

# The Implementation of Human Trafficking Laws in Pakistan

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## **Abstract**

*Human trafficking is a menace which has plagued the world at large. It is the focus of not only international systems of criminal justice but also national legislatures. Pakistan has, within its own means, tried to deal with the problem of human trafficking by enacting legislation to this effect. But this has not impeded human trafficking much. This paper will analyse relevant national legislations to see where and why the laws on human trafficking fail for lack of efficacy. The paper will try to use this assessment to make suggestions for reform.*

## **Introduction**

Human trafficking can be likened to modern-day slavery. The existence of slavery is as old as the beginning of time. No country in the world would openly admit that it condones slavery and the UN Declaration of Human Rights ensures that states are obliged to eliminate this activity.

However, today it exists extensively, more so than it has at any other point in human history, although in different forms and manners. The practice has a variety of dimensions, covered under international legislation like the additional protocol to the UN Convention against Transnational Organized Crime.<sup>1</sup>

Women and children are especially vulnerable to it, however, men are also subject to this practice, especially for the purposes of forced labour including in instances of debt bondage. Victims may be moved between countries or within a country. Human trafficking includes a variety of human rights abuses and can be distinguished from smuggling on the basis of the use of force and coercion involved.

### **A. Forms of Human Trafficking in Pakistan**

Pakistan is considered as a country of destination, origin and transit for human trafficking. Although much cross-border trafficking occurs in Pakistan, there is the opinion that the occurrence of internal trafficking is greater. There are different purposes of trafficking in persons from which the main causes are domestic servitude, bonded labour and forced labour, sexual exploitation (mostly involving female victims especially in commercial sex trade), forced and false marriages, child soldiers, begging and most importantly for the purpose of using children as camel jockeys in gulf states.

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<sup>1</sup> Hereafter 'UNTOC'.

There are different procedures, in which trafficking takes place. Recruitment is one of the basic modus operandi for human trafficking; it can take a variety of forms with the exception of inter-generational and tribal practices. Human trafficking networks will have agents who are responsible for 'recruiting' victims. They may be recruited by kidnapping; this may sometimes take the form of drugging, and sometimes they may willingly go with their traffickers: those susceptible to human trafficking tend to come from low socio-economic backgrounds and can be lured by the appeal of fake opportunities presented to them by agents.

Several factors lead to be the causes of human trafficking, from which poverty is a cause that stands out. Factors that cause migration are structural, as well as poverty, these include social conditions such as conflict, lack of education and social oppression, Factors that allow migration to convert to trafficking are proximate: the legal infrastructure, corrupt governments and information circulated within the country.

Trafficking of women and children from Bangladesh is very common, due to the hardships of the flood-ridden economy. Here, agents usually establish themselves in a community, to seek out vulnerable members of the community whom they persuade to join their scheme. Law enforcement procedures in Pakistan also show no signs of checking and terminating trafficking because when restrictions are introduced in countries for crimes of trafficking, most of them target sex workers, not human traffickers.

Sometimes officials tasked to control human trafficking personally get involved in this practice, which leads to severe consequences. Pakistan has been under international pressure to introduce counter-trafficking measures thus as a reaction to this pressure the Government of Pakistan<sup>2</sup> brought into force the first ever piece of legislation that defines human trafficking and recognizes the victim as a victim. This is known as, The Prevention and Control of Human

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<sup>2</sup> Hereafter 'GOP'.

Trafficking Ordinance 2002<sup>3</sup> and this legislation serves as a symbol that GoP is working to combat human trafficking.

This Ordinance has been seen as an instrument to bring Pakistan to a tier 2 country, in United States annual Trafficking in Persons Report. Considering much importance that has been given to the Ordinance, it becomes necessary to consider and evaluate how effective it is in its implementation and what steps can be taken to improve its implementation.

## **B. Legislations to Combat Human Trafficking**

The following pieces of legislation and relevant sections have been implemented in Pakistan which deal with acts involved in trafficking of persons, whether transnational or internal: the main piece of legislation to combat human trafficking is Prevention and Control of Human Trafficking Ordinance 2002, which gave a definition of human trafficking, identified potential victims of trafficking and considered their relationship to organized crime.

The legislation makes it illegal to plan or even participate in a practice in any way that amounts to human trafficking and provides very harsh sentences for offenders. PACHTO Rules, which followed in 2004 enhanced the effective implementation of the legislation.

There are other legislations which in specific ways address different issues under this offence such as Emigration Ordinance, in its different sections points towards certain issues as unlawful emigration (s.17), fraudulently inducing to emigrate (includes fraudulent documentation and coercion) (s.18) and receiving money for proving foreign employment (s.22).

