

Pakistan's Legal Framework on Human Trafficking

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Abstract

Human trafficking is a pressing public health concern and it's spreading like a disease regardless of gender or race. The situation in Pakistan is awakening as well and there are noises around but we are deaf ears. We wait for a criminal to commit a heinous crime and then we stand up for prevention. There are still so many flaws in our legal framework but we are still not making our laws up to date to curb this issue. There is a need to make people aware of these issues but no such efforts have been made so far in this regard. Even after recent legislation fruitful results have not been obtained as these laws are not sufficient to deal with this problem. While there have been many vocal calls for the protection of human rights and to preserve human dignity and freedom, Pakistan's legal system has so far been unable to address this problem.

Key Words: Human Trafficking, Forced Labour, UNODC, PATCHO

Introduction

Human trafficking Includes recruitment, harbouring or transporting humans into a situation where they are exploited through the use of violence, and coercion and are forced to work against their will, illegally. It also includes the facilitation or transportation of humans against their will across international borders in violation of their fundamental rights. Human trafficking is curtailing the liberty of human beings against their will in order to attain benefits from them by engaging them in illegal activities. Human trafficking is a criminal activity that ends up in making illicit money through exploitation. It is a modern form of slavery in which human especially the most vulnerable group is forced to do labour and sexual activities against their will.

Pakistan Legal Framework on Human Trafficking

When reality is ignored it not only brings with it harsh results but also proves fatal to the public at large in later stages and same is the situation when it comes to the legal framework on Human Trafficking in Pakistan because with the passage of time lessons are not learnt and noises become routine soon as the problem got worsen. It also cannot be denied that legislation has been made including the

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Prevention of Human Trafficking Act 2018 on Human Trafficking and also test legislation called as Zainab Alert Response and Recovery Act 2020

⁴ but not up to the touchstone of international standards as a mechanism of implementation vis a vis steps not taken in letter and spirit thus resulting in further agony to curb human trafficking as this menace is increasing day by day which is much more alarming at a greater extent. International Anti-Human Trafficking law is known as Palermo Protocol⁵ made it mandatory for countries to have legislation on Human Trafficking in accordance with the instructions Pakistan also promulgated the Human Trafficking Regulating Law but lack of guidelines. This resultantly leads to another defective legislation in the file even has a number of different laws in the file which have already proven fruitless. From a long time ago, human trafficking has been a terrible crime. It connotes the use of force or threats to enlist, transport, transfer, harbour, receive, or manage individuals for the goal of exploitation in order to obtain other desired outcomes as well as financial gain.⁶

Efforts have taken place to stop these malpractices but today children, women and human beings are being transported through even borders into other countries and the human species is vulnerable to the hands of criminals who seem challenging to the governments and states.

In recent times it is claimed that traffickers exploit 25 million people in the world and millions in our country which are equal to the entire population of a country. It is also asserted that these criminal exporters receive 150 billion dollars in a year from this industry thus further aggravating the existing situation in the world.⁷

UN and international Community on Human Trafficking in Pakistan

A Global Report on Trafficking in People, the UNODC's "first global evaluation of the breadth of human trafficking," gathered data from 155 countries. The evaluation finds that many governments do not report or punish instances of human trafficking, and in two of the five countries looked at by the UNODC Report, no one has ever been found guilty of the crime. Statistics show that sexual exploitation is "the most widespread kind of human trafficking (79%)," with women and girls being the primary targets for this sort of trafficking. The second most common kind was forced labour (18%). Around 20% of human trafficking victims globally are children, according to the survey. While studies like the UNODC study helping

⁴ Retrieved from Mohr.gov.Pk

⁵ Retrieved from www.freedomunited.org

⁶ Ibid

⁷ An introductory insight into Human Trafficking. (2022). Retrieved from <https://rsilpak.org/2022/an-introductory-insight-into-human-trafficking>

to illuminate global trafficking networks and markets, a thorough knowledge of the scale and severity of human trafficking still remains elusive. The issue of human trafficking is not properly addressed or combated at the national level by many countries. Also, it was reported that trafficking continues to be a problem, especially in Pakistan. The US Department of State places the country on its watch list as a result of the administration's repeated inability to step up efforts to eradicate trafficking.

