

Thesis for LL.M. (International Law)

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Human Trafficking
In the perspective of International legal regime
With Special reference to Pakistan

Man is born free, but is everywhere in chains

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A thesis submitted in partial fulfillment of the requirement of the degree of
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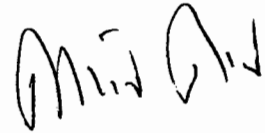
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LIST OF ABBREVIATIONS

- UDHR : Universal Declaration of Human Rights;
- ICCPR : International Covenant on Civil and Political Rights;
- ICESCR : International Covenant on Economic, Social and Cultural Rights;
- CRC&OP : Convention on the Rights of Child and its relevant Optional Protocol;
- CEDAW : Convention Concerning the Prohibition and Immediate Action for the Elimination of All forms of Discrimination against Women;
- SAARC : South Asian Association for Regional Cooperation
- CCT&WCP : Convention on Combating Trafficking in Women and Children for Prostitution.
- CRC : Convention on the Rights of the Child
- NGOs : Non Governmental Organizations
- IOs : International Organizations
- P& CHTO : Prevention and Control of Human Trafficking Ordinance, 2002

DEDICATION

This humble research effort is dedicated to Pakistan with prayers to Allah Almighty that Pakistan may flourish rapidly to become stronger and affluent. People of Pakistan may blossom with Sanctuary and security in the world.
(Amen)

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ABSTRACT

The purpose of this research is to increase understanding of the nature of institutional forces inhibiting the communication of social problems to the Pakistani public. With the transnational operation called human trafficking, slavery remains alive and thriving. Trafficking in persons is a global issue. No country can claim that its borders are not affected in some way by trafficking. This is estimated to be a multibillion-dollar business. Human trafficking is now second only to drug trafficking in relation to international organized crime. Trafficking in persons is the equivalent of modern-day slavery. This thesis argues the vital role of international cooperation plays in combating human trafficking.

Human trafficking has been selected as a case study to expand understanding of the ways in which social problems make it onto the public agenda. Human trafficking, or the movement of humans across international borders for profit, is a growing problem throughout the world. A content analysis of newspaper articles from 2004 and a series of interviews with reporters, nongovernmental organization staff and governmental representatives were conducted between November, 2006 and August 2007. This study examines current tactics used by government officials, non-governmental organizations and the media to present this issue to the public, as well as any constraints faced by each.

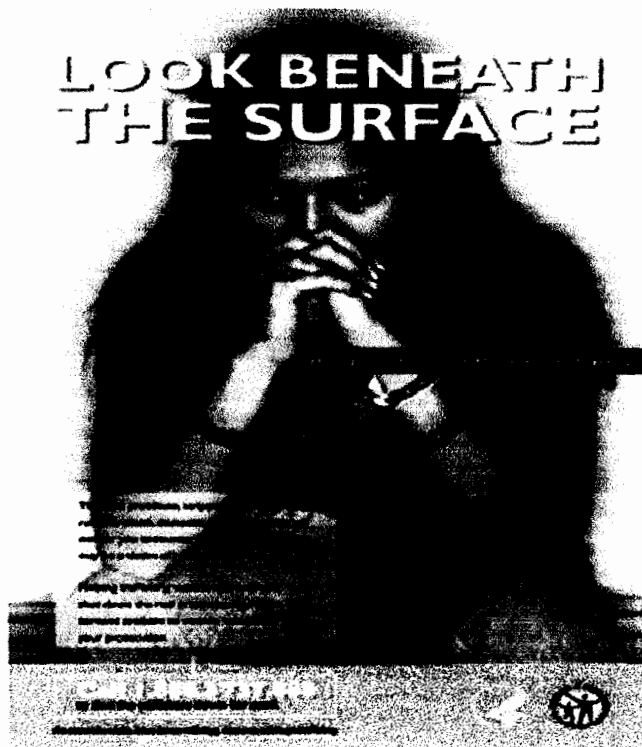
Findings from this study suggest that the issue of human trafficking is covered infrequently in press, and that institutional forces within the media, government and NGOs contribute to this infrequent coverage of the story in the Pakistan. In addition, the very nature of the human trafficking issue itself works as a limit on story coverage. Unfortunately, without knowledge of the issue, the Pakistani people will not identify human trafficking as a social problem of any import, and it will not appear on the public agenda, without public recognition and support for resources to find solutions. It is likely that the problem of human trafficking will continue to grow. How to best communicate complex, ongoing social problems such as human trafficking with constituencies largely unable to speak on their own behalf remains an important question.

Human Trafficking

Chapter No. 1

It isn't those who are taken by force, put in chains and sold as slaves; who are the real slaves: it is those who will accept it, morally and physically.

Sembene Ousmane (1923).¹



Introduction

Human Trafficking is commonly understood as a grave human rights violation. One perpetrated by ordinary individuals and organized crime elements all over the world. In fact, it is difficult to find a place where someone has not been

¹Encarta® Book of Quotations © & (P) 1999 Microsoft Corporation. All rights reserved.
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touched by this crime. The extent to which countries address the problem of trafficking varies regionally and nationally. The reasons that people are trafficked within their own countries, as well as across borders, are many and complex. However, they stem from the fact that most people want a better life for themselves and their families. While it is not uncommon that children and women are kidnapped or sold into sexual slavery or forced bondage, it is more likely that people agree to be transported to another place – either legally or illegally – and then find themselves in a situation in which they cannot escape, because of psychological or physical violence on their own person or families back home. This simplified phenomenon is commonly known as human trafficking.”²

Human trafficking is a growing problem throughout the world. It strikes the most precious thing of an individual as dignity, values and exploits human beings for revenue through sex, forced labor and human organs. “The United Nations estimate that more than one million persons are being trafficked annually. It is calculated that the annual “profit” made by traffickers totals between 11 to 13 billion dollars which makes this heinous business the second source of profit of organized crime after drug trafficking”³. **It is a multidimensional global phenomenon. It should be combated through raising awareness, effective anti-trafficking legislation, and poverty alleviation by the mutual consent of the countries involved** because the process of buying and selling people for financial gain, or what is known as human trafficking, is strongly linked to countries with economic, social or political instability and industrialized countries lacking in human capital. Nevertheless no country is immune to this problem.

The subject of human trafficking is of immense importance for Pakistan since in our context the problem is multi-dimensional in nature being origin, transit and destination country. It has become critical to tackle this problem as it is one of the most serious organized crimes being committed in the country.

The government is concerned over the growing activities of organized criminal groups involved in human trafficking and therefore it has been decided to institute

² Senior Honors Thesis in Political Science American University Christina A. Arnold April 22, 2004 Professor Singerman GOVT 481H-001

³ UNO Report on TIP

effective and coordinated action against human traffickers. At the international level, Pakistan is fully committed to active involvement in international efforts to prevent and combat human trafficking and provide protection and support to its victims.

The National Action Plan aims at integrating the resources of all the various participating stakeholders and agencies to address the problem of human trafficking. It seeks to establish a framework in which all aspects of the fight against trafficking may be effectively coordinated. The participants in the Plan (Organizations, ministries, departments, NGOs and others) shall form a nucleus, which will be coordinated by the National Co-coordinator.

The Plan envisages to co-ordinate and enhances the ability of the participants to identify and respond to needs as they arise. It draws together domestic governmental and non-governmental resources with those of international organizations and provides a vehicle for accessing support from international governmental sources, institutions and agencies. While seeking to create and augment coordination, the Plan utilizes the experience of other countries, co-operation with and membership of international initiatives as well as co-operation with international and national governmental and non-governmental organizations dealing with human trafficking.

An integrated approach to combat human trafficking is required based on prevention, prosecution of traffickers, and protection of the victims. The Government of Pakistan has taken legal and administrative measures which have helped in curbing the problem to a great extent⁴.

The issue of the "trade" or "trafficking" in human beings that started to be raised during the latter part of the 1980s did not really enter into the mainstream until the 1990s. Most of the publications on this subject did not appear until the latter part of that decade. It is therefore not overly surprising that the available material

⁴ Federal Investigation Agency - Govt. of Pakistan

has been found to be limited since its first appearance in the literature, and analysis of it has largely been based on research reports (both published and unpublished) and coverage by the media.

1.1 Definition

Historically, provisions of many international treaties address the various human rights violations that take place in the context of trafficking. Some of the relevant instruments include the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (1984), the Convention on the Rights of the Child (1989), the Slavery Convention (1926), the Convention on the Protection of the Rights of All Migrant Workers and their Families (1990).⁵

However until recently, one of the fundamental problems in responding to trafficking in human beings has been the lack of international consensus on the definition of trafficking. Moreover, there has been a persistent confusion about the distinction between trafficking, smuggling and illegal migration. At international level these problems have largely been addressed by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (hereinafter referred to as "UN Trafficking Protocol"), which contains a worldwide recognized definition as follows :-

Article 3

"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

⁵ Indonesian Country Report :Human Trafficking Dr. Harkristuti Harkrisnowo Universitas Indonesia Human Rights Center

to achieve the consent of a person having control of another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ;⁶

This Protocol provides a clear definition of trafficking in persons. The definition in Art. 3 (a) contains three distinct, but interconnected elements:

1. the recruitment, transport, transfer, harbouring or receipt of a person;
2. by use of threat, force, coercion, abduction, fraud or deception, abuse of power or a position of vulnerability or giving or receiving payments or benefits to achieve the consent of a person having control over another person;
3. for the purpose of the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, practices similar to slavery, servitude or the removal of organs.

Art. 3 (b) stipulates that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means mentioned above is used, whereas Art. 3 (c) states that the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation should be considered "trafficking in persons" even if this does not involve any of the means mentioned above, meaning that coercion is not required to consider a child as being trafficked.⁷

In Pakistan, prior to Prevention & Control of Human Trafficking Ordinance 2002, there was no specific law to deal with the offences related to human trafficking except Article 11 (slavery, forced labour, etc prohibited) of the Constitution of Pakistan. Various local laws were being applied against culprits involved.

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime

⁷ Report of the Experts Group on Trafficking in Human Beings (Brussels, 22 December 2004)

Prevention & Control of Human Trafficking Ordinance 2002 clearly differentiates trafficking from other offences and define it as follows :-

“Human trafficking means obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person”’s subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes laid down by law”

Formula used by the Interpol for example, clearly define the following as:⁸

All act and attempted acts involved in the recruitment:

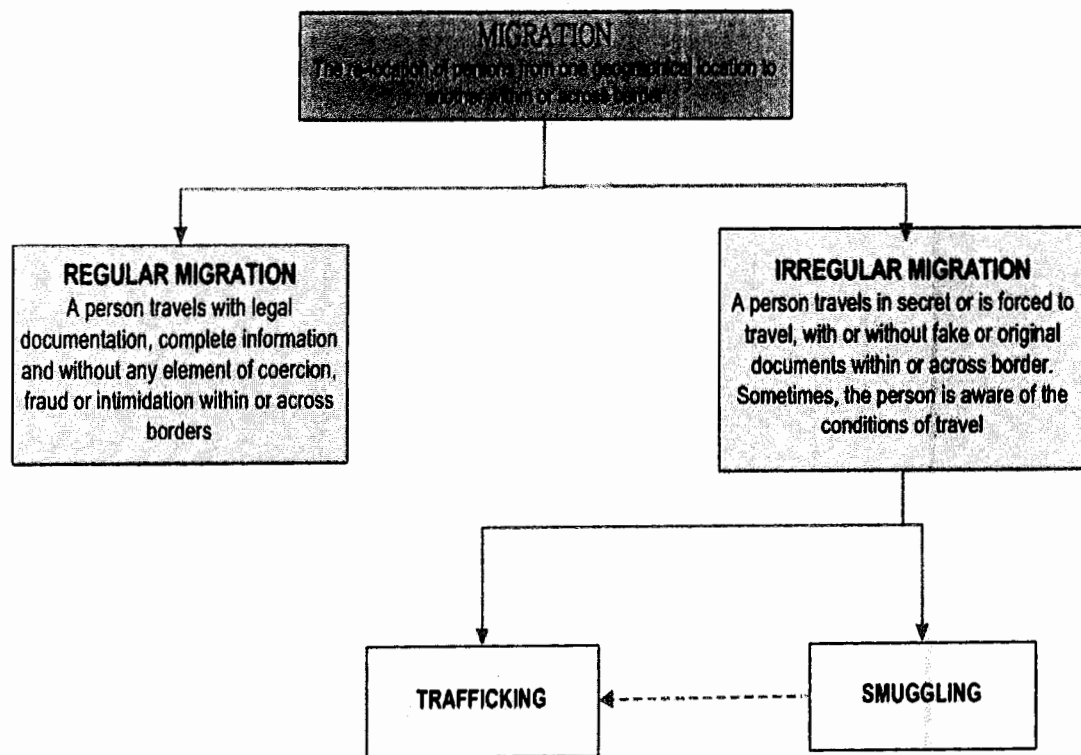
1. Transportation within or across borders Purchase, sale
2. Transfer, receipt or harboring of a person
3. Involving the use of deception
4. Coercion (including the use or threat of force of abuse of authority)
5. Or debt bondage for the purpose of placing or holding such person
6. Whether for pay or not
7. In voluntary servitude (domestic, sexual or reproductive)
8. In forced or bonded labor, or in slavery-like conditions
9. In a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage

1.2 Difference between trafficking and smuggling of human

The clear distinction is made in the Convention between trafficking of human beings and smuggling of migrants, The purpose of smuggling is the illegal crossing of borders, whereas the aim of trafficking is the exploitation of the trafficked person. In other words, smuggling concerns primarily the protection of the State against illegal migration, while trafficking primarily concerns the protection of the individual person against exploitation and abuse. A

⁸ Indonesian Country Report :Human Trafficking Dr. Harkristuti Harkrisnowo Universitas Indonesia Human Rights Center

protection of the individual person against exploitation and abuse. A distinguishing criterion, therefore, between smuggling and trafficking is the existence of a victim, that is, a person whose individual rights have been violated. The offence of smuggling, on the contrary, as such does not violate individual rights but the political interest of the State whose borders are violated. However, often smuggled persons are themselves victims of human rights violation, for example the right to life. More problematically, at the time of movement it is often unclear whether a person is trafficked or smuggled. Neither the victims themselves, nor border officials, may know the ultimate purpose for which the person is moving, nor the ultimate conditions they will find themselves in.



