



Exploring the Role of the Criminal Justice System in Combating Human Trafficking in Pakistan

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ABSTRACT

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This research article examines the multifaceted phenomenon of human trafficking within the context of Pakistan's criminal justice system. The phenomenon of human trafficking, in conjunction with associated concerns such as human smuggling and unauthorized migration, poses a multifaceted dilemma influenced by a range of socio-economic factors. The research investigates the complexities of human trafficking, examining its conceptualizations, expressions, and fundamental origins. Considerable emphasis is placed on the involvement of the criminal justice system in tackling the issue of human trafficking, encompassing activities such as prosecution, victim assistance, and preventive measures. This study critically examines the efficacy of Pakistan's criminal justice system in addressing the issue of human trafficking, drawing upon relevant scholarly literature and empirical research. Furthermore, the study underscores the significance of global cooperation and collaboration in addressing this transnational criminal activity. In the conclusion section, the author underscores the need for comprehensive approaches that prioritize victim protection, legal enforcement, and addressing root causes to effectively combat human trafficking in Pakistan and beyond.

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1. Introduction

The phenomenon of human trafficking, alongside human smuggling and other forms of illegal migration, is deeply intertwined with the broader context of overseas migration (Dandurand & Jahn, 2020). The intricate interplay of "push" and "pull" factors among nations shape migration flows, which frequently result in either legal or illegal migration contingent on compliance with relevant laws and policies (Van Hear, Bakewell, & Long, 2020). Human trafficking, however, transcends mere illegality, representing a modern form of slavery that necessitates urgent attention and action. The implementation of a global treaty to prohibit and eliminate slavery has stimulated continuous endeavors to combat the illegal trade of human beings. The Trafficking Protocol, established in November 2000, provides a comprehensive definition of human trafficking. It highlights the recruitment, transportation, and exploitation of individuals using various forms of coercion (Segrave, 2009). The concept of exploitation incorporates several manifestations, such as coerced labor, sexual exploitation, and servitude, hence emphasizing the complex and multidimensional nature of this criminal activity.

Criminalization and punitive measures are frequently employed as integral elements of anti-human trafficking programs, to deter both current and prospective perpetrators. The objective of prosecuting traffickers is to impede the continuation of illegal activity and safeguard the well-being of victims. However, this approach primarily focuses on the illegal element of the sector, disregarding the underlying vulnerabilities that enable trafficking to

continue. An effective and deliberate approach is necessary to safeguard and prevent victims, as instances of illegal migration and exploitation often stem from biases rooted in factors such as gender, socioeconomic status, race, and poverty (Latham-Sprinkle, David, Bryant, & Larsen, 2019).

Traffickers use diverse strategies to intimidate and manipulate their victims, including enslaving them in debt, issuing threats of physical harm, and seizing personal information. Victims often encounter profound fear and coercion, so impeding their ability to seek assistance or extricate themselves from their circumstances. Pakistan has various manifestations of human trafficking, including coerced marriages, bonded labor, and involuntary servitude. According to Kumar (2015), it has been estimated that a significant proportion of individuals are affected by these activities. The criminal justice system plays a crucial and intricate role in Pakistan's efforts to combat human trafficking. In addition to prosecution and punishment, it is imperative for anti-trafficking efforts to encompass the identification and mitigation of systemic vulnerabilities, as well as the provision of comprehensive support to victims (Mirza, 2010). The criminal justice system possesses the capacity to assume a pivotal role in the eradication of human trafficking and safeguarding the rights of those who are susceptible, through a comprehensive understanding of the root causes of the offense and the implementation of focused interventions. In this research article, the author will explore the criminal justice system of Pakistan, discussing its various components and its working. Having established this foundation, the author will then delve into the phenomenon of human trafficking, examining its intricacies and pervasive nature. Furthermore, the effectiveness of Pakistan's criminal justice system in curbing this menace will be scrutinized, with a focus on its ability to uphold the societal contract between citizens and the State.

2. Criminal Justice System

2.1. Meaning of Justice

Justice is compliance with encoded law. It has a twofold purpose, preventing the crime and punishing the wrongdoer. Justice is not delivered to get some benefit out of it. It should not be denied to any and it should be delivered to everyone when anyone sought it. Justice is not to cause injury to anyone. Justice does not look at the father or mother and it only considers, what is truth.

