

Trafficking in persons is rampant in Pakistan. It results in many crimes such as prostitution, begging, forced labor, organ transplantation and bonded labor. The findings of this paper are that trafficking in persons is one of the most serious issues in Pakistan; that the current legal regime is not enough to combat this menace; that police and other officials are often themselves involved in this organized crime; that Pakistan could overcome this problem by strengthening legal regime and enhance punishments for offenders of this crime; that Pakistan must accede to the UN TIP

Protocol and implement the same to overcome this problem.

Key Words: Trafficking in persons, smuggling, migration, bonded labor, legal regulations, Pakistan.

Introduction

Trafficking in persons is one of the serious issues in Pakistan. According to Bales et al. (2008), socio-economic inequalities and inadequate legislation as well as unwillingness of law enforcement agencies of existing laws are the major contributing factors to this menace. According to the US State Department Report (2013), the Government of Pakistan has been ignoring trafficking in persons. According to the latest Report of the US Department of State (2016) regarding the state of human rights in Pakistan, "Widespread human trafficking, including, forced and bonded labor, continued." According to a Report by Child Workers in Asia (CWA, 2007), people in bondage suffer a range of abuses and violations of their rights and dignity. Problems of sex trafficking, forced labor, bonded labor and begging are happening at an alarming rate in Pakistan. This paper focuses on what is the current situation of trafficking in persons in Pakistan? What legal regime exists to combat human

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trafficking? How can the Government of Pakistan (GOP) protect the victims of human trafficking? What can the GOP do to prevent human trafficking? These questions are very complex rather than simple.

Current Situation of Trafficking in Persons in Pakistan and Constitutional Framework

Trafficking in Persons Protocol, known formally as the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, signed in Palermo, Italy in December 2000 contains a definition of trafficking in persons that has been agreed by the international community. According Article 3 of this Protocol,

“trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

Trafficking in persons and bonded labor in Pakistan lead to forced labor. As a matter of fact the Constitution of Pakistan of 1973 mentions in Article 11 (1) that “Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form” (Constitution, 2015). Article 11(2) of the Constitution prohibits “all forms of forced labor and trafficking in human beings.” Under Article 11(3) “No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment”. In addition, under Article 37(e) of the Constitution the State shall “make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women and employment”. Furthermore under Article 4(2)(C) of the Constitution, which is the most fundamental article, “no person shall be compelled to do that which the law does not require him to do”. Furthermore, Article 3 of the Constitution states that “the State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his

work". These articles are very clear and do not need explanation. Article 11 is within the chapter on Fundamental Rights but how can the informal sector of Pakistan labor market be subjected to it is another issue. Article 37 is in Chapter III and is within the Principles of Policy and thereby not justiciable and practically ineffective. Finally, Article 4 is in the introductory part of the Constitution and as such can never be suspended even in case of an emergency.

In *Mian Abdur Razzaq v. Federal Governmen t* (PLD 2001 FSC: 1) the Federal Shariat Court in Pakistan has described human trafficking as a *hadd*. The then Chief Justice of the Federal Shariat Court opined that any proceeding regarding this offence shall be entertained only by the Federal Shariat Court. However, the case is appealed to the Shariat Appellate Bench of the Supreme Court where it is pending till the writing of this work and the decision of the FSC is suspended. This is very interesting; however, no school of Islamic jurisprudence or even a single jurisprudent has considered trafficking in persons as a *hadd* offence in any manual of Islamic law. Under Islamic law *Hudud* (singular, *hadd*) offences are punishable by a *hadd* which means that the penalty for them is fixed by the Qur'an or by the *Sunnah*. The Hanafi school of thought consider only five offences, that is, *shorb al-khamar* (drinking alcohol), *sariqa* (theft), *haraba* (highway robbery), *zina* (adultery/fornication), and *qadhaf* (slander), as *hudud*. The rest of the Sunni schools consider fixed penalty offences to be seven. They consider *ridda* (apostasy) and *baghi* (transgression) also to be *hudud* (Munir, 2011: 95).

