

**CRITICAL EVALUATION OF ANTI HUMAN
TRAFFICKING LEGAL REGIME IN PAKISTAN**

By

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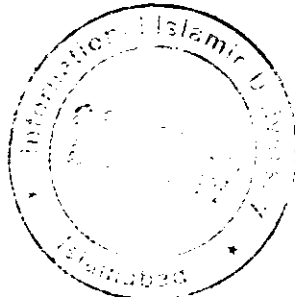
This thesis is submitted in the partial fulfillment of the requirement for the

Award of the Degree of PhD Law in the

Faculty of Shariah and Law

Department of Law

International Islamic University, Islamabad (IIUI), Pakistan.



07/10/14



Acc # 7H21659

Amman

PhD
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MUC

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قَالَ مَعَ الْحَسْرِ يُسْرًا

قَالَ مَعَ الْحَسْرِ يُسْرًا

For indeed, with hardship [will be] ease

Indeed, with hardship [will be] ease

(Surah As Sharah Ayah No.4,5)

Muhammad Sohail

2019

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ACKNOWLEDGMENT

I want to give my deep words of acknowledgment to my Supervisor, Dr. Ataullah Khan Mehmood, for his valuable guidance, expertise, and inspiration. I acknowledge the kind contribution of following persons towards the support in writing this thesis as well.

- My promoter, Dr. Farkhanda Zia Mansoor, for her exceptional efforts for encouraging me to do this research.
- My ideal teachers Dr. Muhammad Munir and Dr. Muhammad Mushtaq Ahmad for their friendly behavior and scholarly legal acumen who are always a source of inspiration for me.
- My family, particularly my mother for her patience, hard-work and prayers for me at every stage of my life.
- My friends and colleagues for sharing knowledge and experiences relevant to the study of this thesis.
- The International Islamic University, in particular the staff of Central library.

DEDICATION

Each challenging task requires self determination and encouragement as well as extended prayers from well wishers. So I dedicate this research thesis to my father (late) who regretfully could not see good days of mine, my mother, wife and loving daughters Maham Zahra and Mah Noor Zahra, to make me able to have such honor and success in life.

DECLARATION

I declare that this thesis titled “**Critical Evaluation of Anti-Human Trafficking Legal Regime in Pakistan**” submitted for the degree of Ph. D. (Law) to the Department of Law, International Islamic University, Islamabad, Pakistan is the product of my own and original research and none of any parts has been copied from any published source, except the references. I further declare that this research work has previously been submitted neither by me nor by any other person at any other university, institution or organization.

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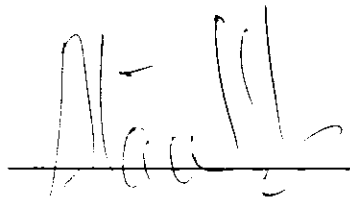
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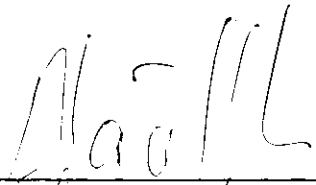
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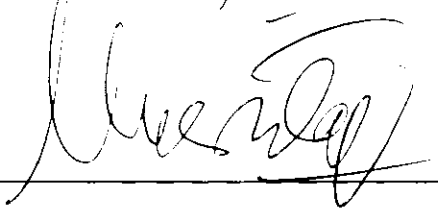
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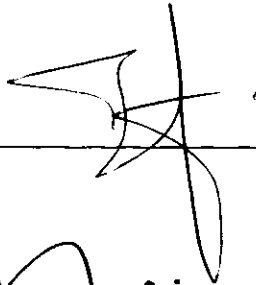
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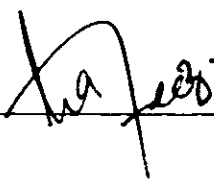
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LIST OF ACRONYMS

3Rs' Model	Rescue, Rehabilitation, and Re-integration
4Ps' Model	Prevention, Protection, Prosecution and Partnership
ACS	American Colonization Society
AIR	All India Reporter
BLSAA	Bonded Labor System Abolition Act, 1992
CDHRI	Cairo Declaration on Human Rights in Islam
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on the Economic, Social and Cultural Rights
CIA	Central Intelligence Agency
CLC	Civil Law Cases
CRC	Convention on the Rights of Child
CP&WB	Child Protection and Welfare Bureau
CrPC	Code of Criminal Procedure, 1898
CSEC	Commercial sexual exploitation of children
ECHR	European Court of Human Rights
ECOSOC	Economic and Social Council
EU	European Union
FIA	Federal Investigation Agency
FSC	Federal Shariat Court
GCA	General Clauses Act, 1897
HCHR Principles and Guidelines	Recommended Principles of Guidelines on Human Rights and Human Trafficking