2.2. What is the Criminal Justice System?

Law and judges are two major organs of the criminal justice system. The concept of Law and Justice could easily be differentiated but it is not possible to appreciate one without the help of another. Genesis as well as the outcome of law is justice. The basic model of justice includes fairness, impartiality, and equality (Konow, 2009). The mission to provide the best possible justice is not a static process and it may change according to the changing needs of society with time. Fundamental rights enshrined in the Constitution of Pakistan, 1973 are included in the constitution on the basic theory of justice. The criminal justice system means a formal encoded procedure and departments that have been established to bring the accused to justice, prosecute, and punish them (Robinson & Darley, 2007). The major organs of the criminal justice system are the Police, prosecution, courts, probation, parole, and prisons. The police department is under obligation to maintain law and order situations, deter criminals, and arrest culprits. Prosecution is established to prosecute the accused after the investigation by the Police and prepares the case for its submission in the court of competent jurisdiction for final adjudication by law (Hall, 1975). The courts are under obligation to provide justice fairly and freely without any influence and according to law. Probation rehabilitates the culprits by giving them family care in society. Prison is an appropriate place for those culprits who are convicted by courts to suffer imprisonment as proper treatment for them. Parole is for those who show good conduct to society. Justice could be understood as a process through which culprits flow. The process starts with the submission of a complaint and proceeds with the investigation and filing of final investigation reports to the prosecution for inspection and its further submission to the court of competent jurisdiction for final adjudication after the process of trial. Courts after trial convict offenders and jail authorities keep the convict and treat them for their re-entry into the community (Richards et al., 2012).

2.3. The Administration of Criminal Justice

The phrase administration of criminal and civil justice demonstrates the implementation of judicial authority to uphold and maintain the rights of an individual and penalize wrongdoers.

The administration of criminal and civil justice in a state is the upholding right and preventing wrong among the people of that state using physical strength (Balkin, 2010). The courts must secure the rights of individuals and Penalize the wrongdoers i.e. the court may either compel a person to do his duty regarding which he has obligation, or he would be penalized for any omission on his part. The administration of justice may be divided into two categories as follows: (i) Administration of criminal justice and (ii) Administration of civil justice.

The ultimate goal of both tends to implement of rights of people on the civil side and penalize wrongdoers on the criminal side. Civil justice is related to the rights of the plaintiff, on the other hand, criminal justice relates to the wrongdoer and his criminal actions (Lynch, 2014). As to the implementation of the criminal justice system, the same may be divided into three different phases. The first phase is related to the investigation, the second phase is related to the inquiry and the trial is the final phase after which the accused may be punished if found guilty of committing an offense. To implement the administration of justice, institutions of Police, Prosecution, Magistrate, and Sessions Courts have been created by law and concerned establishment, the authority of each department of administration of the justice system has been clearly defined to avoid any confrontation between the different departments of the administration of justice (Ali, 2015). The purpose of separating the different pillars of justice is that all three establishments shall not interfere in the jurisdiction of others as it will cause a miscarriage of justice. The following are the main principles for the safer administration of justice; (i) presumption regarding the accused is that he is innocent unless his guilt is proved in the court of competent jurisdiction; (ii) It is the duty of the Prosecution to establish its case on the strength of its evidence and it cannot take benefits of the weaknesses of accused (iii) Accused is favorite child of law and can tell a lie in his defense and he could not be penalized due to weakness in his defense and he remained unable to prove the plea he opted to take in his defense and the same could not be used to prove prosecution case or discharge the prosecution from its obligation to establish its case beyond shadow of any reasonable doubt (iv) If the accused successfully cause dent in the prosecution story which may the considered by the court as reasonable doubt, it is his right to claim acquittal as his right rather grace (Guimaraes, Gomes, & Guarido Filho, 2018).

Judges are answerable to their conscious as well as to their creator. A peaceful state may be constituted if all members of the state irrespective of their breed, religion, faith, and position in the society are given justice, and a court of law can participate as a major player in this game. The ultimate goal of this system is not to secure conviction instead its purpose is to offer serious consideration on the matter in issue to bring real facts on record. The unfortunate propensity in our people is to nominate innocent people along with real culprits. Due to the very behavior of society, it is not possible that the culprits may be acquitted due to the involvement of some innocent people in the crime but the courts are duty-bound to determine who is involved and who is innocent (Ewing, Martinez, & Rumbaut, 2015). Every case has its circumstances and should be decided on its own merits and no strict formula could be crafted to administer justice in every case. It is always open for a court to foresee the real facts and give the best possible judgment for the administration of justice.