Pakistan Constitution on Human Trafficking

The Constitution of Pakistan says that forced labour, slavery and human trafficking are all banned in the country. Moreover, the country must take all actions necessary to safeguard its people especially children and women from all sorts of trafficking. According to the Constitution's Article 11, slavery is prohibited. No law should ever permit in any way to introduce it into Pakistan. Forced labour in any form and human trafficking are both forbidden. Any mining, industrial, or other dangerous occupation is banned for children under the age of fourteen.

When we investigate the recent history, it becomes clear that, before 2002, no specified law or regulation dealt with human trafficking. There were a few provisions in the Pakistan Penal Code, which were insufficient to deal with the hard-core criminals engaged in these heinous crimes. The Prevention and Control of Human Trafficking Ordinance (PACHO), was passed by the Pakistani government in October 2002. In 2004, its regulations were made public which highlighted and defined trafficking. It also established the legal framework for the country for dealing with this heinous crime. The PACHTO had multiple significant shortcomings while being a good first step in recognizing that there was a trafficking issue in the country and starting to take action to address it. Since both people, smuggling and human trafficking fall under the same law as separate offences was one of PACHTO's major drawbacks. Furthermore, because the code exclusively defined trafficking in terms of cross-border travel, it completely ignored the existence of domestic trafficking. The Prevention of Smuggling of Migrants Act 2018 and The Prevention of Trafficking in People (PTPA) 2018 are two major pieces of legislation which the government of Pakistan has passed in 2018. It addressed the restrictions of PACHTO's and raises Pakistan's position from the Tier 2 Watch List. Although there are now different laws to address both situations, the laws are thought to be effective in defences against human trafficking and the smuggling of migrants in Pakistan. The recently enacted legislation recognizes individuals who are trafficked for the purpose of exploitation within Pakistan or brought into Pakistan from other regions of the globe as trafficking victims.

According to the PTPA, any individual who uses force, deception, or intimidation to employ, shelter, transport, provide for, or obtain another person is

committing the crime of trafficking in persons. The law outlines the penalties for traffickers, stating that they may face a fine of up to one million rupees, a maximum prison sentence of seven years, or both. If the victim is a woman or child, the perpetrator may face a minimum of two years in prison, a fine of up to one million rupees, or a combination of the two as punishment. The Act also states that repeat offenders and those who threaten the lives, health, or safety of victims of human trafficking will face longer sentences (up to 14 years) and higher fines which are rupees 2 million for their crimes. In 2020, the laws for implementing the PTPA were announced by the government of Pakistan as The Prevention of Trafficking in People Regulations. It said that now the FIA is largely in charge of solving the cross-border trafficking while the domestic trafficking charge was given to the provincial government and the police department.

Nevertheless, police lack the competence and understanding of trafficking because a variety of jobs have been allocated to a single agency that is already overworked from cybercrime to land disputes emerging from government employees.

According to a report (2021-25), the FIA has created a five-year National Action Plan to Fight Human Trafficking and Migrant Smuggling in addition to the new anti-trafficking legislation. The FIA is called by The National Action Plans to cooperate with the UN, civil society and government institutions to give strength to policy and legislative frameworks. Affirmative action should be taken to boost the participation of women in major institutions by giving them the task of battling Human Trafficking and Migrant Smuggling (HTMS). It would include the court, law enforcement and criminal justice.⁸

Boost the ability to identify, look into, and prosecute victims and smuggled migrants while also protecting victims /smuggled migrants. Increase the accessibility of statistics on the type and extent of human trafficking and migrant smuggling that are broken down by gender and age. Increase international, national, and regional collaboration while increasing awareness of HTMS crimes. Nevertheless, the National Action Plan provides a detailed path for combating Pakistan's human trafficking; the major issue is its implementation. The prior frameworks were not able to achieve their due goal because of the lack of organizational capacity and resources within the country. If the scenario remains the same, it would be a pipe dream to meet the country's current challenge in combating human trafficking, which takes on new forms with each passing year.

Countries' Legal Provisions Anti-trafficking legislation

Several laws relating to human trafficking were implemented in the country before the adoption of specific anti-trafficking legislation.