1.3 The element of movement and distinction between trafficking & smuggling.

Unsurprisingly States, in their desire to maintain border controls, have tended to concentrate on the transportation and movement elements of the definition of

restrictive immigration and border control regimes. Yet this is inherently problematic, as at the time of transportation, movement, or border crossing, it is unlikely that the purpose for which the movement is occurring, i.e. exploitation will be clear. Indeed often a person may move between a number of different people and in a number of different situations. People may enter a country legally, but subsequently become trafficked. It is only at the point of outcome, when the person reaches exploitation, that it can be clear that trafficking has taken place. Until such point, movement may be for other (legitimate or illegitimate) reasons.

Concentration solely or strongly on the movement elements of the Trafficking Protocol is also problematic when trying to address the forced labour or slavery like outcomes of trafficking. Recent International Labor Organization (ILO) research has assessed why migrants have ended up in forced labor situations. The research demonstrates that not in all cases have victims been trafficked as traditionally understood (i.e. through a web of transport, international agents, etc.). In some cases migrants have entered by other means and ended up. Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit of the illegal entry of a person into a State Party of which the person is not a national or permanent resident."

During the last 12 month there have been many poignant examples of migrants found dead, suffocated in containers or in trains, drowned crossing the sea or just killed by their smugglers to avoid police action. For example, individuals may legally enter as spouses, students, tourists or domestic workers and then be subjected to forced labor or slavery-like conditions. In this case they often only become illegal when they remove themselves from the power of their husbands or employers. in forced labor or slavery like conditions. For instance, they might be smuggled into the country or have entered as illegal migrants and only at the other side of the border are they recruited and moved into forced labor situations.

This begs two questions. Firstly, how had the non trafficked forced laborers got into that situation? One could argue that on a legal interpretation of Article 3(a) of the Protocol any transportation, harbouring or receipt, etc. – for example the transportation of a worker from their place of sleep to the work place or the receipt of a worker to exploit his or her forced labor or services could be considered as trafficking. And, secondly, what is the use of the Trafficking Protocol if it seemingly makes these distinctions between forced labourers, simply on the basis of elements of movements, harbouring, etc. What this makes clear is that such distinctions are utterly problematic when trying to consider policy interventions to prevent either trafficking or forced labour or services. Finally, concentration on the movement element and thereby border controls, while understandable, has led to cases of restrictive border controls for those who may otherwise be freely able to move, and to confusion between trafficking, smuggling and illegal immigration. For many migrants, "trafficking" is perceived as an anti migrant framework that hinders, not assists in protection of their rights.⁹

1.4 Contributing Factors of human Trafficking in Asia¹⁰

- Poverty
- Unemployment
- Conflict
- Low levels of education
- Natural disasters
- Family and social pressures
- Corrupt governments

1.5 Patterns of Human Trafficking

⁹ Report of the Experts Group on Trafficking in Human Beings (Brussels, 22 December 2004)

¹⁰ Ricardo Wyngaard February 2006 Combating Human Trafficking: A Call to Regulate the Recruitment Industry

1.5.1 False promises:

- Work
- Study
- Marriage
- Kidnapped

1.5.2 Done by:

- Relatives
- Long-distance Truckers
- Business women
- Tourists

1.6 Purposes for Human Trafficking:

- Sexual Exploitation
- Forced Labor
- Slavery
- Organ removal
- Drug couriers

1.7 Types of trafficking

It is vital that all forms of trafficking be discussed when considering potential methods of Combating human trafficking. Trafficking is not limited to prostitution; it embodies many forms of slavery. It must not be forgotten that in Belgrade, women and girls are still being sold to the highest bidder at auctions where they are stripped of their clothes and inspected like cattle.¹¹ This is only one of the numerous forms of trafficking existing today In New York, thirty Thai women were locked into the upper floors of a building used as a brothel. Iron bars fastened the windows and armored gates blocked any opportunity of exit to the street. At the trial of the brothel owner she testified that she had legitimately bought the women, paying between \$6,000 and \$15,000 for each.¹² In 1995 Greek

¹¹ United States Government, Foreign Gov. Complicity, 6

¹² Ehrenreich, 227

authorities arrested a number of Greek policemen who were running foreign "call-girl" trafficking rings in Greece. Russian and Eastern European women were lured into coming to Greece with promises of a better life. Upon their arrival, their passports were taken away and they were sold to the nightclub owners. These women were forced to prostitute themselves.¹³

Trafficking also includes 'mail order brides.' It is common for women that want to migrate to become the "products" of a bridal agency, as many women are attracted to this arrangement because they believe all foreigners are wealthy. These agencies act as a "middleman" by presenting the women to potential clients. When the deal is finalized, and the man has chosen a woman, the woman goes to the country of the foreigner as his wife. Sometimes the women find that instead of marriage, they have been sold on to other agents or employers in the country of destination.

Trafficking of course involves enslavement in sweatshops. In August 1995, a group of 68 Thai workers, mainly women, were found imprisoned in a garment factory in the USA. Many of them had been captive for years. They often worked 20 per hour days, for wages that were 25 percent of the legal minimum¹⁴. So it is noticed that there are types of trafficking. Following are the common types of Human Trafficking :-

1.7.1 Sexual Exploitation

- Prostitution
- Pornography
- Bride trafficking
- Commercial abuse of children
- Massage parlors, hostess clubs, brothels, escort services, commercial Phone sex & internet dating
- Exotic dancing/stripping

¹³ Kyle, 178

¹⁴ Human Trafficking: A Violation of Human Rights, A Universal Issue Monica Esquibel Florida State University (Social Sciences - International Affairs)

1.7.2 Forced Labor



- Domestic servitude (domestic work & child care)
- Manual labor
 - small-scale factory work
 - construction work
 - sweatshops & farms of multinational corps
 - agricultural & landscape work
- Restaurants
- Nail salons
- Hotel housekeeping
- False adoption
- Drug trade
- Street begging
- Camel jockeys

- Child soldiers
- Organ harvesting

1.8 Methods to Ensnare People

The tactics used to recruit, transport, and exploit victims remain similar.

- In most cases, women and children are lured with promises of employment or educational opportunities abroad.
- Contemporary trafficking relies to a greater extent on deception and false promises.
- Some victims responded to advertisements in the belief that they would secure a good job in a new country.
- Others were sold by family members, friends or a family friend into the modern equivalent of slavery.

1.9 Methods to recruit people

- Traffickers usually make use of advertisements in which they offer work at, e.g. a health club or restaurant (usually in another province)
- These women's traveling expenses and accommodation costs are provided and on arrival at the place of destination, they are informed that they will also be required to work in the sex industry.
- The recruitment of teenage girls between 15 and 18 years of age into the sex industry happens through newspaper adverts such as the following:
- Actors/dancers/singers wanted. Experience not necessary (telephone number provided)

1.10 Brief history of Anti trafficking

Conventional wisdom assumes that slavery, like smallpox, has been eradicated. This, unfortunately, is not true, as the most recent publication of the U.S. State Department's *Trafficking in Human Persons Report* makes abundantly clear. Criminal human trafficking and the modern slave trade have merely adapted to

the new international economic environment, and both are now flourishing. An estimate by the American non-profit organization Free the Slaves puts the number of persons worldwide living in slavery at 27 million, mostly in poor and developing states.

Islam is the only system of life that forbid the Human trafficking & Human slavery 1500 Hundred years ago. In the last sermon Holy prophet categorically forbid the slavery now which is in form of Human Trafficking. Human trafficking recently has been attracting the public's attention, both in terms local or international. Various efforts were done to prevent the practice of human trafficking. The law has been formed to prevent and address human trafficking. But it continues to develop, especially women and children trafficking.

In the eighteenth and nineteenth centuries in Europe several philosophers proposed the concept of "natural rights," rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group. This concept was vigorously debated and rejected by some philosophers as baseless. Others saw it as a formulation of the underlying principle on which all ideas of citizens' rights and political and religious liberty were based.

In the late 1700s two revolutions occurred which drew heavily on this concept. In 1776 most of the British colonies in North America proclaimed their independence from the British Empire in a document which still stirs feelings, and debate, the U.S. Declaration of Independence.

The concept of human rights has existed under several names in European thought for many centuries, at least since the time of King John of England. After the king violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, or Great Charter, which enumerates a number of what later came to be thought of as human rights. We hold these truths to be self-evident; that all men are created

equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

In 1789 the people of France overthrew their monarchy and established the first French Republic. Out of the revolution came the "Declaration of the Rights of Man." The middle and late 19th century saw a number of issues take center stage, many of them issues we in the late 20th century would consider human rights issues. They included slavery, serfdom, brutal working conditions, starvation wages, child labor, and, in the Americas, the "Indian Problem", as it was known at the time. In the United States, a bloody war over slavery came close to destroying a country founded only eighty years earlier on the premise that, "all men are created equal." Russia freed its serfs the year that war began. Neither the emancipated American slaves nor the freed Russian serfs saw any real degree of freedom or basic rights for many more decades.

In 1961 a group of lawyers, journalists, writers, and others, offended and frustrated by the sentencing of two Portuguese college students to twenty years in prison for having raised their glasses in a toast to "freedom" in a bar, formed Appeal for Amnesty, 1961. The appeal was announced on May 28 in the London Observer's Sunday Supplement. The appeal told the stories of six "prisoners of conscience" from different countries and of different political and religious backgrounds, all jailed for peacefully expressing their political or religious beliefs, and called on governments everywhere to free such prisoners. It set forth a simple plan of action, calling for strictly impartial, non-partisan appeals to be made on behalf of these prisoners and any who, like them, had been imprisoned for peacefully expressed beliefs. The response to this appeal was larger than anyone had expected. The one-year appeal grew, was extended beyond the year, and Amnesty International and the modern human rights movement were both born.

The biggest lesson Amnesty learned, and for many the distinguishing feature of the organization, however, was to stick to what it knew and not go outside its

mandate. A lot of people found this too restrictive. Many pro-democracy advocates were extremely upset when the organization dropped Nelson Mandela (at the time a black South African anti-apartheid activist in jail on trumped-up murder charges) from its list of adopted prisoners, because of his endorsing a violent struggle against apartheid. Others were upset that Amnesty would not criticize any form of government, even one which (like Soviet-style Communism, or Franco-style fascism) appeared inherently abusive and incompatible with respect for basic human rights. Many activists simply felt that human rights could be better served by a broader field of action.

Over the years combinations of these concerns and others led to formation of other human rights groups. Among them were groups which later merged to form Human Rights Watch, the first of them being Helsinki Watch in 1978. Regional human rights watchdog groups often operated under extremely difficult conditions, especially those in the Soviet Block. Helsinki Watch, which later merged with other groups to form Human Rights Watch, started as a few Russian activists who formed to monitor the Soviet Union's compliance with the human rights provisions in the Helsinki accords. Many of its members were arrested shortly after it was formed and had little chance to be active. Other regional groups formed after military takeovers in Chile in 1973, in East Timor in 1975, in Argentina in 1976, and after the Chinese Democracy Wall Movement in 1979.

Although there were differences in philosophy, focus, and tactics between the groups, for the most part they remained on speaking terms, and a number of human rights activists belonged to more than one. Recognition for the human rights movement, and Amnesty International in particular, grew during the 1970s. Amnesty gained permanent observer status as an NGO at the United Nations. Its reports became mandatory reading in legislatures, state departments and foreign ministries around the world. Its press releases received respectful attention, even when its recommendations were ignored by the governments involved. In 1977 it was awarded the Nobel Peace prize for its work.

Unfortunately, the Nobel Peace Prize didn't impress the governments Amnesty most wanted to get through to. That year the Argentine military dictatorship reportedly claimed that Amnesty was a front organization for the Soviet KGB. This supposedly occurred the same week that the Soviet government claimed Amnesty was run by the U.S. CIA, to the amusement of human rights activists and, presumably, embarrassment of certain people in Argentina and the Soviet Union. Following is the development of international law on Human trafficking in bullet form:-

- **1904** international Agreement for the Suppression of White slave traffic
- **1910** International convention for the Suppression of White slave traffic
- **1921** International convention for the Suppression of traffic in Women & Children
- **1933** International convention for the Suppression of traffic in Women of full age.
- **1949** Convention for the Suppression of the traffic in Persons and of the Exploitation of the Prostitution of others.
- **1975** Convention on the Elimination of All Forms of Discrimination against Women.
- **1989** Convention on the Right of the Child.
- **2000** Convention Against Transnational Organized Crime Protocol to Prevent, Suppress, and Punish Trafficking in Person, Especially Women and Children.
- **2002 (In Pakistan)** Prevention & Control of Human Trafficking Ordinance (P &CHTO) 2002

1.11 Root Causes of Human Trafficking

The increase in international trade and competition creates the demand for cheap labor and higher profits, leading to shockingly extensive exploitation of labor. The practices of the patriarchal societies that devalue women and children combined with the economic growth in many Third World countries

advocates a growth in the sexual exploitation industry. After World War II the world's population increased tri-fold, creating millions of disempowered people vulnerable to exploitation.¹⁵ Easy recruitment is the main cause of Human Trafficking :-

Easy recruitment of women and girls

- Poverty...
- Unemployment
- War
- Lack of opportunity or a promising future
- Love and security
- Eager for Western lifestyle

1.12 Why is Trafficking Growing So Rapidly

The trafficking in human beings is not new. But it is a rapidly growing problem. A number of factors have led to its expansion, such as the easy profits made from exploitation; growing deprivation and marginalization of the poor; discrimination against women; restrictive migration laws; a lack of information about the realities and dangers of trafficking and insufficient penalties against traffickers. Why is trafficking growing so rapidly? Kyle offers an answer to this question with the statement: "Efforts to keep down labor costs and remain competitive had intensified rural displacement and urban unemployment; at the same time, the spread of consumer culture created widespread demand among Third World populations for goods, such as televisions, computers, refrigerators, cars etc.