In practice trafficking in persons, bonded labor and forced labor continue in various forms in Pakistan. In order to curb such practices, a number of significant reforms are needed which range from socio-economic uplift, appreciation of international human rights practices, rule of law reforms and the like (International Dalit Solidarity Network, 2014). In addition, existing legislation must be strictly implemented and the responsible government institutions and agencies must tighten their role. Judiciary has taken a proactive role in terms of human rights protections by ensuring respect for law and requiring that governance structure and administrative machinery function efficiently. However, judiciary is not responsible for non-implementation of its decisions. According to the United Nations Fact Sheet, (1991) slavery refers in addition "to traditional slavery and the slave trade" and such abuses include the "sale of

children, child prostitution, child pornography, the exploitation of child labor, the sexual mutilation of female children [female genital mutilation], the use of children in armed conflicts, debt bondage, the traffic in persons and the sale of human organs, the exploitation of prostitution, and certain practices under apartheid and colonial regimes". According to the latest Global Index Slavery Report, (2016) Pakistan ranks amongst the countries where some of these practices are still taking place. The Report stated that Pakistan ranked number six out of 167 countries in the global ranking with an estimated 2,134,900 of people living in modern slavery. The Report also mentioned that 58% of those living in slavery are in five countries, that is, India, China, Pakistan, Bangladesh, and Uzbekistan respectively out of the estimated 45.8 million enslaved persons world-wide. As per the said Report 1.13% of the population of Pakistan is living in modern slavery.

Pakistan has been generous in ratifying many international conventions. The most relevant for the purpose of this work are: the International Convention on the Elimination of All Forms of Racial Discrimination or the ICCPR ratified on 23 June 2010; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery ratified on 20 March 1958; Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others ratified on 11 July 1952; United Nations Convention on the Rights of the Child (CRC) ratified on 12 November 1990; Convention concerning Forced or Compulsory Labor ratified on 23 December 1957; Abolition of Forced Labor Convention ratified on 15 February 1960; and many others as well. Perhaps one of the main reasons for this is the feudal system in Pakistan which is still practiced in various parts of the country. In 1976, The Abolition of Sardari System, 1976 Act became law in Baluchistan but the practice still takes place.

PACHTO or The Prevention and Control of Human Trafficking Ordinance, 2002 deals with the issue of trafficking in persons. The government agency directly responsible for curbing the menace of trafficking in persons is the Interior Ministry which has given powers to the Federal Investigation Agency or FIA to handle the issue. However, trafficking in persons cannot be controlled by legislation and definitions only such legislation must be implemented in its true spirit. It is very interesting to know that the

main problem facing Pakistan is trafficking in persons inside the country which is not even discussed in the said Ordinance. Therefore, Pakistan badly needs an all-encompassing law designed to tackle the different facets associated with trafficking in persons inside the country.

In Pakistan one of the problems associated with trafficking is that even experts and government agencies dealing with it are confused between trafficking in persons within the country and trafficking of migrants or smuggling of migrants. Smuggling of migrants is the act of assisting with an illegal border crossing and illegal entry into a country. Smuggling, therefore, always has a transnational element, and is primarily directed against the interests of a state, and not against an individual. Smuggling of persons is considered a crime against the state by violating the country's immigration laws. 'Trafficking in persons' is considered a serious crime violating individual's human rights, and is therefore a crime committed against the individual.

As explained above, Pakistan is a destination, source and transit state for men, women and children. Pakistan is a destination for women, children and men from Afghanistan, Iran and Bangladesh. Currently around a million Bangladeshi live in Karachi. Children and women are trafficked for sex industry and bonded labor whereas, men are trafficked mainly for bonded labor. According to the Aurat Foundation Report, (2012) the flow of girls to South Punjab and Baluchistan mainly for sex is from Karachi, Lahore and Faisalabad. Since policing is not enough such practices will only thrive.

The way trafficking works is that actors are most often known to the victims as they are either relatives, or friends, or colleagues, or neighbours. Actors force the victims into trafficking through their criminal networks. At the final destinations victims might be forced into some kind of labor activity or sexual activity. Trafficking in persons is one of the most lucrative criminal activities. The principles of demand and supply are used to determine how much victims have to be supplied to which market.

The crime of international human trafficking functions because three key elements come together at the same time: First, victims are continuously supplied from the states of origin; secondly, there is continuous demand for the services the victims could provide

within the states of destination; and finally, international criminal gangs criminally exploit the demand and supply factors.