HRC	Human Rights Committee
IACHR	Inter- American Convention on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
ILO	International Labor Organization
ILS	International Labor Standards
IOM	International Organization for Migration
IPC	Indian Penal Code
KPK	Khyber Pakhtunkhwa
League	League of Nations
Legislative Guides	Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto
MOI	Ministry of Interior
NAP	National Action Plan
NAPC	National Action Plan for Children
NARA	National Alien Registration Authority
NCCWD	National Commission for Child Welfare and Development
NGO	Non-Governmental Organization
NLR	National Law Reports
NVA	National Vigilance Association
NWFP	North-West Frontier Pakistan
OHCHR	Office of the High Commissioner for Human Rights

OIC	Organization of Islamic Co-operation
PACHTO	Prevention and Control of Human Trafficking Ordinance, 2002
Palermo Convention	United Nations Convention against Transnational Organized Crime
Palermo Protocol	United Nations Protocol to Prevent, Suppress and punish Trafficking in Persons, Especially Women and Children
PCrLJ	Pakistan Criminal Law Journal
PLD	Pakistan Legal Decisions
PPC	Pakistan Penal Code, 1860
PTA	Pakistan Telecommunication Authority
PTPA	Prevention of Trafficking in Persons Act, 2018
PTPO	Prevention of Trafficking in Persons Ordinance, 2018
RTF	Regional Task Force
SAARC	South Asian Association for Regional Co-operation
SADC	Southern African Development Community
SAIEVAC	South Asian Initiative to End Violence against Children
SCMR	Supreme Court Monthly Review
SAP-FL	Special Action Program to Combat Forced Labor
TIP Report	Trafficking in Persons Report
TVPA	Trafficking Victims Protection Act
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UN GIFT	United Nations Global Initiative to Fight Human Trafficking
UNCHR	United Nations Commission on Human Rights
UNGA	United Nations General Assembly

UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children' Fund
UNODC	United Nations Office on Drugs and Crime
UNODC Model Law	United Nations Office on Drugs and Crime Model Law against Trafficking in Persons
US	United States
WW-I	World War-I
WW-II	World War-II
YLR	Yearly Law Reports

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ABSTRACT

The legal fight to abolish human trafficking started more than two centuries back when the slave trades were considered as legalized professions, but thereafter got rid of by the states through various enactments. However, it is misconception that slave trades have been outlawed; rather it will be germane to hold that such trades have emerged in the contemporary period with a new face and name as human trafficking, exploiting the human beings in the same way as the slave trades used to exploit. International law has passed a number of treaties to combat human trafficking by providing certain standards therein for the states to comply with. Having recognized such standards, Pakistan passed its laws to abolish the human trafficking within and beyond its state borders, but even then Pakistan has failed to abolish the human trafficking significantly. Pakistan has been making efforts to combat the offence for more than 18 years, for which it has enacted two special laws in different periods of time, but both the legal regimes could not produce the desired results. The reason behind lies in the passing of insignificant legislation as the same is contradictory, overlapping and far away from international standards. Neither the offence is prevented nor the victim is protected nor is the offender prosecuted. So this thesis is an effort to look into the issue of human trafficking in Pakistan through a criminal justice perspective because special laws on the subject have been critically evaluated by comparison with other national laws as well as international standards on the subject. Critically evaluating the national legal regime on the subject from the criminal justice response is a new field of research in Pakistan; therefore, this thesis places a valuable contribution to the research paradigm on the subject. To critically evaluate the legal regime on the subject, Islamic injunctions on the prohibition of exploitative treatment have been addressed; some legal principles have been discussed; general and special laws have been compared; the provisions of special laws have been audited; and

international standards on the subject have been compared with the national law. All the aims, objectives, research questions, parts and chapters of the thesis are inter-connected in such a manner that without discussing any of these, the central argument regarding the significance of national legal regime on the subject cannot be evaluated. After a thorough investigation, the main research has been answered as negative.