The global human trafficking industry is built on the foundation of the increased amount of hopeless immigrants, due to the increase of poverty levels, seeking economic opportunities beyond the borders of their home countries. The poor are forced into the arms of the traffickers, with whom they are given the opportunity of transportation into another country. Terry Coonan expounds on this idea by stating: "As legal immigration has likewise been restricted in recent

¹⁵ Human Trafficking: A Violation of Human Rights, A Universal Issue Monica Esquibel Florida State University (Social Sciences - International Affairs)

decades, the world's poor with an increasing feminine face are left with no recourse but to depend on smugglers and human traffickers to negotiate borders and locate work far from home."

As resources and work options deteriorate, people become increasingly desperate, in which case- "life becomes cheap." As stated by Kevin Bales: "Because the political elites in the developing world focus on economic growth, which is not just in their collective self-interest but required by global financial institutions, little attention is paid to sustainable livelihoods for the majority." So this leaves the developing world with the livelihood of the rich increasing substantially, while the livelihood of the poor diminishes greatly. This is supply and demand at its finest: with such a wide supply of possible slaves, their value has plummeted.¹⁶ Buying a slave is no longer a major investment, slave holders today are able to squeeze the work out of the slave, and then simply throw them away, discarding them like yesterday's trash. This new "disposability" has dramatically increased the profitability of the slave decreasing the length of time the person would be enslaved. "Today slaves cost so little that it is not worth the hassle of securing permanent ownership. Slaves are disposable."¹⁷ The decrease in the length of time a person can be enslaved in turn increases the amount of people being enslaved.

As people are currently viewed as relatively inexpensive "commodities," the death of a slave is no longer considered a grave loss to the business. The type of slavery that is prevalent today has evolved from the ideal of labor without compensation. Modern-day slavery involves the widespread use of coercion; a coercion that is "physical, psychological or cultural," in an effort to control a person entirely.¹⁸ As stated by Defeis: "Poor economic and social conditions combined with little to no domestic and international punishment for trafficking has formed a breeding-ground for the 'highly lucrative practice' of trafficking in

¹⁶ Bales, 12-13

¹⁷ Bales, 13-14

¹⁸ CAHR, 15

persons.”¹⁹ Kyle suggests that by shifting the focus on the nature of the economic enterprise which spans multiple countries, rather than the degree to which a migrant agreed to be smuggled, we can gain a better understanding of what is at stake for those who are benefiting from smuggling operations, whether directly or indirectly, and also a deeper understanding of their different economic logics, which could lead to more appropriate policies that go beyond capturing the immediate perpetrators, and instead focus on the multiple levels of benefactors.²⁰

Human trafficking persists because of many reasons. The Center of Advancement of Human Rights points out that human trafficking is profitable and relatively low-risk, and people support it unknowingly by buying slave-labored goods. Also, human trafficking continues to persist because many of the victims of trafficking may not know their rights or of the laws and services that can help them.²¹ The increase in human trafficking is disputed to be in direct correlation with the increase of concentration on illegal immigration.

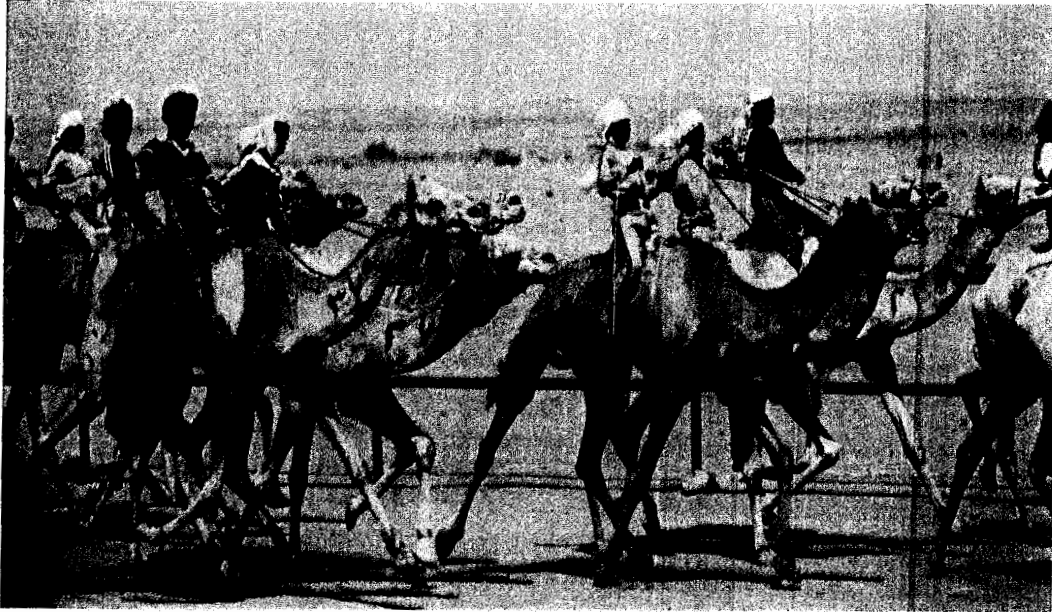
Kyle mentions that the continued state reliance on deportation, as a means of controlling illegal immigration, does nothing to diminish the traffic and instead makes the victims of trafficking less likely to report their situation and more dependent upon traffickers and pimps. With the increase in border enforcement, the need for a “professional” smuggler has grown. The demand for a professional smuggler combined with the risks acquainted with increased border enforcement equals an increase in the price of smuggling. As people continue to desire migration and immigration controls remain strict, this business will continue to exist. Because there are such high profits to be found in the smuggling business there will continue to be smugglers willing to continue the hazardous and illegal profession.

¹⁹ Defies

²⁰ Kyle, 34

²¹ CAHR, 15

1.13 Trafficking of Children as Camel Jockey



Camel racing was a traditional desert sport of Beduin tribes. Today, the desert racing rules have been modified for modern racetracks. The unfortunate aspect of this sport is the usage of innocent children as camel jockeys in these races. UNICEF and non-government campaigners say the children often die or are severely injured as they are tied to the camel's back of scare the camel into running faster. The ages to these children are between 5 to 12 years.

These innocent camel jockeys were trafficked from various countries of Asia to UAE by the human traffickers, who were either kidnapped by these traffickers or poor parents present their children for some money. The countries like India, Bangladesh and Pakistan have been targets for these human traffickers.

The situation is quite worse for Pakistan as in the recent past hundreds of children were trafficked to UAE for these races to be used as camel jockeys. Analysis of the information transpired that most of these children belong to Districts Rahimyar Khan and Bahawalpur. Both the districts comprise of desert areas.

Districts Rahimyar Khan and Bahawalpur. Both the districts comprise of desert areas.

1.13.1 Reasons

- Geographical and climatic similarities of both countries i.e. UAE and Pakistan, especially desert conditions of District Rahimyar Khan and Bahawalpur.
- Children of these localities are more familiar with camel riding.
- Poverty.
- Unemployment and lack of opportunities.
- Contacts of UAE nationals with the inhabitants of above two Districts.
- Ignorance of trafficking consequences for camel races.

1.13.2 Modus Operandi

The modus operandi of smuggling of the children is as under:-

- Most of the children were smuggled by Agents with fake parents. In this regard, they firstly prepare Nikah Nama, Birth Certificate, "B" Form and get endorsed those children on fake mother's passports.
- In some cases the real parent's smuggle their own children. Agents only facilitate them to get documents and visa etc.
- The real parents arranged Ziarat Visa of Iran and trafficked the children via Quetta – Iran and ultimately reach UAE.

1.13.3 Present Situation of Camel Jockeys

The UAE Government has banned the use of children as Camel Jockeys below 45 Kg in weight and 14 years of age. During the year 2005, 185 camel jockey children have been deported from UAE. Among them 101 children have been handed over to their parents and 84 are still in the custody of Child Protection and Welfare Bureau Government of Punjab, Lahore. Up till now, 69 cases have been registered in FIA, Passport Circle, Lahore during the year 2005.

In these cases 34 Fathers and 15 Mothers have been arrested as facilitators. During investigation, 3 agents and 3 sub-agents were also arrested and they are still in Judicial Lockup. Reportedly two agents have expired, while all the

facilitators are on bail. Few identified agents are still at large. Cases are under investigation and up till now challans in 25 cases have been submitted in the trial court. No accused has been convicted or acquitted.

1.14 Steps Taken by FIA

- Establishment of Anti Trafficking Units for investigation of Human Trafficking cases, especially camel jockey.
- Preparation and updating of database of Human Traffickers.
- Speedy trial of cases registered against Human Traffickers.

1.15 Problems

- Facilitators/Parents do not disclose the complete facts and particulars of agents.
- Shortage of staff and vehicles.

Recently a special team was deputed to arrest the notorious agents involved in this heinous offence. The team visited different localities of District Rahimyar Khan, Dera Ghazi Khan and Multan to arrest the culprits but unfortunately due to incomplete/fake addresses of the agents provided by facilitators desired results could not be achieved.

1.16 Role of Punjab Government & UNICEF

UNICEF and Government of Punjab in collaboration with OPF are helping and coordinating the repatriation of Camel Jockeys from UAE to Pakistan. Government of Punjab has set up a Child Protection and Welfare Bureau where these children are stationed. These children are handed over to the parents by the competent court as per law.

1.17 Further Steps

Sources and intelligence network has been spread especially focusing Rahimyar Khan, Dera Ghazi Khan, Bahawalpur and Multan Districts. This will help to unearth agents whose addresses are incomplete and parents are reluctant to

disclose the facts. All the staff/officers posted at Immigration Check-posts have been briefed to keep an eye on the profile of down trodden ladies accompanying children bound for UAE.

Special emphasis is being given to the illegal trafficking through Pak – Iran border. For this purpose a close liaison has been established with the agencies like F.C., Coast Guards, Levies, and District Police, as envisaged under the charter of Task Force established for this purpose under the Director General FIA.

1.18 P & C H T Ordinance 2002 & Camel Jockeys ²²

According to the Prevention & Control of Human Trafficking Ordinance 2002 "Obtaining, Securing, Selling, Purchasing, Recruiting, Detaining, Harboring or Receiving a person notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction or by giving or receiving any payment or benefit or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the following purposes constitute human trafficking:-

- Attaining any benefits.
- Exploitative Entertainment.
- Slavery.
- Forced Labour.
- Adoption.
- Plans to commit any offence.

²² Federal Investigation Agency - Govt. of Pakistan

Chapter No. 2

Review/survey of the existing literature



Cutting of the Pakistani News Papers

2.1 Background

Human trafficking is a growing problem throughout the world, and consists of three potential scenarios for people who are trafficked. One scenario involves people who pay traffickers to smuggle them across country borders illegally to

avoid immigration laws or for other reasons. Sometimes their journey ends when they safely arrive in their destination, however, in scenario two, many people are victimized by their smugglers and forced to pay thousands of dollars more or work off an additional extra and unexpected payment in sweatshops or brothels, as domestic help or even as agriculture workers. A third scenario involves individuals who are captured, moved, sold, or in general held against their will as slaves for all types of forced labor. All three scenarios occur throughout the world, including in the United States.(Department of State 2003)

Global trafficking networks are typically comprised of large crime organizations, smuggling rings, and loosely associated individuals, with human trafficking as the third largest profit venture by criminal organizations, behind drugs and guns.(Miko and Park 2002) According to a 2003 State Department report, organized crime groups view trafficking in women as a new source of business strength for the organizations (Department of State 2003). Women and children are bought and kept for prostitution businesses that are highly profitable because there are very few expenses after the women have been trafficked. A Los Angeles man arrested for using women trafficked from Asia as prostitutes in suburban brothel houses and apartments made \$460,000 from his prostitutes in only six months. In general, trafficking is a highly profitable practice. (Department of State 2003). Organized crime groups are drawn to trafficking because they can often earn money from both the initial transaction, in which they obtain and sell a person, as well as taking a percentage from that person's earnings from the actual labor (Department of State 2003). Trafficking cases are difficult to track because the crime usually occurs behind closed doors and victims are kept isolated from the outside world.²³

2.2 Last Sermon of Holy Prophet, a Comprehensive charter of Human Rights

This Sermon was delivered on the Ninth Day of Dhul Hijjah 10 A.H in the Uranah Valley of mount Arafat.

²³ Marci McCoy, M.A. University of Pennsylvania, 200 Advisor: Oscar H. Gandy, Jr.

"O People, lend me an attentive ear, for I don't know whether, after this year, I shall ever be amongst you again. Therefore listen to what I am saying to you carefully and take these words to those who could not be present here today.

*O People, just as you regard this month, this day, this city as Sacred, so regard the life and property of every Muslim as a sacred trust. Return the goods entrusted to you to their rightful owners. **Hurt no one so that no one may hurt you.** Remember that you will indeed meet your Lord, and that He will indeed reckon your deeds. Allah has forbidden you to take usury (Interest), therefore all interest obligation shall henceforth be waived. Beware of Satan, for your safety of your religion. He has lost all hope that he will ever be able to lead you astray in big things, so beware of following him in small things.*

*O People, **it is true that you have certain rights with regard to your women, but they also have right over you.** If they abide by your right then to them belongs the right to be fed and clothed in kindness. Do treat your women well and be kind to them for they are your partners and committed helpers. And it is your right that they do not make friends with any one of whom you do not approve, as well as never to commit adultery.*

*O People, listen to me in earnest, worship Allah, say your five daily prayers (Salah), fast during the month of Ramadhan, and give your wealth in Zakat. Perform Hajj if you can afford to. You know that every Muslim is the brother of another Muslim. **You are all equal. Nobody has superiority over other except by piety and good action.** Remember, one day you will appear before Allah and answer for your deeds. So beware, do not stray from the path of righteousness after I am gone.*

O People, no prophet or apostle will come after me and no new faith will be born.