3. The Criminal Justice System in Pakistan

There are certain essential norms of justice like fairness, equality, and impartiality in all spheres of women's and children's actions. The quest for prompt justice is a perpetual process and the theory of justice is a dynamic concept. Fundamental rights ensured by the Constitution of Pakistan, 1973 are formulated based on norms of justice (Ahmed, 2021). The criminal justice system refers to the institutions that have been established to deal with the arrest, prosecution, punishment, and treat law violators. The major components of the criminal justice system are the following: (i) Police department (ii) Prosecution department (iii) Judicial Department (iv) Prison Department (v) Probation Department (vi) Parole department Police curb and control law and order, prevent crimes, and arrest criminals (Wassan, Bhatti, Ahmed, Oad, & Detho, 2023). The prosecutors plead the case before the judges to ensure punishment for the criminals. The courts are neutral parties and they award punishment to the law violators and acquit the innocents from the charges. The probation department readjusts the offenders through family care in society. The prison department provides dwelling to the persons who are sent to judicial custody and punished. The parole department re-adjusts the prisoners who have good conduct back to the community.

3.1. Discrepancies regarding the criminal justice system

3.1.1. Inadequacy of legislation

Laws have been shown to have numerous flaws throughout time, so incorporating administrative machinery into legislation has become increasingly challenging. Administrative law has emerged as a new area of law to address our growing need to develop economic and social issues (Baxi, Rai, & Ali, 2013).

3.1.2. Inadequacy of Courts

The court nowadays is overworked and has an excessive amount of rushed work. Courts find it nearly hard to keep up with the volume of work. Administrative law has arisen as a new field of law to address this significant issue (Farooqi). The legal system is a cumbersome and delayed means of resolving conflicts and making decisions. The state has established various tribunals to address this issue.

3.1.3. Easy and Simple procedure

The courts in Pakistan employ intricate procedures and engage counsel, whereas the administrative tribunals and ombudsmen offices follow a straightforward and uncomplicated procedure. The technique lacks technical complexity. Administrative tribunals mostly rely on manually registering cases in a predetermined format, accompanied by pertinent papers and evidence. Conversely, inside ombudsmen offices, it is possible to file online complaints and pertinent supporting papers (Hameed, Mustafa, & Shahzad, 2023). This technique can be adopted by an individual with a high level of education in ombudsmen and administrative tribunals. The assistance of advocates is not necessary. Administrative justice is gaining popularity due to its straightforward process.

3.2. Objectives of Criminal Justice

3.2.1. Welfare of Public

The main objective of administrative law is to improve public welfare through executive powers. Welfare is a vast subject and administrative law ensures the public's welfare (Bishop, 2018). Aggrieved persons should be given justice, and the state is responsible for giving basic rights to its citizens, which are the following. A welfare state is responsible for the following rights of the individual.

3.2.2. Speedy justice

Averagely, a civil case in courts consumed 5 years up till the decision. This thing constructs the mind of people that in Pakistan, you need years for justice; however, this concept might be right for civil court, but in administrative tribunals and ombudsmen, it is not right (Saeed, 2020). The researcher met various persons who got justice from the ombudsman and administrative tribunals within six months. Federal service tribunals and provincial service tribunals consume much time. Other tribunals and ombudsmen take 6 months only to decide the case, and the main objective of administrative law is to provide justice within a short time.

3.2.3. Provide cheap cost justice

This is famous in Pakistan that if someone wants justice in Pakistan he must have Khizer A.S age and wealth like Qaroon. In courts, an individual has to pay a lot to advocates in terms of fees and court fees, as well as payment of dues to the advocate's clerk on every date and other expenses. So, it is based on the truth that in Pakistan, justice is so costly (Javaid, 2010). But in administrative tribunals, no court fee is applied, and if someone is educated, he can plead his case due to a simple procedure. So, the objective of administrative law is to provide justice at a low cost (Iqbal, 2015).

3.2.4. Participation

All individuals, including men and women, should have a voice in decision-making; equal opportunity for all must be the state's policy and every individual has the freedom to move forward to participate in the betterment of the country.

3.2.5. Transparency and Merit

Merit in the state must strictly be observed, and only the most eligible person should be given a chance to work. Transparency in every department must be observed. A corruption-free Country must be corruption-free, and in every department, the environment must be corruption-free.