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INTRODUCTION TO THE THESIS

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Introduction

Pakistan is under an obligation and committed under ratified international instruments to combat human trafficking. Despite the fact that Pakistan has made efforts to fulfill international commitments and passed necessary legislation accordingly, but the laws are overlapping, contradictory and far from complying with the international standards. This leads to criticism on the anti-human trafficking legal regime in Pakistan.

This thesis uses the broad definition of human trafficking for the purposes of labor as well as sexual exploitation. The international law defines exploitation as the ultimate purpose of trafficking. However, there is no unanimity on the definition of the term exploitation. Various efforts have been made at international, regional and local level to define the term. International legal regime evolved from slave trade to human trafficking i.e. a shift from ownership to exploitation. National legal regime of Pakistan also paved way by adopting various international treaties, but the same is not significant due to lacunas underlying in it.

Background to the Study

Throughout the historical anecdotes, the weaker human beings remained the articles of trade in the hands of the stronger human beings. During ancient periods, the stronger nomadic tribes used to capture and exploit the weaker tribes mainly in labor but for sexual practices to some extent. However, labor exploitation has much older history as compared to the sexual exploitation, but the latter multiplied much distress in the modern period. The recorded history of labor exploitation begins with the advent of trans-Atlantic slave trade which has been proscribed for more than two hundred years back. Meanwhile, white slave trade became another controversy for the European people. Social movements played an important role for its abolition too. The former trade refers to labor exploitation; while the latter trade refers to sexual exploitation. The people were used to

traffic for the purpose of exploitation, so the business of exploitation was on rise. The traffickers were involved in such business with impunity; even under the color of legal protection for some periods of time. The Age of Enlightenment opened the impression of modernism wherein the human rights were aspired, and finally were guaranteed by the respective states. The slave trade and slavery were considered contrary to the norms of society and civilization. However, does slavery still exist, but in some other form? Various studies at international as well as national levels underpin the fact that despite universal prohibition, dealing in human beings still exists. The stronger people have the same concept as of nomadic tribes to exploit the weaker sections of the society. Even the Age of Enlightenment and recognition of human rights could not change the intellectual attitude of the stronger people. The only difference is the disguised face of the contemporary form of slavery and slave trade. Still humans prey upon their fellow humans for earning monetary profits, by using and abusing them, and by buying and selling them, just as the articles of commodities.

Human trafficking is considered a lucrative business, because of high profits to traffickers and low risk of prosecution of the crime, ranking it the third most international organized criminal activity after trafficking in arms and drugs, amounting to over US \$32 billion per year.¹ Unlike other organized offences such as drugs and arms, human beings are more profitable because they are easily re-sellable, expandable and disposable people.² Victims are also treated as criminals. The noteworthy reason includes the fact that anti-human trafficking legal regime is insignificant being overlapping, contradictory and noncompliant with international law.

¹ Katherine Taken Smith and others. "Human Trafficking: A Global Multi-Billion Dollar Criminal Industry," *International Journal of Public Law and Policy* (October, 2013): 1-25.

² Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley and Los Angeles: University of California Press, 2004).

International legal regime started its movement to combat human trafficking in the 19th century. The national legal regime emerged in the 20th century. Pakistan is challenging to design a significant national legal response to cope with the problem. In connection to, Pakistan ratified various key international instruments related to anti-human trafficking. These instruments lay down obligations as well as minimum standards with regard to national anti-trafficking response wherein state parties are obligated to comply with these standards. Pakistan being a member state to these particular instruments is obligated to bring its laws aligned, so that a significant anti-human trafficking legal regime can be framed to combat the menace.

Rationale for the Study

As stated above, Pakistan is under an obligation to develop a significant anti-human trafficking legal response which must be effective and comprehensive; therefore, Pakistan in response has led miscellaneous legislative and other measures including the National Action Plans to curb the problem. However, given the distinctive & multifaceted nature and poor understanding of the crime, it remains demanding to develop a significant legal framework. Various NGOs and other researchers undertook research; various research papers and books have been published at international and national levels, but an all-inclusive research aimed to construct Pakistan's significant legal response, in particular from the perspective of criminal justice system, aligned with international obligations, is lacking. This necessitates the main rationale for the present research thesis to make a contribution to address this gap.