Reason well, therefore, O People, and understand my words which I convey to you. I leave behind me two things, the Qur'an and my example, the Sunnah and if you follow these you will never go astray.

All those who listen to me shall pass on my words to others and those to others again; and may the last ones understand my words better than those who listen to me directly.

Be my witness oh Allah that I have conveyed your message to your people."

The sermon of the Holy Prophet is not only remarkable for its eloquence, but it contains a sublime message for the whole of the human race. It was a declaration of Human Rights and moral values, a charter of Women Rights. The world has not been able to lay down better principles of ethics and morality than those enunciated in it. Every word of it breathes a spirit of magnanimity and aims at establishing righteousness and fair dealing among men on a workable basis.

Man is then reminded of his duty towards his female counterparts (wife, sister, daughter, etc). Although man is quicker to assert his rights in such relations, he must not forget that his wife has also got rights over him, that Almighty ALLAH has ordained. He will be sinful if he is neglectful in any of his obligations. Women share both the happiness and sadness of man and provide him support. They are thus committed helpers to his cause and as such must command respect, justice and good treatment. The example of the Holy Prophet (Peace be upon him) should serve as a constant reminder of the high standard of behavior expected from true Muslims in such relations.

2.3 Law perspective and human rights regarding human trafficking

INTERNATIONAL INSTRUMENT

There are several international instruments linked to the human trafficking issues.

They are:

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Rights of the Child and its relevant Optional Protocol;

- Convention Concerning the Prohibition and Immediate Action for the Elimination of All forms of Discrimination against Women;
- United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons especially Women and Children supplementing the Convention against Transnational Organized Crime;
- SAARC Convention on Combating Trafficking in Women and Children for Prostitution.

2.3.1 Universal Declaration of Human Rights;

Article 4 of Universal Declaration of Human Rights (UDHR) mentioned that
"No one shall be held in slavery or servitude; slavery and the slave trade shall be Prohibited in all their forms."

Other provision in article 4 clearly prohibited slavery and trade slave.

2.3.2 International Covenant on Civil and Political Rights;

Restriction to slavery is also found in The International Covenant on Civil and Political Rights (ICCPR). Within different word but similar in meaning to article 4 (UDHR), Article 8 (ICCPR) clearly mentioned that

- 76A-6449
1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
 2. No one shall be held in servitude.
 - 3.(a). No one shall be required to perform forced or compulsory labour;
 - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful

order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Therefore it is clear that slavery is prohibited. UDHR and ICCPR did not explain the word "slavery". "Slavery" in Convention of Slavery is "the status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised". The word means buying, selling, and transporting people, directly or indirectly, for the purpose of exploitation to obtain material benefit. International Humanitarian Law, are against and prohibit all forms of "slavery". The issues that related to "slavery" are being qualified as an international crime, along with war crime and crimes against humanity. Therefore, the issue has become a major issue for every country to set up their national law to combat and prevent it, even in war situation or conflict. International growth has brought slavery to be international issue. Slavery has become jus cogens²⁴. International Criminal Tribunal for The Former Yugoslavia (ICTY) has decided that enslavement is classified as "crimes against humanity". Similar to International Criminal Court (ICC) Statute, enslavement and sexual slavery are considered as criminal activities. ICC translate the word enslavement as the exercise of any or all of the powers attaching to the right of ownership over a person"²⁵. This include the exercise of such power in the course of trafficking

²⁴ Meaning a norm accepted and recognized by the international community as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" Article 53 Vienna Convention.

²⁵ Article 7 (2) © International Criminal Court.

persons, in particular women and children.²⁶ As for sexual slavery, ICC limit the word as follows²⁷:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as purchasing, selling, landing, or bartering such a person or by imposing on them a similar deprivation of liberty.
2. The perpetrator caused such person or persons to engage in or more acts of sexual nature. Aside the issue related to slavery, there are several international instruments that protect women and children.

2.3.3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a convention to protect women against all forms of violence, which might be experience by a woman.

In article 6, it is clearly stated that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. The provision set in article 6 is a call for countries to pay more attention to human trafficking issues, in particular women. The provision in article 6 CEDAW indicates that traffic in woman and prostitution of woman is against humanity and very dangerous to such persons, family and community. Consequently, the countries participated in CEDAW has to give criminal sanction to perpetrator exercised:

- (1). Seeking, transporting, or asking other person or persons, in order to engage in prostitution activities, even under the consent of the person or persons;
- (2). Exploitation other person or persons in prostitution, even under the consent of the person or persons. CEDAW has limited the job that can be done by women.

In article 11, it clearly stated that:

²⁶ Consideration of the Issue of Trafficking, Background Paper, 11-12 Nov, 2002. New Delhi,

²⁷ Ibid.

1. States Parties shall take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular
- (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeship, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, invalidity in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2.3.4 ILO Convention No. 29/1930

ILO Convention No. 29/1930 put the meaning of force or compulsory labor as all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily. More than 25 years later, ILO has agreed to add another instrument, which is called as Abolition of Forced Labor Convention No. 157 (1957). That convention explained clearly that suppression of forced labor means political coercion, labor discipline, or racial, national or religious discrimination; as a method of mobilizing and using labor for purposes of economic development; and as punishment for having

participated in strikes”²⁸.18 Issues related to children is also caught the concern from international attention.

2.3.5 Convention on the Rights of the Child (CRC)

Issues related to children labor force, children trafficking, and children pornography are the issues that need to be addressed immediately. In short, all kinds of children exploitation need to get top priority from all over the world. Convention on the Rights of the Child (CRC) is one of conventions that control things related to child protection.

Article 1 of this convention mention that “child” means “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Due to this provision, subsequently every country should pay attention to any forms of violence to children.

Article 19 clearly explained that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any person who has the care of the child.

Article 34: Addressed exploitative use of children in pornographic performance that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performance and materials.

²⁸ Force Labor, Child Labor and Human Trafficking In Europe; An ILO Perspective, Technical Paper for the UE.IOM STOP “European Conference on Preventing and Combating Trafficking in Human Beings”, 18 – 20 September 2002, Brussels, Belgium.

Article 35: In this article, it is mentioned that

"States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any aspects of the child's welfare". Judging from the provision in CRC it showed that CRC does not a complete rule regarding children protection. A child should be protected from all kinds of economic exploitation, sexual exploitation, or all forms of "sexual abuse"²⁹. All the weaknesses found in CRC then were added with the Optional Protocol to the Convention on the Rights of the Child. The Protocol expands the interpretation related to "sale of child", "child prostitution", and "child pornography". Restrictions for "trafficking" and children exploitation are getting attention in ILO Convention on the Worst Form of Child Labor. Related to child labor, ILO has agreed an instrument regarding Minimum Age Convention No. 138. Along with the growth of child labor, therefore Worst Forms of Child Labor Convention No. 182 was formed in 1999. Worst Forms of Child Labor in interpreted as all forms of slavery or practices similar to slavery, such as the sale and trafficking in children, debt bondage and selfdom and forced or compulsory labor, including forced or compulsory recruitment of children for armed conflict". International law has also given protection to individuals, as migrant or migrant workers. International instrument related to it is Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This convention stated "The right to life of migrant workers and members of their families shall be protected by law". Law protection shall not come from the recipient countries but also from migrant workers' country of origin. Protection to the migrant workers is an expansion of human rights that need to get law protection. The major issue now is illegal migrant worker, as proposed by Leonard M. Hammer that "the situation of illegal migrant workers is especially problematic, "exemplify[ing] the jurisdictional struggle between state sovereignty

²⁹ Ibid., p.39.

and its control over immigration versus obligation on the State to uphold the human rights of all individuals found within a State's territory.³⁰

Those rights clearly stated in Article 8, as follows: Migrant workers and members of their families shall be free to leave any State, including their state of origin. This right shall not be subject to any restriction except those that are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention. Apart from the right to be protected by law, migrant workers need to pay attention to several items in order to receive protection. Those are:

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labor. The Convention meant that all migrant workers are free from all forms of slavery and forces. States have to sentence a person or a group of persons who exercised violence to migrant workers. Having reviewed all of the explanation above, it is obvious that human trafficking issues are needed to be addressed together. Therefore, international organizations address the issue into international instruments.

2.3.6 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,

In article 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime, "trafficking" is being interpreted as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring 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

³⁰ Leonard M. Hammer, *Migrant Workers in Israel: Towards proposing a Framework of Eforceable Customary International Human Rights*, Netherland Quarterly of Human Rights, 1999, p. 5.

of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. Interpretation of "trafficking in persons" is differ to what so called "smuggling" which means:

"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident. From the above explanations we can see that there is a sharp difference between the interpretation of "trafficking in persons" and "smuggling". "Smuggling" is emphasizing more to the procurement of transporting illegal person(s) from one state into the other, which will benefit the "smuggler". In "smuggling" there is no indication of exploitation to such person(s). It is possible that there will be victims from the procurement of transporting such person(s), but it is not the main issue. The main issue of "smuggling" is transporting the person(s) illegally from one state to another. While "trafficking" aimed a specific target, which is the person(s) is the object of exploitation. Therefore, it involved the wish to exploit such person(s) from the beginning of the act. The elements of "deception" and "coercion" are essential to the issue of "trafficking in persons"²¹

2.3.7 Convention on the Rights of the Child and its Optional Protocol



Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The States Parties to the

present Protocol, Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography, Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography, Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography, Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited, Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry, Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunction families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviors, harmful traditional practices, armed conflicts and trafficking in children, Believing also that efforts to raise public awareness are needed to

reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level, Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Inter country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child, Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in: (a) The law of a State Party; (b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

2.4 REGIONAL LAWS

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution³¹ is aimed to prevent and combat women trafficking and children for prostitution. It is well aware that South Asia the number of women trafficking and children for prostitution is very high, done by well-organized syndicates. Subsequently, the State Parties in SAARC commit to combat and prevent such activities, by classified them into criminal acts as follows :-

2.4.1 SAARC Convention on Preventing and Combating Trafficking In Women and Children for Prostitution

The member states of the SAARC, parties to the present convention Emphasising that the evil of trafficking in women and children for the purpose of

³¹ SAARC was adopted in January 2002, among the state parties: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights; recalling the decision of the Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored; recalling also the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989;

Giving due regard to the implementation of the recommendations of the various pertinent International Bodies and Conferences including the Fourth World Conference on Women at Beijing (1995); noting with concern the increasing exploitation by traffickers of women and children from SAARC countries and their increasing use of these countries as sending, receiving and transit points; recognising in this regard the importance of establishing effective regional cooperation for preventing trafficking for prostitution and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking; emphasising the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking for prostitution; Have agreed as follows:

A r t i c l e - I I

Scope of the Convention

The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.

Article-III

Offences

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.
2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.
3. Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.

Article-IV

Aggravating Circumstances

1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.
 - a) the involvement in the offences of an organized criminal group to which the offender belongs;
 - b) the involvement of the offender in other international organized criminal activities;
 - c) the use of violence or arms by the offender;
 - d) the fact that the offender holds a public office and that the offence is committed in misuse of that office;
 - e) the victimization or trafficking of children;
 - f) the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social and cultural activities;

g) previous conviction, particularly for similar offences, whether in a Member State or any other country.

Article-V

Judicial Proceedings

In trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counseling and legal assistance. 3 of 5

Article-VI

Mutual Legal Assistance

1. The State Parties to the Convention shall grant to each other the widest measure of mutual legal assistance in respect of investigations, inquiries, trials or other proceedings in the requesting State in respect of offences under this Convention. Such assistance shall include:

(a) taking of evidence and obtaining of statements of persons; (b) provision of information, documents and other records including criminal and judicial records; (c) location of persons and objects including their identification; (d) search and seizures; (e) delivery of property including lending of exhibits; (f) making detained persons and others available to give evidence or assist investigations; (g) service of documents including documents seeking attendance of persons; and (h) any other assistance consistent with the objectives of this Convention.

2. Requests for assistance shall be executed promptly in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting State and shall give reasons for the same.

Article-VII

Extradition or Prosecution

1. The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereinafter be concluded, between any of the Parties to the Convention.

2. If a State Party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, the Requested State shall, if so permitted by its laws, consider this Convention as the basis for extradition in respect of the offences set forth in Article III.

3. Extradition shall be granted in accordance with the laws of the State to which the request is made.

4. The State Party in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of that State.

5. In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention shall be prosecuted and punished by their courts.

Article-VIII

Measures to Prevent and Interdict Trafficking in Women and Children

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.

2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children. 4 of 5

3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.

4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.

5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.

7. The State Parties to the Convention shall endeavor to focus preventive and development efforts on areas which are known to be source areas for trafficking.

8. The State Parties to the Convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in Women and Children and its underlying causes including the projection of negative images of women.

Article-IX

Care, Treatment, Rehabilitation and Repatriation of the Victims

1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.

2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.

3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counseling, job training and health care facilities for the victims.

4. The State Parties to the Convention may also authorize the recognized non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

5. The State Parties to the Convention shall encourage recognized non-governmental organizations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

2.5 DIRECT DOMESTIC LEGISLATION

The following Acts/Ordinances and Rules currently exist in Pakistan to regulate migration.