Then there is Zina Ordinance, which can be invoked against those

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<sup>3</sup> Hereafter 'PACHTO'.

guilty of offences of trafficking where commercial sexual exploitation takes place. It addresses *Zina-bil-Jabr*, kidnapping or abducting in order to subject person to unnatural lust, selling persons for purposes of prostitution and buying a person for purposes of prostitution.<sup>4</sup>

Then comes the *Pakistan Penal Code*,<sup>5</sup> which addresses wrongful confinement (s.340), punishment for wrongful confinement (s.342), kidnapping or abducting a person under the age of fourteen (s. 364), procurement of minor girl, importation of a girl from a foreign country kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.(s.366A - 367), buying or disposing of any person as a slave, habitual dealing in slaves, selling a person for purposes of prostitution, buying a person for purposes of prostitution, unlawful compulsory labour, making preparation to commit dacoity, and punishment for belonging to gang of dacoits.<sup>6</sup>

To deal with the issue of bonded labour the Bonded Labour System (Abolition) Act 1992<sup>7</sup> was enacted. This Act is specific to the practice of bonded labour, which has been difficult to prosecute due to unequal power relationships between landowner and tenant. The Rules accompanying this legislation came in to effect in 1995.

Another very important piece of legislation is Foreigners Act 1946, this statute is relevant not to the prosecution of traffickers, but it is regularly invoked against victims who have been trafficked to Pakistan who are not recognized as victims.

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<sup>4</sup> Zina Ordinance, s 6, s 12, s 13, s 14 (respectively).

<sup>5</sup> Hereafter 'PPC'.

<sup>6</sup> Pakistan Penal Code s 370, s 371(A), s 371(B), s 374, s 399, s 400.

<sup>7</sup> Hereafter 'BLAA'.

### **C. Problems with PACHTO**

Implementation of PACHTO is subject to and faced with different problems, and to make its implementation and enforcement effective GOP has to cope with these problems efficiently. One of the major issues is that of its drafting, as a single perusal can confirm that it is poorly drafted. It excludes certain known purposes of human trafficking<sup>8</sup> such as for organs or forced marriage. In s.3(iii) a person's liability for the crime of human trafficking is only established if they were motivated to commit the crime for exploitative entertainment or if they had received payment to do so, whereas in fact there are many other reasons as to why someone would be involved in human trafficking. It also excludes internal trafficking by referring to the transportation of persons into or out of Pakistan and issues no penalty if death occurs as a result of human trafficking.

The drafting of this Ordinance has never been debated and therefore it lacks collective wisdom. The PACHTO tries to allow for compensation to the victim and offers them extended stay in the country but this is in direct conflict with the provisions of the Foreigner's Act and the Emigration Ordinance and this conflict needs resolution. Another problem is of the general unawareness of PACHTO because it is not a widely known piece of legislation. This lack of awareness means that the PACHTO will not be used as it was intended so its creation is pointless when people as legal professionals are unaware of its existence.

Section 3 involves a number of offences but they are not dealt with sufficiently by the legislation as they are repeated in section 5 which refers them to the same sentence of section 3. Different offences should be subject to different punishments as each offence is of a different gravity and therefore requires appropriate and relevant penal sanctions which have not been provided by this legislation.

PACHTO covers offences that previously exist in other legislations, which results in overlapping legislations covering the same issue. Overlapping legislations can hinder due process as legal loopholes occur when more than one legislation covers the same crime. When a criminal is

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<sup>8</sup> See PACHTO 2002, s 2.

tried under provisions in two different statutes and when they are similar in nature, then the lesser sentence is granted.<sup>9</sup>

An initial confusion comes out where cases of smuggling are wrongly decided under PACHTO 2002, such as *Rizwan Islam vs. The State*, under section 4. *Ghulam Ahmad vs The State*<sup>10</sup> also was brought under PACHTO s.3 where the accused took money for the illegal transportation of a client. But there was no evidence of exploitative practices. In the higher courts, judges in some rulings however, have confirmed that these do not warrant to be within PACHTO's remit and should instead be considered under provisions of the Emigration Ordinance 1979.

Similarly, in *Murad Ali Shah vs The State*<sup>11</sup>, an agent who took money for illegal transportation overseas was tried under the Ordinance, but it was held that he could not be tried for the offence of trafficking as his actions did not meet the necessary conditions under section 2(h) and the purpose of transportation did not include any of the exploitative practices as under section 3. Same was held in *Muhammad Arshad vs the State*.<sup>12</sup> Likewise, in *Sardar Muhammad Aslam vs The State*<sup>13</sup> the judge ruled that a 'mere promise will not constitute "human trafficking" within the meaning of Section 3. Essential ingredients for application of Section 3 are coercion, kidnapping, abduction etc.