Bonded labor is the equivalent of modern day slavery and is the largest problem in trafficking in persons. Victims receive a debt from the traffickers under the promise that the former will do some labor work to pay off the debt. Bonded labor exists throughout Pakistan but is mainly in Sindh and Punjab in private brick-making industry. In some cases escapees are returned by police who are then chained in private jails. Young boys and girls are sold, bought, hired, and even kidnapped and placed in domestic servitude, begging rings, factories and prostitution. Young boys are in more peril to be used as sex worker in hotels, bus or truck stations. Women and girls are forced into prostitution after they are trafficked by labor agents. In some cases they are sold into marriages. In few cases young boys were kidnapped by non-state actors and were used as suicide bombers in Pakistan and Afghanistan.

Bonded labor is interlinked with trafficking in persons. Bonded laborers are trafficked from one region of Pakistan to another region. Writing about India, Devin Finn (n.d.) argues that debt bondage in the form of bonded labor is one of the known forms of modern slavery. The situation in Pakistan is not much different. According to the Labor Watch, (2011) bonded labor is “prevalent in Pakistan in various sectors of the economy, most notably agriculture, but also brick kilns, carpet weaving, fisheries, mining and probably others”. Bonded labor exists in 78% of country’s labor force which is neither formalized nor organized. In addition, these workers are very vulnerable to any type of exploitation by their employers as there are no written contracts between the workers and their employees (Jacobs and White, 1996: 44). Despite the fact that there is an oral contract with the consent of the workers but in the absence of equality of bargaining powers between such workers and their employers such consent has no meaning.

Some of the special laws in Pakistan to tackle the problem of bonded labor are end of the pipe solutions with little or no lasting impact. For instance, the Bonded Labor System (Abolition) Act, 1992 was enacted to tackle bonded labor after the Supreme Court had given its decision in *Darshan Masih* case (PLD 1990 SC: 513) but the legislation is not sufficient to eliminate this gigantic problem.

Punishment for bonded labor is only two to five years. In addition, the Act cannot change the attitude of law enforcing agencies who can be bribed by the feudal lords and owners of brick-kilns to arrest and return the fleeing workers to pay their initial debt. A requirement under section 15 of the said Act is the establishment of Vigilance Committees in districts in Pakistan. In practice no such Committees exist. The constitutional 18th amendment transferred the responsibility of labor inspection from the Federal to the Provincial governments but it will take some time to implement the changes made under the 18th Amendment. Punjab and KPK governments succeeded in legislating their own laws on bonded labor, but only with the replacement of words “Federal government” to “Punjab and KPK Governments.” Rest of the Act is the same but the change is yet to materialize in practice.

Legal Regime to Combat Trafficking in Persons in Pakistan

The Government of Pakistan (GOP) does not comply with the minimum standards for elimination of human trafficking. The GOP is not signatory to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The Federal Investigation Agency (FIA) has an Anti-trafficking wing but it is most of the time accused of facilitating the crime itself and covering up any investigation later. Police are not doing enough to combat the crime. They are accused of aiding and abetting in the crime. The Pakistan Penal Code (PPC) criminalizes procurement of minor girls under section 366A and it carried imprisonment which may extend to 10 years and fine. Similarly, under section 365B of the Pakistan Penal Code “kidnapping, abducting or inducing woman to compel for marriage” is prohibited and the offence carries imprisonment for life and fine. Furthermore, selling a person for prostitution, etc under section 371A of the PPC is punishable with imprisonment which may extend to 25 years and fine. Finally, buying a person for prostitution, etc under section 371B of the PPC also carries imprisonment which may extend to 25 years and fine.

However, according to the Aurat Foundation Report (2012), “law enforcers and judicial officers do not appear to have an understanding of the phenomenon of trafficking in persons. They appear to make no distinction between trafficking and the trafficked”. Transnational trafficking in persons, people smuggling

and fraudulent adoption are prohibited through the (PACHTO) Prevention and Control of Human Trafficking Ordinance 2002. Imprisonment for violation ranges from 14 years to life. Bonded labor is prohibited by the Bonded Labor System (Abolition) Act. The offence carries jail sentence of two to five years and fine or both. This law is devolved under the constitutional 18th amendment in 2010 to provinces that have to make corresponding legislations. Cases are brought in the courts but conviction rate is rare. Poverty takes the main blame for bonded labor in Pakistan.

According to the ILO Report (2012), those who are involved in bonded labor do it with impunity. The Report alleges that some officials receive bribes to ignore trafficking activities from brothel owners, landowners, and factory owners whereas others solicited bribes from deported Pakistanis to avoid charges against them.

How can the Victims be protected?