- NADRA Ordinance,
- Emigration Act 1922
- Emigration Ordinance, 1979 and Rules framed there under
- Foreigner's Act, 1946
- Foreigner's Ordinance, 1951
- Registration of Foreigner's Act, 1939
- Registration of Foreigner's Rules. 1966
- Pakistan Citizenship Act 1951 and Rules framed there under
- Naturalization Act, 1926 and Rules, 1961
- Passport Act, 1974 and Rules 1974
- Passport and Visa Manual
- The National Registration Act 1973 and rules 1975
- Pakistan Control of Entry Act, 1952
- The Exit from Pakistan (Control) Ordinance, 1981
- Prevention and Control of Human trafficking Ordinance 2002

Human trafficking is defined in Section 2 of the Prevention and Control of Human trafficking Ordinance 2002 as under:-

"Human Trafficking means obtaining, securing, selling, purchasing, recruiting, detaining, harboring or receiving a person, not with standing his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person's subsequent

transportation out of or into Pakistan by any means whatsoever for any of the purposes laid down by law.”

2.5.1 Prevention & Control of Human Trafficking Ordinance 2002

No specific law was existed prior to promulgation of P&CHTO 2002 to deal with the offences and the culprits relating to human trafficking. It was, therefore, considered expedient and necessary to provide effective measures to prevent offences related to the human trafficking and to protect and assist victims of such trafficking. Prevention & Control of Human Trafficking Ordinance (P&CHTO) was, therefore, promulgated in October 2002 in accordance with national and international requirements.

2.5.2 Salient Features

1. It clearly defines the offence of human trafficking and all of its forms and manifestations.(Section-2)
2. It provides a mechanism for the security and welfare of the victims of trafficking with the assistance of NGOs (Rule-4)
3. All offences under this ordinance have been declared as cognizable, non bailable & non compoundable. (Section-8)
4. It not only provides compensation to victims (Section-6) but also provide severe punishments against the offenders, repeaters and organized gangs which may extend to a maximum punishment of 14 years. (Section-3)

2.5.3 Rules

Government of Pakistan has also framed rules under P&CHTO in 2004 which provide guidelines to the law enforcing agencies for the following purposes:-

1. Investigation and prosecution under P&CHTO.
2. Security and welfare of the victims.
3. Referral of victims to shelter homes.

4. Association of NGOs for security & welfare of the victims and their rehabilitation.
5. Repatriation of victims to their country of origin.

2.5.4 Establishment of Anti Trafficking Unit

Human trafficking is the burning issue at national and international level. It is, therefore, being focused by the Government accordingly. A steering committee has been established in MOI to monitor and review combating efforts against human trafficking. Joint Secretary (Security) MOI has been declared as focal point for coordination and exchange of information. FIA being the lead Agency has established Special Unit to be called Anti Trafficking Unit (ATU) at FIA HQs to deal all matters relating to human trafficking more effectively. To ensure country wide coverage of human trafficking, sub units of ATU have also been established in all Zonal Directorates of FIA at Karachi, Lahore, Rawalpindi, Peshawar and Quetta.

2.5.5 Tasks of Anti Trafficking Unit

1. To Prevent & Protect victims of trafficking.
2. To investigate cases & prosecute culprits.
3. To build a data base of human traffickers.
4. To liaise with NAS of US Embassy, NGOs, Provincial Police etc.
5. To develop a referral mechanism for the transportation of victims to shelter homes and their repatriation to the country of their origin.

2.5.6 Targets

1. To target criminals exploiting the needy and put an end to Human Trafficking and smuggling.

2. To eradicate illegal immigration through authorized routes, where FIA immigration check posts are functional.
3. To establish additional immigration check-posts and passport Circles to control illegal immigration through Pak – Iran border and coastal areas of Balochistan where no immigration staff is deployed at present.
4. To launch effective campaign against the culprits involved in smuggling of camel jockeys to control their immoral and illegal activities.
5. To remove Pakistan from Tier-2 Watch List through successful arrest and convictions of human traffickers by effective application of P&CHTO 2002.

2.5.7 Achievements

FIA has registered as many as 747 enquiries and 850 cases against human traffickers during the year 2003 to February 2005. During this process 642 culprits involved in human trafficking have been arrested. After completion of investigation 316 cases have been sent to Court for trial purposes. 74 cases have been convicted so far and rest are under trial. Effective monitoring is being ensured to improve quantity and quality of the achievements under P&CHTO.

Chapter No. 3

Human Trafficking in Asia



3.1 Introduction

It is understood that Trafficking is now a primary concern of Governments. The phenomenon of human trafficking is today one of the major concerns of governments and organizations active in the field of migration, although as recently as ten years ago the term "human trafficking" was rarely referred to in migration policy debates. In Asia, as well, there is a general lack of hard data on this topic. However, it is possible to glean some valuable insights from studies on related activities (such as prostitution and sexual exploitation)³². These studies can frequently provide an indication of the scale of trafficking in the region. Although not comprehensive in scope or coverage, the following estimates do present convincing evidence of the existence of a growing trafficking problem in this part of the world as well:

- A UNICEF survey indicates that between 30 – 40 per cent of all sex workers in the Mekong sub-region are between the ages of 12 and 17;

³² Developing Better Indicators of Human Trafficking for Asia, Paper prepared for the "Expert Group Meeting on Prevention of International Trafficking", Seoul, Korea, September 22-23rd, 2003. By Frank Laczko and June J.H. Lee, IOM Research and Publications Division, Geneva.

- In Thailand, it was reported that almost 200,000 foreign children were trafficked into the country in 1996 for the purpose of exploitative child labour, including commercial sexual exploitation (UNICEF, 2001);
- An estimated 13,000 children have been trafficked out of Bangladesh in the last five years, and 300,000 Bangladeshi minors work in red light districts in India;³³
- Between 5,000 – 7,000 girls are trafficked annually from Nepal to India (UNICEF, 2001);
- and in a 1997 report, the UN Rapporteur on Violence Against Women stated that in some rural villages in China between 30 – 90 per cent of marriages resulted from trafficking, a demand created by the shortage of women available for marriage in some communities.

3.2 Patterns of human trafficking and route in Asia

The above list of statistics, with a lack of specifically commissioned research into this area, it is still possible to sketch out roughly the major trafficking patterns and routes prevalent in Asia. Although not precisely or rigorously studied, such overviews can still provide valuable information on the nature of this phenomena in Asia, and may prove useful when trying to organize effective cooperation among field practitioners and government officials in prevention programs, victim assistance, or prosecution efforts.

Trafficking in China occurs both at internal and international level. In the domestic market, young boys (mostly under seven) are sold for illegal adoption while young girls and women are abducted into prostitution or as brides for bachelors in rural communities where women are in short supply. Between 1996 and 1998, 10,503 women and children victims of domestic trafficking were rescued, while 14,709 traffickers were arrested.³⁴ As regards to external trafficking from China, Thailand and Cambodia appear to be the favoured

³³ Sanghera, J., *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead*. UNICEF/Save the Children, 2000.

³⁴ UNICEF, *Children on the Edge: Protecting Children from Sexual Exploitation and Trafficking in East Asia and the Pacific*, 2001.

countries of destinations within the region, in addition to other destinations including the Hong Kong Special Administrative Region (SAR) of China, Taiwan, Singapore, Malaysia, the Republic of Korea (South Korea), Japan and Australia. Victims usually end up in the sex industry. Furthermore, some of these locations also act as transit stations for eventual transportation to Europe or the United States. Inter-regionally speaking, trafficking victims within East Asia have been reported to originate from Thailand, Myanmar, Mongolia, North Korea, the Lao Peoples Democratic Republic (Laos), Vietnam and also Russia.

Other information related to trafficking within the region also indicates movement from China, South Korea, Thailand and Philippines to Japan, from the Philippines, Thailand and China to South Korea, and from South Korea to Japan and the United States. International trafficking routes have also been discerned with victims of trafficking from Colombia and Eastern Europe being found in Japan and well as some victims originating from Russia and Central Asia found in the Republic of Korea.

3.3 Destination and Origin in Asia

One of the most important recent developments in Asia vis-à-vis human trafficking is that Asia has emerged as much the origin as the destination of the phenomenon. Even when excluding Japan, the Republic of Korea, Malaysia, Hong Kong SAR, and Taiwan are now destinations of trafficked persons. While also being countries of origin, Thailand, India, Pakistan, Turkey, and several Gulf States, including United Arab Emirates, are also destination countries in and its neighbouring region.

Most countries are countries of origin, transit, and destination. Major receiving countries in the region are Brunei, Hong Kong SAR, Japan, Malaysia, and Republic of Korea. Hong Kong SAR is also a transit country, whereas Malaysia and South Korea have been reported as source countries as well. Bangladeshi and Nepal are reported to be sending countries. However, this does not mean

that in these countries are only either receiving or sending countries. It is quite possible that other related activities have not been widely reported.

3.4 Internal Trafficking

Internal trafficking is widely practised in South Asian countries, China, and in the Mekong region of the Southeast Asia. Indonesia is also frequently mentioned when discussing internal trafficking. In particular, bride trafficking or forced marriage, often involving young women, is said to be widespread in China as well as Nepal and Bangladesh. The United Nations Children's Fund stated in a 2001 report that in recent decades, more than 250,000 women and children have been victims of trafficking within China.

3.5 South Asia Efforts for Improvement in Anti-Trafficking

Three South Asian countries, Nepal, Bangladesh and Pakistan, received praise in the State Department's 2005 Trafficking in Persons Report for their significant efforts to confront the problem of human trafficking over the past year. Nepal and Bangladesh are both sources of women and children trafficked for the purposes of sexual exploitation, domestic servitude and forced labor. Pakistan is both a source and destination country for victims of trafficking. Women and girls from South and Central Asia are trafficked to Pakistan for sexual and domestic servitude while Pakistanis are trafficked to the Middle East for bonded labor. Both Bangladeshi and Pakistani boys are trafficked to the Arab Gulf countries to serve as camel jockeys for organized camel racing. The report also observed that internal trafficking takes place within each country, typically bringing rural women and children to cities in order to work as prostitutes, domestic servants and forced laborers.

The report groups countries into three "tiers," according to their efforts to combat the scourge. Tier 1 groups countries that are in compliance with the minimum standards of the Trafficking Victims Protection Act of 2000 (TVPA). Tier 2 includes countries that are not in compliance but are making efforts to comply. Tier 3 groups countries that are not making significant efforts to combat the problem. The 2005 report moved Nepal from a Tier 2 country to a Tier 1 country,

indicating that the Nepalese government is now in compliance with the minimum standards.

"Despite political and security challenges, the government has sustained its efforts to combat trafficking in persons. Nepal has a National Plan of Action to combat trafficking, a draft Human Trafficking Control Bill to strengthen its 1986 anti-trafficking law, and a National Rapporteur on trafficking," the report said. The report noted that the Nepalese government faces significant challenges in addressing the problem of human trafficking given the country's ongoing Maoist insurgency. It also noted that the Maoist insurgents are responsible for internal trafficking of children, whom they forcibly conscript into military service.

Nevertheless, the report calls the Nepalese government's law enforcement efforts "commendable" and says the government works well with nongovernmental organizations (NGOs) to provide protection and assistance for the victims. According to the report, the government has established anti-trafficking "vigilance committees" in high-priority districts, conducts mandatory "safe migration" orientation sessions for workers traveling abroad, and carries out national public awareness campaigns. Bangladesh improved its performance in combating trafficking, moving from a Tier 3 country to a Tier 2 country in the 2005 report, indicating that it has begun making efforts to comply with the minimum standards of the TVPA. "Over the last year, Bangladesh showed commendable progress in all areas of anti-trafficking efforts," the report stated. "Bangladesh established an inter-ministerial anti-trafficking committee to oversee its national efforts to combat trafficking, created a national anti-trafficking police monitoring unit with presence in all 64 districts, prosecuted an increased number of trafficking and trafficking-related corruption cases, rescued over 161 boys from servitude in the fishing industry, devised and launched a multi-faceted anti-trafficking public awareness campaign, and increased its cooperation with NGOs involved in the fight against trafficking." The report stated that Bangladesh continues to have difficulty confronting the trafficking problem due to generalized corruption of public officials who in many cases are complicit in the human trade.

Pakistan moved from the "watch list" to the "general list" within the tier-two category, indicating that its efforts to combat trafficking and meet the minimum standards of TVPA have become noticeably more effective over the past year. "Most notably, [Pakistan] has increased trafficking-related prosecutions and convictions, strengthened implementation of its 2002 Prevention and Control of Human Trafficking Ordinance, established an Anti-Trafficking Unit within the Federal Investigation Agency, and co-sponsored several public awareness campaigns," the report said.

The report noted that Pakistan obtained 72 convictions on trafficking crimes in 2004 compared to six in 2003. It also said that the Pakistani government has committed itself to providing resources for protection, shelter and repatriation of trafficking victims. Afghanistan and Sri Lanka remained in the Tier 2 category, indicating that they are working to confront their human-trafficking problems. India remained on the Tier 2 "watch list" due to its inability to show evidence of increased efforts to address the problem, and specifically its failure to empower a national law enforcement entity with an anti-trafficking mandate.

The State Department prepares the annual Trafficking in Persons Report in response to a congressional mandate. In presenting the 2005 report on June 3, Secretary of State Condoleezza Rice said, "The United States has a particular duty to fight this scourge because trafficking in persons is an affront to the principles of human dignity and liberty, upon which this nation was founded."

3.6 Human Trafficking Routes Through Pakistan & India

Pakistan is a country of origin, destination, and transit for trafficking in persons. Pakistani women and children are trafficked mainly to India and the Middle East. Boys are trafficked to the Gulf states, particularly the United Arab Emirates (UAE), as well as to Kuwait and Qatar.

Women and children from Afghanistan, Azerbaijan, Bangladesh, Iran, Myanmar, Nepal, the Philippines, Russia, Tajikistan, Thailand, and other countries of Central Asia are trafficked to Pakistan. According to some surveys,

Pakistan and oil-rich Arab states are the principal destinations of Bangladeshi children.³⁵ Pakistan is a country of transit for East Asians and Bangladeshis traveling westward to the Middle East. People are smuggled to Europe and the Middle East through Pakistan's remote border regions with Afghanistan and Iran.