Parents' complicity has been an issue raised by many NGOs. As it rose in the famous camel jockey case<sup>14</sup> where the father of two camel jockeys was charged under the PACHTO as he allegedly received money from agents. However very few such cases reach the High Court or Supreme Court as severe punishments are rarely given. There is hardly any Pakistani precedent on human trafficking cases and international judgments are used to supplement as persuasive authority.

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<sup>9</sup> *Murad Ali Shah vs The State* [2004] PCRLJ 925.

<sup>10</sup> *Ghulam Ahmad vs The State* [2006] MLD 330.

<sup>11</sup> *Murad Ali Shah vs The State* [2004] PCRLJ 925.

<sup>12</sup> *Muhammad Arshad vs the State* [2006] MLD 1189.

<sup>13</sup> *Sardar Muhammad Aslam vs The State* [2008] PLD 2008 Lahore 218.

<sup>14</sup> *Muhammad Hanif vs The State* [2008] Y L R 810.



## **D. Human Rights Concerns**

There must be an addition of a human rights perspective while considering the issues of Human trafficking as the early criticism of the Ordinance was that it was just drafted as a law enforcement tool rather than a piece of legislation and that it does not take into account the fundamental rights and security of the person, two things which are detestably abused through crime of trafficking.

There are no specific provisions for the protection and rehabilitation of victims. Some advocates also have claimed that the complexity and high burden of proof tests are responsible for low conviction rates that are needed to be addressed in general. In addition to this, due to absence of witness protection procedures there is a lack of witnesses willing to testify in trafficking cases.

Lastly it is important to note that there is nothing which can be done to cope with problems of implementation until there is corruption present within officials of FIA and GOP. Up to 2013, thirteen cases were tried under the Prevention and Control of Human Trafficking Ordinance 2002 in Pakistani Higher Courts. This fact is, in itself, quite distressing because although the Ordinance introduced greater sentences for this offence (7-14 years), the settlement of cases within lower courts reflects that these sentences are rarely awarded.

## **E. Conclusion: Recommendations for reform**

To make implementation of PACHTO against human trafficking issues, more effective changes and measures can be adopted and applied to domestic legal systems. Primarily, an independent body should be established to monitor the implementation of human trafficking legislation. International treaties should be ratified and their all principles should be enforced stringently.

As argued above, amendments to the Ordinance should be

introduced. This time amendments should be made after complete consultation with relevant stakeholders. There must be a special sessions court to try human trafficking cases, superior than that of a Magistrate court so that sentences reflect the gravity of the crime.

Workshops on awareness, regarding legislation and recognizing victims of trafficking should be established within law schools, judicial training schemes, FIA and police training and for immigration officials. To encourage more witness involvement in trials against human traffickers, various methods should be employed and provisions for witness protection and confidentiality should be provided. An action plan should be made, internal trafficking should come under the purview of FIA and a special reporter could be set up at the SAARC level.

Legal procedural and regulatory framework for immigration and overseas education consultancies should be adopted to prohibit regular schemes of human trafficking at play.

PACHTO has had little effect on countering trafficking in Pakistan. The problem is not the existence or non-existence of legislation as there is a plethora of legal literature which can be made use of. The problems however, lie within PACHTO, its drafting and its implementation.

Pakistan is facing problems of social, economic and human rights orientation. It is difficult to deal with the issue of trafficking and present it on the political agenda where there are many other issues striving for attention (e.g. India/Pakistan relations, poverty, diseases, load shedding, etc). If the public understood the effect of human trafficking perhaps there would be greater demand for effective strategies. Within the current economic and political situation, it is difficult for people to think beyond rising prices and limited resources. Therefore, a new approach to human trafficking needs to be adopted, which pulls the problem from the pit of the country's priority list and gathers new focus for it, which can be harnessed to deploy efforts to deal with this problem effectively.

A common criticism is the lack of awareness of PACHTO and human trafficking. Lack of resources is also blamed in fully implementing a counter-trafficking operation. Donor aid can therefore, play an important part in the response of Pakistan. Typically, aid is used to address the root

causes of trafficking i.e. general policies and programmed to address poverty, corruption etc. However, more targeted programmes could be designed such as those that deal with governance and institutional frameworks and the capacity to deal with human trafficking. Also, given that human trafficking affects the most marginalized of society, aid could be used to address social exclusion or directed at areas where trafficking is perhaps known to originate from.

While the specifics of the approach to deal with human rights is unknown, what can be suggested with certainty is that the most appropriate approach for now should be multi-faceted, including emphasis on human rights of victims and prioritisation of their dignity. There are some measures adopted by the Pakistani Government but there is little evidence of what happens to victims, their rehabilitation and restoration of their lives damaged by traffickers who stole their freedom.

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