3.2.6. Court Insufficiency

Currently, the court is experiencing excessive workload and is overwhelmed with substantial work. Courts face significant challenges in meeting the demands of their workload. Administrative law has arisen as a new branch of law to address this important issue.

3.2.7. Lack of sufficiency in the legal system

The judicial system is a protracted and laborious process for resolving disputes and making decisions. The state establishes various tribunals to address this issue.

3.2.8. Straightforward and uncomplicated process

In Pakistan, courts employ intricate procedures and engage counsel, whereas administrative tribunals and ombudsmen offices follow a straightforward and uncomplicated method. According to Shinwari (2015), the process lacks technological complexity. Administrative tribunals often register cases manually, using a prescribed format and include important papers and evidence. On the other hand, ombudsmen offices allow for online registration of complaints and include relevant attached documents. An educated individual can employ this method in ombudsmen and administrative tribunals. The assistance of advocates is not necessary. Administrative justice is gaining popularity due to its straightforward method.

3.2.9. Legal Frameworks and Challenges in Combating Human Trafficking: A Focus on Pakistan

In Pakistan, several legal frameworks address the issue of bonded labor. The Constitution of 1973 explicitly prohibits slavery and forced labor in Article 11, stating that such practices are nonexistent and forbidden (Bilal, 2017). Furthermore, extramarital relationships—including adultery and fornication—as well as the trafficking of people for prostitution are illegal under the Zina Hudood Ordinance of 1979, which carries harsh penalties like life in prison (Mirza, 2010). In addition, Pakistani foreigners are subject to regulations regarding their entry, including the Foreigners Act of 1949 and the Foreigners Order of 1951, which impose penalties for unapproved entry (Rashid, 2019). The Prevention and Control of Human Trafficking Ordinance of 2002 (PACHTO) was enacted as part of a major legislative effort in the South Asian Association for Regional Cooperation (SAARC) region to combat human trafficking comprehensively (H. Khan, 2012). PACHTO establishes strict penalties and defines human trafficking for a variety of purposes, including forced labor and prostitution. It even views mental injury as a form of exploitation. Moreover, the ordinance holds each member of a trafficking group vicariously liable and provides provisions for compensating victims. However, challenges persist in the legal framework, particularly regarding the evidentiary requirements for crimes such as extramarital sex and rape under Islamic law. The high burden of proof frequently thwarts victims' access to justice. It increases the risk of re-victimization, particularly in rape cases where victims may be punished for adultery if they are unable to establish their innocence (Mahmood, 2021). Additionally, questions concerning the protection of children's rights, particularly in dangerous occupations, are raised by gaps in labor laws like the Child Labor Act and the Employment of Children Act.

4. Pashto

A major legislative effort within the SAARC region, Pakistan's Prevention and Control of Human Trafficking Ordinance (PACHTO) seeks to address the problem of human trafficking (Munir, 2014). When it comes to human trafficking, the PACHTO organization takes a targeted approach, concentrating on the plight of women and children as they are smuggled into and out of Pakistan. Nevertheless, anti-trafficking programs still face many obstacles, even though legal frameworks exist. According to PACHTO, trafficking encompasses a range of activities, including abduction, manipulation, and exploitation, to engage in sexual exploitation and exploitative forms of entertainment. Engaging in the planning or execution of trafficking acts is subject to stringent legal consequences, including monetary fines and imprisonment for a maximum of 10 years. In addition, PACHTO explicitly forbids the act of trafficking children and women for exploitative intentions and imposes penalties of incarceration and monetary fines on anyone who commits such acts (M. I. Khan, Meer, & Usman, 2023). The Act encompasses offenses such as curtailing an individual's liberty, fabricating documents, and participating in organized criminal activities to facilitate human trafficking.