3.7 Factors That Contribute to the Trafficking Infrastructure

Throughout South Asia, poverty, as well as the breakdown of traditional livelihoods, the lack of education and skills for women and children, natural disasters, the breakdown of families from war situations, the low social status of women, and gender-discriminating practices, contributes to the trafficking phenomenon.³⁶ Weak legislation and poor enforcement of trafficking laws are also cited as factors contributing to trafficking in the area.³⁷ Furthermore, there is a common superstition in the region that a sexual encounter with a virgin girl can rid a man of sexually transmitted disease; this belief fuels the demand for young girls.³⁸

More specifically in Pakistan, exploitative customary practices, economic instability, discriminatory laws, and a shortage of resources in the Interior Ministry for antitrafficking efforts are cited as factors that have induced traffickers to get involved in the trafficking business there.³⁹ Many wealthy Arabs own large farms in the desert area of the Punjab province, and from there boys are taken to work as camel jockeys in Arab countries.⁴⁰

3.8 Multilateral Initiatives

The South Asian Association for Regional Cooperation (SAARC) forum, founded in 1985, aims at promoting cultural ties and economic and social

³⁵ "Seven Foreigners Released after Being Detained on Suspicion of Child Trafficking," *Associated Press Worldstream*, 30 September 2002.

³⁶ "SAARC: CS Groups Demand Implementation of SAARC Convention on Human Trafficking," *Pakistan Newswire*, 2 January 2004.

³⁷ UNICEF, "UNICEF Welcomes Signing of Two Conventions on Children by South Asian leaders," press release, 5 January 2002.

³⁸ Debra Armentrout, "Child Trafficking Continues to Threaten Young Women in India," *Digital Freedom Network*, 15 November 2002.

³⁹ "Economic Instability Main Cause of Human Trafficking: Study," *Dawn*, 6 November 2002. See also "100 Human Trafficking Agents Arrested: FIA," *Pakistan Newswire*, 17 November 2003.

⁴⁰ "Child Camel Jockeys Returned to Pakistan, Highlighting Illegal Trafficking," *Associated Press Worldstream*, 3 May 2003.

development among member states (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka). In January 2002, the Pakistani government signed the SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution. Conventions were adopted to step up cooperation among law enforcement authorities to fight trafficking in women and children, terrorism, and the drug trade. In January 2004, leaders from SAARC member states met in Islamabad for the first summit in 2 years.⁴¹

Pakistani and Iranian officials held talks in Islamabad in May 2003 on tightening their common border.⁴² Immigration, intelligence, and border security officials met again in early December 2003 in Chah Bahar, Iran, to discuss curbing human and drug trafficking across Pakistani–Iranian land and maritime borders.⁴³

3.3.1 Children vs Adults as Victims of Human Trafficking

The victims of human trafficking is not only adults but also children. Victims consists of all sexes; male and female; even though the data showed that the number of adult men becoming victims was less than the number of women and children. The next detailed explanation will reveal all cases related to victim criteria based on their sexes and ages.

3.3.2 Men cases in human trafficking

Human trafficking cases where men become victims has a characteristic that the victims were seeking for job that were deceived by agents. Malaysia is the target country for human trafficking practices where the victims of human trafficking were then hired with a very low wages that below the life standard and the promises from their agents. The life standard in Malaysia are 25 ringgit, but they are paid for 8 ringgit since their wages were cut for unexplainable administrative

⁴¹ "Background and Facts on the SAARC Forum," *Associated Press Worldstream*, 6 January 2004.

⁴² "Nearly 50 Pakistanis Arrested in Iran for Illegal Entry Deported: Pakistani Official," *Associated Press*, 26 May 2003.

⁴³ "Pakistan, Iran to Discuss Border Security," *Associated Press Worldstream*, 20 November 2003.

charges. The story was told by the victim's wife, Nur Zakiah (28 years old), migrant worker from Malang.

This young mother of two children enter Malaysia since June 1997. With a loan for 1,2 millions she went there together with her husband. As a brick layer he was promised will be paid 25 ringgit per day. But his supervisor cut their wages so that they only received 2 ringgit per day. The supervisor said that the reduction will be paid when their contract is over.

A case where a migrant worker was stranded in Netherlands is an interesting case since the victims were generally highly educated. Han Harlan got a story about an Indonesian who was educated but become a victim of human trafficking in the Netherlands.⁴⁴ According to the victim, he was sent by an agent that promised a job in America and Europe with high salary and life standard. He has to pay Rp 40 millions for departing cost. The fact afterward was the victim was having a condition that was far from cry having decent jobs and become stress and even went into mental institution in the Netherlands.⁴⁵

3.3.3 Women that become victims of human trafficking



Pictures of Melissa⁴⁶ : These photographs are a graphic illustration of the impact of prostitution and drugs on a young woman. The photographs were taken by Pinellas County Police Dept. The first photograph is of Melissa when she was first arrested for prostitution at age 18. The second photograph of Melissa was taken at age 21 when she was arrested for prostitution and drugs. In between those times, she was arrested 17

⁴⁴ http://www.mw.nl/ranesi/html/korban_perdagangan_manusia.html

⁴⁵ Radio Netherland, October 16, 2002, Korban Trafficking by Han Harland.

⁴⁶ Lane DeGregory, "Girl next door," *St. Petersburg Times-Floridian*, October 19, 2003.

of the number of times she'd been arrested, she faced felony charges and 10 years in prison.

The cases that were found, women trafficking is not only limited to forced prostitution or sex-trade, but also some forms of exploitation, forced services and slavery practices in some informal territory, including domestic and wife for hire.⁴⁷ Most of the cases that found in Indonesia were the form of human trafficking with the purpose of enforced prostitution or sex-trade with sexual violence. Economy become the main reason in the women trafficking that are said by most of victims on how they were trapped in the practice of human trafficking are in order to find job. Most of them were migrant workers both legally or illegally. To those who were legal workers, they become victims due to the bad intention of their agents, nevertheless their documents were kept by their agents. On condition where they have no document on their hands they got the job as labor, domestic workers or prostitutes same as they who came illegally. That they do not have their documents with them enable the employer to exploit them, such as working without time limitation, below standard wages, or even no wages at all, and were treated badly by the employers.

The victims said that even before they were sent abroad they already experienced terrible condition on the camp. On the camp, they were not taught some skills, but they were already exploited by working without being paid on indecent living condition.⁶⁶

One of the cases was Laila (22 years old) along with other 16 girls, victims of women trafficking that was successfully saved by the police in an operation catching the women trafficking syndicate in Penjaringan, North Jakarta. Laila explained it was started when she wanted to go home to Cirebon. In the Senen Station she was talking to a man who offered her a job as a domestic worker,

⁴⁷ Women Solidarity (Lembaga Advokasi Buruh Migran Indonesia). HAM in Practice: Guidance to combat Women and Children Trafficking. Pp. 5. Bangkok: GAATW. 1999

Laila refused his offer but she was forced to get into a cab heading to Yayasan Karya Setiawan. On the day after that Laila was brought to Bar Cempaka, she was bought for Rp 300.000 and was forced to be a prostitute ever since. She demanded to be released to go home to her hometown, but they refused to set her free with regards that she has to pay for the money that they had paid to buy her and the clothes that were given to her. She was forced to sign a contract to be a prostitute, Laila has to accompany the guests who come and her tariff was Rp 50,000/person. Half of the tariff was given to the employer, and the rest would be given to her once in two months. Laila could stand the situation she was having and managed to escape. She claimed that she suffered from a disease and she was several times having vaginal bleeding before from the torture if she refused to accompany guests.⁶⁷ According to Johana Debora Imelda⁶⁸ factors that encouraged women trafficking were among else: low educational level (therefore they were easily mistrust people and unable to fight back due to information), and youth marriages.

Chapter No.4

Analysis

4.1 Introduction

Trafficking and smuggling are reportedly on the rise in Pakistan. Young women and girls are trafficked from Pakistan for purposes of prostitution. Organized criminal networks deceive, coerce, abduct, and sell these victims and then force them to work and live under conditions of slavery. Officials estimate that about 200,000 women between 12 and 30 years of age were trafficked for purposes of sexual exploitation from Bangladesh to Pakistan between 1991 and 2001.⁴⁸ An estimated 40,000 female children are exploited in Pakistani brothels, and a significantly large number of them are smuggled from Bangladesh.⁴⁹

Marriage is often used as a method of recruitment for trafficking and to avoid arrest under Pakistan's *zina* ordinance, which criminalizes sex outside marriage. Open selling of girls is reported, particularly in underdeveloped areas. In the Mohmand Agency, a federally administered tribal area, traditional fairs in which families offer their girls for sale were banned some years ago, but smaller fairs are reported to persist in more remote areas.⁵⁰

Incidents are increasingly reported of children trafficked for use as camel jockeys or for employment in other hazardous occupations.⁵¹ Young boys are trafficked from Pakistan to be camel jockeys in the UAE. The children are sometimes taken on false pretenses or are sold by their parents or are kidnapped. In the UAE, they are often underfed so that they will be as light as possible.⁵² Despite the UAE's ban on camel jockeys younger than 14 years of age and lighter than 45 kilograms, strong evidence exists that children younger than 14 are still being used as camel jockeys.⁵³ Sexual and physical abuse of child camel jockeys is common. Most children used as camel jockeys are from

⁴⁸ Naveed Anwar, "Pakistan Government Plans Steps for Prevention of Human Trafficking," *Business Recorder*, 10 April 2001.

⁴⁹ "Some 1,000 Children Trafficked from Bangladesh in 3 Years," *Xinhua News Agency*, 26 January 2004.

⁵⁰ "Pakistan: Insufficient Protection of Women," *Amnesty International*, April 2002.

⁵¹ "Crackdown on Human Traffickers Launched," *Pakistan Newswire*, 20 November 2003.

⁵² Peter Beaumont, "Kidnapped Children Sold into Slavery as Camel Racers," *Guardian*, 2 June 2001.

⁵³ "Six More Children Used as Camel Jockeys in UAE Arrive Karachi," *Pakistan Newswire*, 6 May 2003.

Bangladesh, India, Pakistan, and Sudan.⁵⁴ As of 2002, an estimated minimum of 30 boys were kidnapped or sold monthly for camel racing in the Gulf states.⁵⁵

In March 2002, Pakistani police raided a house in a middle-class Karachi suburb after neighbors complained of incessant crying from the house.⁵⁶ Police discovered 11 infants in the process of being smuggled abroad for adoption.⁵⁷ The children, the oldest of whom was 18 months of age, were found dirty, hungry, and crying. Eight people were arrested in connection with the adoption network. Police reported that this arrest was not the first such bust, and that because of the lucrative nature of the business, organized gangs operated adoption rings. All 11 infants had forged passports.⁵⁸

Evidence exists that armed groups have forcibly recruited some poor or disadvantaged children to fight in Afghanistan and in Jammu and Kashmir. Some internal armed groups, such as the Mohajir Quami Movement, are believed to have children in their ranks as well.⁵⁹

4.2 Constitutional Framework

1. Article 37 (g) of the Constitution enjoins the State to "prevent prostitution..."

Article 11 (2) states "All forms of forced labour and traffic in human beings are prohibited."

2. On 15 August 2001, Pakistan ratified ILO core Convention 182 on the Elimination of Worst forms of Child Labour. "Worst forms of child labour" include child prostitution and trafficking. Pakistan also signed the Optional Protocol to the Convention on the Rights of the Child on the "Sale of children, child prostitution and child pornography" in September 2001. The Constitutional obligations and

⁵⁴ "LHRLA Expresses Concern over Child Trafficking," *Pakistan Newswire*, 10 May 2003.

⁵⁵ "Pakistan: Focus on Human Trafficking," *United Nations Integrated Regional Information Network*, 16 April 2002.

⁵⁶ "Pakistan: Focus on Human Trafficking," *United Nations Integrated Regional Information Network*, 16 April 2002.

⁵⁷ Another report from March 2004, recalling the incident, claimed the babies were being smuggled to Malaysia for a price tag of US\$20,000 each. See "Pakistan: IOM Launched Initiative to Combat Human Trafficking," *United Nations Integrated Regional Information Network*, 16 March 2004.

⁵⁸ "Pakistan: Focus on Human Trafficking," *United Nations Integrated Regional Information Network*, 16 April 2002.

⁵⁹ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2001* (London: Coalition to Stop the Use of Child Soldiers, 2001).

these instruments provide a detailed framework to the Government to combat trafficking in persons.

4.3 Legislative Frame work

3. The Prevention and Control of Human Trafficking Ordinance was promulgated in October 2002. The Ordinance is a comprehensive law designed to meet Pakistan's obligations under various international treaties on trafficking in persons (including relevant provisions of the CEDAW) as well as treaties to which Pakistan is likely to become party in the future such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Specially Females and Children Supplementing the International Convention against Transnational Organized Crime. The salient features of the ordinance are:

i) It contains a comprehensive definition of "human trafficking" - obtaining, securing, selling, purchasing, recruiting, detaining, harboring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share of such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in..." This definition is further strengthened by a separate definition of "coercion" - the use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force but calculated to have the same effect, such as the credible threat of force or infliction of serious harm". It prohibits human trafficking for any reason whatsoever including labour, entertainment or prostitution.

ii) Two persons acting together to commit a crime falling under the purview of the Ordinance are sufficient to qualify as an "organized criminal group" thus meriting stricter punishment. This definition is narrower than that contained in the Convention against Transnational Organized Crime according to which three or more person constitute a criminal group.

4. The Ordinance prescribes harsher punishments if the victims are women and / or children. Section 3(iii) of the Ordinance states:

i) "Whoever knowingly purchases, sells, harbors, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purposes of exploitative entertainment by any person and has received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine;

ii) Provided that if the commission of the offence under this clause involves kidnapping or abduction or any attempt thereto of the victim, the term of imprisonment may extend to fourteen years with fine;"

5. The Ordinance also prescribes punishment for a crime, which is only in the planning stage and has yet to be committed.

i) It also provides for compensation to the victim as appropriate.

ii) In addition to the above mentioned law, there are certain provisions in Pakistan Penal Code which also impose sanctions for various aspects of trafficking in persons. Section 364-A. Kidnapping or abducting a person under the age of ten; Section 366. Kidnapping, abduction or inducing women to compel her to marriage, etc; Section 366-A. Procurement of minor girl; Section 366-B. Importation of girl from foreign country etc.