The GOP does not have systematic methods to identify victims of human trafficking and refer them to protective services. Unfortunately, there are no protective services as such. Private entrepreneurs as well as the state should take steps to tackle this issue. Some shelters are available for women only but services are not good. Victims are often detained and fined. Police often return 'runaway' bonded laborers to brick kiln and landowners on the ground that they avoid debt payment. Trafficked victims are detained on returning despite the fact that they were trafficked.

Another way to stop trafficking in persons is prevention. The GOP has made little efforts in the past to prevent human smuggling. The FIA has put posters at the airports and international crossings for awareness. Prevention under the devolution process 2010 is now a provincial matter and provinces lack resources and technical capacity to deal with it.

What should the GOP do to Combat Trafficking in Human?

Some important recommendations are given below to combat the problem.

- 1) The GOP should make sure to vigorously investigate and prosecute suspected human trafficking offenders.
- 2) Due process of law should be respected.
- 3) The GOP should punish government officials involved in trafficking of persons.
- 4) The GOP should identify trafficking victims, including street children, women in

prostitution, laborers in brick kilns and agriculture. 5) The GOP should make sure that victims of HT are not penalized. 6) Distinguish between human smuggling and trafficking in persons in training, policies, and programs. 7) Strengthen the capacity of provincial governments. 8) Address human trafficking and bonded labor through trainings and policies. 9) The GOP should encourage provincial governments in anti-trafficking action plan. 10) Undertake awareness programs in local languages. 11) The GOP should improve efforts to collect, analyse, and accurately report counter-trafficking data. 12) And finally, the GOP should accede to the UN TIP Protocol. Modern slavery, through the lens of forced labor, is a big challenge for Pakistan. It is, basically, the outcome of socio-economic inequalities and legal lacunas. Since regimes in Pakistan are mostly indifferent to contemporary human rights practices and welfare approach of good governance, they, resultantly have ignored to combat such menace, thereby establishing the vicious cycle of modern slavery in the informal sector of Pakistan.

References

- Assembly, U. G. (2000). Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime. *GA 55: 25*. Retrieved from <https://www.osce.org/odihr/19223?download=true> 07 July, 2017
- Bales, K. (2008). Human Rights and Contemporary Slavery. *Human Rights and Human Welfare*. Retrieved from <http://www.du.edu/korbel/hrhw/researchdigest/slavery/slavery.pdf> 14 July, 2017
- William. F., Stafford, Jr. (2007). *Understanding Bonded Child labor in Asia: An introduction to the nature of the problem and how to address it*. Child Workers in Asia (CWA), Thailand. Retrieved from http://www.crin.org/en/docs/CWA_%20UnderstandingBondedChildLabour.pdf
- Finn, D. (2008). Bonded Labor in India. *Topical Research Digest: Human Rights and Contemporary Slavery*, 1-21. Retrieved from <https://www.du.edu/korbel/hrhw/researchdigest/slavery/india.pdf>

- Global Index Slavery Report. (1996). Retrieved from <http://www.globalslaveryindex.org/country/pakistan> on 09 July, 2017.
- Hussein, M., & Hussain, S. (2012). Internal Trafficking of women and girls in Pakistan: A research study, *Aurat Publication and Information Services Foundation*. Retrieved from http://pdf.usaid.gov/pdf_docs/pnaec210.pdf
- International Dalit Solidarity Network. (2014). *Caste Discrimination and human Rights*. Retrieved from http://www.idsn.org/fileadmin/user_folder/pdf/New_files/UN/UNcompilation.pdf 09 July, 2017
- Labour Watch Pakistan. (2011). Bonded and forced labour in Pakistan. Retrieved from <http://labourwatchpakistan.com/bonded-and-forced-labour-in-pakistan> 07 July, 2017
- Munir, M. (2011). The Layha for the Mujahideen: an analysis of the code of conduct for the Taliban fighters under Islamic law. *International Review of the Red Cross*, 93(881), 81-102.
- The Constitution of the Islamic Republic of Pakistan. (2015) National Assembly of Pakistan, Islamabad.
- United Nations Fact Sheet No. 14. (1991). Contemporary Forms of Slavery. Retrieved from <http://www.ohchr.org/Documents/Publications/FactSheet14en.pdf> 09 July, 2017.
- US Department of State. (2013). Pakistan 2013 Human Rights Report. Retrieved from <http://www.state.gov/documents/organization/220614.pdf> July 09, 2017.
- US Department of State. (2016). Pakistan 2016 Human Rights Report. Retrieved from <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> July 09, 2017.