Notwithstanding these provisions, PACHTO exhibits significant drawbacks. The text fails to comprehensively acknowledge the role of non-governmental organizations (NGOs) in combating trafficking and neglects to adequately address the subject of child trafficking as a distinct concern. Additionally, it is worth noting that the legislation predominantly centers its attention on trans-border trafficking, sometimes neglecting the matter of domestic or internal trafficking (Munir, 2017). Furthermore, its jurisdiction is limited to the Federal Investigating Agency (FIA), so complicates comprehensive enforcement efforts. Moreover, there is an inconsistency between the PACHTO and PPC provisions, even though the PPC criminalizes several trafficking-related offenses, such as kidnapping, abduction, and forced marriage (A. Khan, Iqbal, & Ahmad, 2022). This disparity may result in inconsistent punishment and enforcement. Effective anti-trafficking enforcement is still a challenge, despite constitutional provisions that forbid forced labor and slavery and guarantee fundamental rights. Most trafficking cases are tried under the Passport Act, which imposes relatively low fines, indicating a lack of robust enforcement mechanisms.

4.1. Recommendations

The elimination of human trafficking in Pakistan calls for coordinated efforts and a variety of approaches. It is critical to strengthen law enforcement agencies, and one way to do this is by encouraging better cooperation between state and federal investigators. Specialized training programs are necessary to enhance frontline workers' capacity to identify victims of human trafficking and aid them. In addition, all parties involved must work together to prioritize comprehensive investigations and persistent legal proceedings to raise the conviction rate for those involved in human trafficking. Effective collaboration among various authorities is critical for providing a cohesive and effective response to trafficking-related issues. In this scenario, more cooperation between the government's police, labor, and justice ministries is critical. Furthermore, given the critical importance of international collaboration and support in combating the transnational aspect of trafficking, bilateral and multilateral agreements with other countries are emphasized. An apparatus for collecting, consolidating, and presenting data on the diverse facets of human trafficking in Pakistan is required to identify its origins and extent precisely. There is a need to enhance LEA's ability and that of relevant government department personnel to identify and report criminal activities. Promoting research studies by academia and civil society organizations is crucial to collect primary data and uncover the previously unrecognized aspects of trafficking. LEA authorities should be mandated to report trafficking-related crimes exclusively under the PTPA once their capacity has been enhanced. As a result, accurate and trustworthy information will be provided, and victims of human trafficking will be granted legal entitlements like protection and access to resources. In order to protect vulnerable people from being victims of human trafficking, it is essential to educate the public and launch public awareness campaigns. In order to prevent individuals from falling prey to exploitation, it is crucial to tackle the underlying issues that contribute to trafficking, including poverty, inequality, and inadequate education. To better protect victims and guarantee effective enforcement of anti-trafficking laws, new policies are required. If we want to make sure everyone is safe and that prosecution processes are as efficient as possible, we should think about changing some laws and regulations.

5. Conclusion

Ultimately, despite Pakistan's challenges in combating human trafficking, significant strides can be taken to mitigate this heinous transgression of human rights through enhanced collaboration, new regulations, and concerted international and national initiatives. Human trafficking prevention requires coordinated national and international initiatives. The government must prioritize the development of comprehensive programs to promote international collaboration and cooperation. Efficient prosecution and inquiry require international cooperation. Human trafficking is a serious human rights issue because it exploits women and girls all over the world through forced sex work, enslavement, and other forms of trade. Humanitarian efforts stress the protection of immigrant and women's rights, whereas human traffickers take advantage of the vulnerability of women and children. The government should develop a comprehensive strategy to reintegrate and rehabilitate trafficked women and girls into society. Relying solely on short-term defense measures is inadequate. Revictimization is prevalent among a significant proportion of women and girls who have been trafficked. There is a scarcity of information regarding strategies for women and girls to prevent themselves from becoming victims of trafficking in the future. Hence, it is imperative to conduct research in order to ascertain the factors that facilitate the survival of individuals who have fallen victim to

human trafficking. Interventions aimed at enhancing public awareness regarding the issue of trafficking are of paramount importance. Individuals could receive guidance on how to protect themselves from traffickers and promptly notify the appropriate law enforcement agency through print, digital, and social media platforms. The government should have specifically focused its efforts on vulnerable communities to prevent exploitation, as traffickers often exploit their vulnerabilities. Pakistan must recognize the gravity of the situation and act quickly, dedicating cash for law enforcement training and forging agreements with foreign partners, among other steps. While it may seem impossible to eliminate human trafficking, some measures may be taken to significantly reduce its prevalence and protect the most vulnerable victims. Through strong law enforcement and cooperation with international stakeholders, Pakistan can be able to effectively tackle this heinous act and safeguard the rights of children and women. By putting the safety of vulnerable populations first and fixing the systemic problems that lead to human trafficking, Pakistan can build a society where everyone feels valued and secure.

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