4.4 Government Responses

The constitution of Pakistan prohibits slavery, all forms of forced labor, and trafficking in human beings.⁶⁰

In August 2002, the federal cabinet passed the Prevention and Control of Human Trafficking Ordinance.⁶¹ The ordinance defines *human trafficking* as "obtaining, securing, selling, purchasing, recruiting, detaining, harboring, or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction or by giving or receiving any payment or benefit,

⁶⁰ Article 11.

⁶¹ Ordinance No. LIX of 2002. F. No. 2(1)/2002-Pub.

or sharing or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever."⁶²

Planning or executing a plan of trafficking into or out of Pakistan for the purpose of "attaining any benefit or for the purpose of exploitative entertainment, slavery or forced labor, or adoption in or out of Pakistan" is punishable by imprisonment for up to 7 years and a fine.⁶³ The punishment increases to 10 years' imprisonment and a fine if, in addition to committing an offense of trafficking a person, someone kidnaps, abducts, or attempts to kidnap or abduct in connection with the trafficking offense. If a person plans to commit an offense of trafficking but has not yet done so, the punishment is imprisonment for up to 5 years and a fine.⁶⁴

Anyone who knowingly provides, obtains, or employs the labor or services of another person by coercion is subject to punishment of imprisonment for up to 7 years and a fine. The punishment increases to 10 years' imprisonment and a fine if an offender kidnaps, abducts, or attempts to kidnap or abduct a person in connection with an offense of forced labor.⁶⁵

The Prevention and Control of Human Trafficking Ordinance imposes a punishment of imprisonment for up to 10 years and a fine on anyone who "purchases, sells, harbors, transports, provides, detains, or obtains a child or a woman through coercion, kidnapping, or abduction or by giving or receiving any benefit" for trafficking the child or woman into or out of Pakistan for the purpose of "exploitative entertainment."⁶⁶ The punishment increases to imprisonment for up to 14 years and a fine if the offense involved kidnapping or abduction.⁶⁷

Tampering with documents related to trafficking in furtherance of any offense under the Prevention and Control of Human Trafficking Ordinance, as

⁶² Article 2(h).

⁶³ Article 3(i). Article 1(f) defines *exploitative entertainment* as "all activities in connection with human sports or sexual practices or sex and related abusive practices."

⁶⁴ Article 3(i).

⁶⁵ Article 3(ii).

⁶⁶ Article 3(iii).

⁶⁷ Article 3(iii).

well as preventing or restricting a person's liberty to move or travel, is punishable by imprisonment for up to 7 years and a fine.⁶⁸

If an organized criminal group commits any of the offenses under the ordinance, each member of the group is subject to imprisonment for up to 10 years. Punishment is enhanced to imprisonment for up to 14 years and a fine if the group's purpose in committing the trafficking offense is exploitative entertainment.⁶⁹

Repeated commission of any of the offenses under the Prevention and Control of Human Trafficking Ordinance is punishable by 14 years' imprisonment and a fine.⁷⁰

The Prevention and Control of Human Trafficking Ordinance provides for certain benefits for victims. These benefits include allowing the victim to stay in Pakistan, extending the victim's stay in Pakistan,⁷¹ paying compensation and expenses to the victim;⁷² or making arrangements for shelter, food, and medical care of a victim who is an unaccompanied child or a destitute woman.⁷³

The Offense of Zina (Enforcement of Hudood) Ordinance of 1979⁷⁴ prohibits sexual intercourse outside the institution of marriage.⁷⁵ Punishment for the offense is a whipping of 100 lashes if the perpetrator of the crime is not married and death by stoning if he or she is married.⁷⁶

The ordinance penalizes whoever sells, buys, lets to hire, or obtains possession of any person with the intent that the person be employed or used for the purpose of prostitution or illicit intercourse or for any unlawful and immoral

⁶⁸ Article 3(iv).

⁶⁹ Article 4.

⁷⁰ Article 5.

⁷¹ Article 6(i).

⁷² Article 6(ii).

⁷³ Article 6(iii).

⁷⁴ The ordinance prohibits *zina*, which is defined in section 4 as follows: "A man and a woman are said to have committed 'Zina' if they willfully have sexual intercourse without being validly married to each other." Zina includes fornication and adultery. See Julie Dror Chadbourne, "Never Wear Your Shoes after Midnight: Legal Trends under the Pakistan Zina Ordinance," *Wisconsin International Law Journal* 17, no.2 (1999): 179.

⁷⁵ Section 4.

⁷⁶ Section 5.

purpose. Punishment for the offense is imprisonment for life, a whipping not exceeding 30 lashes, and a fine.⁷⁷ The ordinance also prohibits kidnapping or abducting any woman with the intent of compelling her to marry someone against her will or forcing or seducing her into illicit intercourse. Punishment for the offense is imprisonment for life, a whipping up to 30 lashes, and a fine. The same punishment applies to cases involving inducing a woman by means of criminal intimidation, abuse of authority, or any other means of coercion to go from any place with the intent of forcing or seducing her into conducting illicit intercourse with another person.⁷⁸

The Offense of Zina (Enforcement of Hudood) Ordinance requires for proof of zina that "at least four Muslim adult male witnesses about whom the Court is satisfied, having regard to the requirements of *tazkiyah al-shuhood*, that they are truthful persons and abstain from major sins (*Kabair*), give evidence as eyewitnesses of the act of penetration necessary to the offense, provided that, if the accused is a non-Muslim, the eyewitnesses may be non-Muslim."⁷⁹

Enticing, taking away, or detaining a woman with intent of having unlawful intercourse with another man is punishable by 7 years' imprisonment, a whipping up to 30 lashes, and a fine.⁸⁰ Causing, encouraging, or abetting prostitution of a girl less than 16 years of age is punishable by 3 years' imprisonment and a fine. If an offender is a male, he is also subject to a whipping.⁸¹

Procuring a woman or a girl for the purpose of prostitution—or with intent that she becomes an inmate of or frequent a brothel—and persuading a woman to leave her usual place of abode are punishable by imprisonment for up to 3 years. If an offender is a male, he is subject to a whipping.⁸² Importing a woman or a girl for prostitution is an offense under the Pakistan Suppression of

⁷⁷ Sections 13–14.

⁷⁸ Section 11.

⁷⁹ Section 8. In this section, *tazkiyah al-shuhood* means "the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness."

⁸⁰ Section 16.

⁸¹ Section 7.

⁸² Section 8.

Prostitution Ordinance. Punishment is 3 years' imprisonment and a fine. If an offender is a man, he is subject to a whipping.⁸³

The Registration of Foreigners Act⁸⁴ requires any foreigners entering or already in Pakistan to report their presence to the prescribed authorities.⁸⁵ The act also requires such reporting in the event that the foreigner moves from one place to another in Pakistan.⁸⁶ Similarly, any foreigner who is about to leave Pakistan must report the date of his or her intended departure to the appropriate authorities.⁸⁷

The Passport Act⁸⁸ regulates the requirements pertaining to travel documents. The Emigration Act⁸⁹ covers the requirements that must be satisfied in cases involving immigration for the purpose of unskilled work⁹⁰ and skilled work.⁹¹

In August 2002, President Pervez Musharraf approved a new law to curb trafficking in persons, including the smuggling of women abroad for prostitution and of children for camel racing and sexual abuse. According to officials, the law was designed "to effectively control human trafficking from and through Pakistan."⁹² Smuggling of children abroad for use as camel jockeys was made punishable by up to 10 years in prison.⁹³

Special squads of the Federal Investigation Agency have conducted raids against traffickers.⁹⁴ In 2002, the interior minister announced that this agency would be strengthened on par with international standards. Computer-literate women officers were being recruited to work for the Federal Investigation Agency.⁹⁵ Pakistani immigration officials busted several trafficking rings in 2002.

⁸³ Section 9.

⁸⁴ Law No. 26 of 1939

⁸⁵ Section 3(a).

⁸⁶ Section 3(b).

⁸⁷ Section 3(c).

⁸⁸ Law No. 34 of 1920.

⁸⁹ Law No. 7 of 1922.

⁹⁰ Sections 9–14.

⁹¹ Sections 15–22.

⁹² Sami Zubeiri, "Pakistan Moves to Curb Trafficking of Women and Children," *Agence France Presse*, 29 August 2002.

⁹³ "Child Camel Jockeys Returned to Pakistan, Highlighting Illegal Trafficking," *Associated Press Worldstream*, 3 May 2003.

⁹⁴ "Crackdown on Human Traffickers Launched," *Pakistan Newswire*, 20 November 2003.

⁹⁵ "Economic Instability Main Cause of Human Trafficking: Study," *Dawn*, 6 November 2002.

Pakistani diplomats working in the UAE will sometimes rescue child camel jockeys when their owners come to renew their passports at the Pakistani Embassy.⁹⁶ Between May 2002 and May 2003, 86 Pakistani children were recovered and repatriated to Pakistan from the UAE, thanks to joint efforts between Pakistan and the UAE.⁹⁷

In November 2003, the Interior Ministry announced a major crackdown against trafficking and smuggling in persons.⁹⁸ As of November 2003, 100 human-trafficking agents had been arrested, initially in Gujarat, Gujranwala, Karachi, Lahore, and Sialkot, pursuant to a nationwide campaign following the directives of the interior minister.⁹⁹ The government also announced that it was stepping up the patrolling of Pakistan's borders, especially the border with Afghanistan.¹⁰⁰

According to an April 2004 report, machine-readable "smart passports" were to be issued to all Pakistanis by the National Database and Registration Authority in September 2004. The passports were to have unique physical and security features that could not be forged or tampered with. Pakistani authorities hope the passports will reduce incidences of trafficking and illegal migration.¹⁰¹

4.5 Nongovernmental and International Organization Responses

Since 1991, more than 20 nongovernmental organizations (NGOs) have been established with a strong focus on trafficking.¹⁰² Lawyers for Human Rights and Legal Aid (LHRLA) was the first organization to take up the issue of trafficking in women in Pakistan in 1991. Its 1-year project, Trafficking of Women in Pakistan, supported by the Canadian International Development Agency, aimed at raising awareness about trafficking, conducting research to gauge the

⁹⁶ "Child Camel Jockeys Returned to Pakistan, Highlighting Illegal Trafficking," *Associated Press Worldstream*, 3 May 2003.

⁹⁷ "Pakistani Child Camel Jockeys Repatriated from UAE," *Xinhua General News Service*, 13 May 2003.

⁹⁸ "Crackdown on Human Traffickers Launched," *Pakistan Newswire*, 20 November 2003.

⁹⁹ "100 Human Trafficking Agents Arrested: FIA," *Pakistan Newswire*, 17 November 2003.

¹⁰⁰ "Crackdown on Human Traffickers Launched," *Pakistan Newswire*, 20 November 2003.

¹⁰¹ "Smart Passports' for all from Sept.," *Times of Oman*, 1 April 2004.

¹⁰² See the Web page of Lawyers for Human Rights and Legal Aid, <http://www.lhrla.sdnpk.org/>.

severity of the problem, developing a plan of action for its elimination, and providing legal aid to victims and their families. LHRLA has worked for the release of all women detained illegally and subjected to trafficking.¹⁰³ LHRLA held a National Court of Women on the Violence of Trafficking and HIV/AIDS from 1 to 3 August 2003. The meeting, held to formulate campaigns to combat trafficking, was attended by survivors of trafficking and AIDS, United Nations (UN) representatives, and government officials.¹⁰⁴ The LHRLA sent an investigative team to interview children returned from the UAE at the Overseas Pakistan Foundation in Karachi and Edhi Center in May 2003.¹⁰⁵

In March 2004, IOM announced the launch of a thematic group on trafficking. Funded by the Canadian International Development Agency, the group will bring together representatives from the Interior Ministry; the Ministry of Labor, Manpower, and Overseas Pakistanis; and the Ministry of Women's Development with civil society organizations, donors, and international NGOs active in the field of trafficking. The group will meet on a regular basis to develop a comprehensive plan of action to combat trafficking.¹⁰⁶

In September 2004, the United Nations Children's Fund sponsored a 3-day meeting of South Asian governments, United Nations agencies, and NGOs in Colombo, Sri Lanka. Government officials signed a five-point joint statement, agreeing that children in South Asia deserve better protection from traffickers and sexual abusers. Participating countries were Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.¹⁰⁷

4.6 Situation on the ground.

6. The constitutional and legislative framework in Pakistan on trafficking in persons is comprehensive. The promulgation of the Ordinance on Prevention and Control of Human Trafficking in November 2002 is a sign that the Government of Pakistan recognizes the issue to be important and serious.

¹⁰³ Lawyers for Human Rights and Legal Aid, "Current Projects: Project on Trafficking of Women in Pakistan," 13 April 2004, http://www.lhrla.sdnpc.org/traff_women.html.

¹⁰⁴ "South Asian Women Hold Court on Violence," *Off Our Backs*, September–October 2003, p. 4

¹⁰⁵ "LHRLA Expresses Concern over Child Trafficking," *Pakistan Newswire*, 10 May 2003.

¹⁰⁶ "IOM Launches Thematic Group on Human Trafficking," *IOM Press Briefing Notes*, 19 March 2004

¹⁰⁷ "Child Sex-Declaration," *United News of Bangladesh*, 1 October 2004.

7. Pakistan is stated to be a country of origin, destination and transit for trafficked persons. Unfortunately there is wide divergence of views on the scale of the problem. Some NGO estimate that nearly 200,000 persons, mostly women, are trafficked into Pakistan. Global estimates of persons smuggled across border range from 800,000 to nearly two million¹. Even if we take two million as the accepted figure, it seems

implausible that Pakistan alone is responsible for ten percent of the global problem.