⁸ HrCp-web.org

1. Certain aspects of internal trafficking are addressed in sections of the Pakistan Criminal Code (PPC).
 - Kidnapping or abduction as a means of trafficking [Pages 359-366]
 - Procurement of a minor girl [Section 366-A]
 - Importation of a foreign-born female [Section 366-B]
 - Kidnapping or abducting a child in order to cause great harm, [Section 367]
 - Slavery [Section 367]
 - Buying or selling somebody as a slave [Section 370]
 - Habitual slave trade [Section 371]
 - Selling minors for prostitution, etc. [Section 372]
 - Purchasing minors for prostitution, etc. [Section 373]
 - Illegal forced labour [Section 374]
 - Relevant parts of the PPC include 420, which deals with identification document fraud, cheating and impersonation, and so on.

Furthermore, the following statutes address the subject of bonded/forced labour:

2-Bonded Labour System (Abolition) Act of 1992 (applied to ICT) and the 3-Bonded Labour System (Abolition) Act of 1992 (approved by Punjab in 2012)

4-Abolition of the Khyber Pakhtunkhwa Bonded Labour System Act, 2015.

5- The Sindh Bonded Labour System (Abolition) Act of 2015.

6- The Punjab Prevention of Child Labor in Brick Kilns Act of 2016.

The following are FIA-specific law provisions for dealing with situations related to foreign trafficking:

8- 1979's Emigration Ordinance

9- The Passport Act of 1974

10- Pakistan Exit (Control) Ordinance, 1981 Act No. 11 of 1946 Concerning Foreigners.

Drawbacks of Legal Framework

Apex court in their own judgements has mentioned the drawbacks and shortcomings of this system. On the other hand, investigating agencies have failed to perform their duty due to which the courts set free the booked criminals in cases. While having a glance at the very judgement of the Supreme Court in cases tilted Azhan Iqbal vs Abid Hussain reported in 2015 SCMR 1795 and 2019 PcRLJ N 80 of Lahore High Court's Judgement clarify the facts in existence in the country where the courts observed that the government machinery has badly failed to do what it may be expected otherwise. These judgments identify the defects in the

prosecution system which failed to prove the human trafficking-related cases and criminals booked in the cases were acquitted of charges. These were the only few examples as there are a number of other cases in which the courts observed the failures of the government functionaries including the prosecution and investigating agencies to do their work at par so that the convictions couldn't be upheld and criminals were set free.

Pakistan has signed the SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution, in addition to its own laws specific to the country. It is worth mentioning that there are other laws in place as well. The SAARC countries adopted the Convention in January 2002 to help in combating the crime of human trafficking, though desired results were not achieved due to the non-responsive behaviour of these countries and an increase in human trafficking-related cases in these mentioned countries.

Recommendations

1. Increase public awareness of human trafficking; create and strengthen new and existing relationships with NGOs, the private sector, civil society organizations, and the media.
2. Gather resources to support initiatives; develop plans to combat human trafficking on a local, regional, and global scale.
3. Creating interreligious priest forums in each district and at the state level, as well as establishing connections with and interacting with the NGO network in operation.
4. Coordinate in-person outreach and education about trafficking to government officials, traditional leaders, and community members, with a special focus on reducing victim stigma.
5. Improve and educate the judiciary and police to deal with all types of sexual assault and trafficking.
6. Media can play a key role to raise a sense of awareness among people so that they can play their individual roles.

Conclusion

It can safely be concluded that till the realization of the bone of contention and true problems in combating the human trafficking required, results cannot be achieved as a number of steps are much necessary to be taken. In the first instance, it is imperative that defective legislation should be removed as a number of clauses are needed to be introduced in the Act 2018. Act provides that FIA will handle the cases but it is not clear what rank of the officer would look after the cases as today's world criminals are using scientific ways for the crime. Apart from that it is also much necessary that a separate institution that will be solely responsible and which

be fully equipped to combat must be established. Separate courts or courts should be established who would only deal with human trafficking cases so as to ensure speedy trial and justice towards the culprits and maintain peace in society. It is also further important that a different prosecution institution be created having expertise in the relevant field to tackle the case