8. Activists working on this issue are of the view that the legal position regarding trafficking in persons is ambiguous. Foreigners who enter into Pakistan are liable to be prosecuted under the Foreigner's Act. The Act does not differentiate between the trafficker and the traffic victim.

9. The Prevention and Control of Human Trafficking Ordinance can be said to remove this ambiguity. However a number of people continue to be detained under the Foreigner's Act. The proportion of traffic victims in this group is not known. The Ministry of Women Development, Social Welfare and Special Education has sent a detailed questionnaire to all provincial home governments for onward dispatch to all prisons in Pakistan seeking information on the number of women detained under the Foreigner's Act or under any other law relating to trafficking. The initial responses show that there are very few trafficked women in Pakistani prisons. For instance in the entire province of Balochistan there was only one foreign woman, a Ghanian, in Quetta jail, and she was not detained under the Foreigner's Act but was convicted for some other offence.

10. It therefore seems that persons trafficked into Pakistan soon disappear among the population. It is difficult to track such persons officially and to maintain accurate records.

4.7 Preventive Measures to Curb Trafficking.

11. Regardless of its scale, the problem needs to be addressed. The Government is taking a number of actions in this regard. The Promulgation of the Prevention and Control of Human Trafficking Ordinance needs to be seen in this light.

12. Pursuant to the Promulgation of the Ordinance, the Federal Investigation Agency (FIA) has been nominated as the implementing / enforcing agency of the Government of Pakistan. The Agency has conducted a number of raids, particularly in the Mandi Bahawaludin area, against unscrupulous travel agents who were assisting in sending people abroad on false documentation.

13. Other measures to combat human trafficking include:

i) The Ministry of Interior has taken a number of initiatives particularly in the field of interdicting persons on the way out of Pakistan. There are FIA posts at all airports and only passengers holding valid documents are allowed to board the aircraft. Additionally the Ministry of Interior has started the National Aliens Registration Authority (NARA) to determine the number of illegal aliens in Pakistan and to register them.

ii) A database of all adult citizens of Pakistan (NADRA) is nearly complete. NADRA is issuing computerized National Identity cards to all adult citizens of Pakistan. The requirements for these computerized cards are such that illegal aliens including persons who have been trafficked into Pakistan will not be able to qualify and would thus be automatically identified. Victims of trafficking will then be assisted in returning to their countries of origin.

iii) Check posts have been established in border areas to curb unlawful entry into Pakistan.

iv) The Government has set up three crisis centers for women to provide shelter to women and children in distress. An attempt is being made to extend this facility to trafficked women and children.

Chapter No. 5

Conclusion

5.1 Summery

Pakistan is a source, destination, and transit country for men, women, and children for the purposes of sexual exploitation, involuntary servitude, and servitude as child camel jockeys. Pakistani women and men migrate voluntarily to Gulf states, Iran, Turkey, and Greece for work as domestic servants or construction workers; men are recruited for work in Iraq. Some of these men and women, however, may find themselves in situations of involuntary servitude when faced with overwhelming recruitment and transportation fees, restrictions on their movement, non-payment of wages, and physical or sexual abuse. Pakistani girls are also reportedly trafficked to the Gulf for sexual exploitation and Pakistani boys are trafficked primarily to the U.A.E. and Qatar to serve as camel jockeys. Pakistan faces a significant internal trafficking problem reportedly involving thousands of women and children trafficked from rural areas and sold to settle debts and disputes or forced into sexual exploitation, domestic servitude, or marriage. Unconfirmed estimates of Pakistani victims of bonded labor in the brick, glass, carpet, and fishing industries are in the millions. Women and children from Bangladesh, India, Burma, Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyz Republic, Turkmenistan, Uzbekistan, and Tajikistan are also trafficked to Pakistan for sexual exploitation and involuntary servitude. In addition, Bangladeshi, Sri Lankan, Nepalese, and Burmese women are trafficked through Pakistan en route to the Gulf or Greece. The Government of Pakistan does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. This year, the government established a national plan of action to combat trafficking in persons; approved a special cell within the Ministry of Interior to coordinate its anti-trafficking response; trained police officers, attorneys and judges on anti-trafficking measures; and made progress in investigating trafficking cases. The

Ministry of Interior, with the assistance of IOM, also opened a shelter for trafficking victims.

The Government of Pakistan improved its efforts to investigate and prosecute trafficking cases. In 2006, the government reported investigating 765 cases of trafficking, of which 448 were filed for prosecution. Pakistan, in cooperation with IOM, instituted training programs for police officers, attorneys, and judges on methods of investigating and prosecuting trafficking cases. In addition, the government introduced a bill in the National Assembly to expedite trafficking cases through the judicial system.

The government took some noticeable steps to improve its protection efforts for victims of trafficking. Pakistan cooperated with IOM to open a model shelter for trafficking victims in Islamabad providing medical, psychological, and legal care. Since its opening, the Federal Investigation Agency (FIA) referred 12 trafficking victims to this shelter for protection. For victims not located in Islamabad, the government provided victim assistance in 276 temporary shelters where victims received medical treatment, limited legal representation, and vocational training. Pakistan also provided training for investigators on methods of identifying and protecting victims of trafficking. In Lahore, the Child Protection Welfare Bureau assisted in the repatriation and reintegration of 325 child camel jockeys returned from the U.A.E.

Despite these improvements, the practice of punishing victims of trafficking for prostitution by the Government of Pakistan. The government should investigate allegations that victims of trafficking are exploited by guards and other government employees in the temporary shelters. To prevent further victimization, the Government of Pakistan should also increase its efforts to protect the privacy and identity of victims. On more than one occasion, after large trafficking arrests, police have released the names of trafficking victims to the media.

The Government of Pakistan made some progress in its anti-trafficking prevention initiatives. In October 2005 earthquake, the government sent federal Anti-Trafficking Units to earthquake-affected areas of the country to prevent the trafficking of orphaned or otherwise vulnerable children. The government also established an identification system used at airports to monitor immigration patterns for signs of trafficking. Prominent radio and television appearances by the Minister of Overseas Pakistanis raised awareness of the trafficking of Pakistani nationals abroad, and the government, with assistance from IOM and foreign donors, undertook a targeted information campaign to educate people living in the rural areas.

5.2 Findings

1st) Human trafficking is now second only to drug trafficking in relation to international organized crime. Trafficking in persons is the equivalent of modern-day slavery. But the Pakistani people are not identifying human trafficking as a social problem of any importance. If the issue is not seen as important, it cannot move through the democratic arena of public opinion, deliberation and action that is required to bring about lasting, systemic improvements to the situation.

2nd) NGOs report that local governments in Pakistan often prosecute and punish victims of trafficking for prostitution, immigration violations, and adultery under Islamic Hudood Ordinances rather than providing them with protection.

3rd) The government similarly failed to curb internal trafficking for sexual exploitation and involuntary servitude.

4th) The Bonded Labor System Abolition Act establishes penalties of up to five years' imprisonment and fines of \$833 for violating its provisions. In spite of that, this and other laws criminalizing bonded and child labor were rarely used to sentence violators to jail. Most convicted offenders received fines less than \$20, which cause encouraging for traffickers.

5th) The government similarly failed to vigorously investigate and prosecute government officials facilitating trafficking, arresting only two officials for corruption in year, 2006.

- 6th) Punishment for sex and labor traffickers is less in comparison with severity of crime.
- 7th) Some NGOs report the need for greater sensitivity training at the local level.
- 8th) According to NGOs reports, trafficking victims may also face prosecution for adultery or rendering false accusations if their rape cases under the Hudood Ordinances fail.
- 9th) On more than one occasion, after large trafficking arrests, police have released the names of trafficking victims to the media. Which cause further victimization of victims.
- 10th) According to NGOs reports, the practice of punishing victims of trafficking for prostitution and other charges under Hudood Ordinances remains a problem that warrants investigation and action by the Government of Pakistan.

5.3 Recommendations

1st) The combination of these findings suggest that Without knowledge of the issue, the Pakistani people will not identify human trafficking as a social problem of any import. If the issue is not seen as important, it cannot move through the democratic arena of public opinion, deliberation and action that is required to bring about lasting, systemic improvements to the situation. With improved knowledge, it may be possible for future democratic deliberation to be closer to the ideal in terms of improved citizen knowledge and awareness of more complex issues such as human trafficking than is currently the case in the Pakistan press environment. Likely that our attention will continue to be distracted by the story of the day. Perhaps we can learn from other social movements with nearly invisible victims, such as the movement to end domestic violence, how to better utilize the press to increase public knowledge about human trafficking. In the meantime, the absence of this issue from the public arena will preclude any long-term solutions.

2nd) Islamic law give protection to the victim in all circumstances, however observation of NGOs report that local governments in Pakistan often prosecute and punish victims of trafficking for prostitution is misconception, it should be amended in such a way that Islamic rules should be implemented with letter & spirit with out deviation from Islamic law. Special budget to be allocated in each Financial Year for arranging exhibition and presentation to create awareness in the society

3rd) Despite the establishment of provincial anti-trafficking units, the government did not provide sufficient evidence of serious efforts to investigate and prosecute cases of internal trafficking, including instances of bonded and forced child labor, which are not specifically criminalized by Pakistan's Human Trafficking Ordinance of 2002. Pakistan should stop punishing trafficking victims, institute measure to address internal trafficking, and broaden public awareness campaigns to reach more at-risk populations.

4th) The Bonded Labor System Abolition Act outlaws bonded labor, cancels all existing bonded debts, and forbids lawsuits for the recovery of such debts. The Act establishes penalties of up to five years' imprisonment and fines of \$833 for violating its provisions. Penalties should be given maximum in accordance with law to discourage traffickers.

5th) A monitoring system should be establish under the direct supervision of Supreme Court of Pakistan for monitoring the implementation of anti trafficking laws. Also vigorously investigate and prosecute government officials facilitating trafficking.

6th) Sentences given to sex and labor traffickers should be increased so that they are commensurate with the severity of the crime, and law enforcement efforts against internal trafficking and corruption involving trafficking should be improved.

7th) It is recommended that greater sensitivity training at the local level should be deemed necessary.

8th) NGOs, observation regarding the facing of false accusation if their rape cases under the Hudood Ordinances fail. This matter should be reviewed and endow with in the public familiarity by electronic and paper media on priority.

9th) The Government of Pakistan should also increase its efforts to protect the privacy and identity of victims by keeping secrecy of original names and photograph of trafficking victims from the media.

10th) Censure of NGOs for the practice of punishing victims of trafficking for prostitution and other charges under Hudood Ordinances remains a problem that warrants investigation should be removed by amending procedural laws and made public accordingly.

5.4 Suggestions for Preventing Human Trafficking in Pakistan

It is understood that Pakistan is a source, transit and destination place for human trafficking victim. Presently Pakistan name is in the 2nd TIER list word vides. Pakistan must take following measures to prevent human trafficking:-

- The Federal Government should conduct more research to determine an accurate estimate of the scope of the trafficking problem in the Pakistan, including both domestic and foreign victims.
- The Pakistan Government should ensure that its Task Forces are well-functioning and should encourage Provinces and Local bodies to adopt and aggressively implement anti-trafficking laws.
- Department of Anti-Human Trafficking (DAHT) should be created which keeps Embassy staff informed about its projects, requires grantees to monitor their projects through regular progress reports, and strives to conduct site visits.

5.4.1 What NADRA Can Do

- NADRA should create database files for Continued Presence applications to assist in program planning and training. The database files are used for archiving relevant information about victim nationalities, location of victims, the type of trafficking, and the manner of entry.

- NADRA should fund research projects to examine how trafficking victims have had their personal and criminal situations resolved, to identify effective ways to secure victim/witness cooperation, and to evaluate victims' medical and legal needs.

5.4.2 What Governments Can Do

Enhance Research and Coordination:

- Research the extent and nature of the problem;
- Draft an action plan for addressing HT (Human Trafficking); and
- Designate a government point of contact to coordinate efforts with nongovernmental, intergovernmental, and travel/tourism organizations.

Augment Prevention and Training:

- Encourage the travel industry to sign and implement the Code of Conduct;
- Fund and/or launch public awareness campaigns, highlighting relevant extraterritorial laws;
- Train and sensitize law enforcement on the issue; and
- Ensure that border and airport officials report any suspected cases of child / women trafficking.

Strengthen Legal Measures and Prosecutions:

- Pass and/or enforce extraterritorial laws criminalizing Human Trafficking;
- Prescribe punishment that is commensurate with that for other grave crimes; and Prosecute the crime to the fullest extent possible.

Assist Victims:

- Provide shelter, counseling, medical, and legal assistance to victims;
- Provide reintegration assistance as appropriate; and
- Support the efforts of NGOs working with child victims.

5.4.4 What Companies Can Do

Travel, tourism, and hospitality companies can sign the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, which requires them to implement the following measures:

- Establish a corporate ethical policy against commercial sexual exploitation of children / women;
- Train tourism personnel in the country of origin and travel destinations;
- Introduce clauses in contracts with suppliers stating a common repudiation of sexual exploitation of children / women;
- Provide information to travelers through catalogues, brochures, in-flight videos, ticket slips, and websites;
- Provide information to local "key persons" at travel destinations; and
- Report annually on progress to the Code of Conduct's General Secretary

5.4.3 What Pakistani Citizens Can Do

- Stay informed and support the efforts of authorities and the tourism industry to prevent commercial sexual exploitation of children / Women;
- Take notice and report to the authorities abroad and/or to the Ministry of Interior (Security's Immigration and Customs Enforcement) if suspect children are being commercially sexually exploited in tourism destinations;
- Be aware that any Pakistani citizen arrested in a foreign country for sexually abusing minors may be subject to return to the Pakistan, and, if convicted, can face imprisonment; and
- Support the efforts of NGOs working to protect children from commercial sexual exploitation.

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