Aims and Objectives of Study

Evaluating the efforts of combating human trafficking from the legal perspective, particularly from criminal justice response, is rather a new field of research in Pakistan. Having discovered the gaps in the contemporary legal regime, this research thesis

endeavors to make an involvement to the frame of research on the subject. So the aim of this study is five-folds: Firstly, to provide Pakistan's set of circumstances of human trafficking; Secondly, to draw an enhanced understanding to the offence of human trafficking; Thirdly, to provide Islamic injunctions on the denial of human trafficking; Fourthly, to provide relevant international instruments along with obligations on Pakistan being member to these instruments; and Fifthly, to provide national response and to analyze whether the same is significant to combat human trafficking. Although, all the aims of the thesis are co-related with each other and in the absence of any of them, the findings of the thesis are not possible, but the relevance of fourth and fifth aims is very much important because a national legal regime may be critically analyzed when it is placed in the framework of international obligations contained in international instruments.

The objectives of this research thesis are intended to recognize the five-fold aims of the study. As regards the first aim, the objective is to place the country with true picture of human trafficking, so that contours of significant legal response could be analyzed. The situations and extents of internal and external human trafficking with respect to Pakistan are necessary to identify. This objective is dealt with in chapter 1 of Part-I. To recognize the second aim, the objective is to define and explain main issues related to human trafficking. These issues consist of the understanding of definition of human trafficking, its constituents and confusion about its related acts such as human smuggling, slavery, forced labor, practices similar to slavery etc. The offence of human trafficking is distinct being transnational and organized in nature. This objective is covered in Chapter 2 of Part-I. The objective of third aim is to review the Islamic principles on the subject. These principles are necessary to address because no law

inconsistent with the tenets of Islam can be passed in Pakistan. This objective is covered in chapter 3 of Part-I.

To realize the fourth aim, the objective is to appraise the historical expansion of related regional and international legal instruments to make the national legal regime more viable and to identify international obligations and recommended directives to combat human trafficking. This objective is covered in Part-II. As regard the last aim, the objective is two folds. Firstly, Pakistan's legal regime relevant to human trafficking is described. Secondly, the national legal regime is evaluated which comprises general as well as special laws. This objective is central to this thesis. On the basis of this evaluation, recommendations are made for improving Pakistan's legal response aimed to combat human trafficking. These two objectives are enclosed in Part-III.

Statement of the Problem

The overlapping and contradiction of national laws as well as non-compliance of international standards cause difficulty in the combat of human trafficking in Pakistan. This leads to make the national legal regime insignificant because the laws are ineffective and un-comprehensive. The statement of the problem mainly focuses on a research question '*whether the Pakistani legal regime is significant enough to combat human trafficking?*' Having recognized the international obligations and standards, this research thesis evaluates whether the contemporary national anti-human trafficking legal response is aligned with these standards and obligations? Lastly, an analysis is constructed that how the proposed legal reforms would fulfill the purpose of making more viable legal regime and such reforms are in line up with the identified international minimum standards to combat human trafficking? To evaluate the problem statement, related research questions are explored.

In addition to international obligations, Pakistan has also incurred regional obligations as a member of SAARC countries. So Pakistan is experiencing national, regional and international obligations to address human trafficking, by ratifying various anti-trafficking conventions, protocols and other related instruments. On the national level, the Constitution of Pakistan, 1973 guarantees the protection of fundamental rights; while principles of policy are also made part of the Constitution. Further, the national legal regime addresses the issue through criminal justice response by enacting various legislations including general as well special legislations. The general laws include the Pakistan Penal Code which affords human trafficking related provisions under chapter XVI-A; while special laws include anti-prostitution and pornography laws, bonded labor laws, human trafficking and smuggling laws etc. All these laws are related with each other. In a nutshell, the main research question focuses on whether the contemporary national legal regime is significant to combat human trafficking and the same is aligned with regional and international standards and obligations for combating human trafficking accordingly.

Review of Literature

Human Trafficking is an issue of rising apprehension across the world; the estimated number of trafficked person is in millions.³ It is not the new trend; rather it can be traced back to centuries ago when transatlantic slave trade was rampant between the old world and new world. It has appeared one of the most gainful prohibited businesses following to the trades in drugs and arms, but secret nature makes it difficult to identify the exact number of trafficked people.⁴ Human trafficking is mainly of two types; labor trafficking and sexual trafficking. The human trafficking is a kind of slavery that involves

³ UNODC, Global Report on Trafficking in Persons, 2018 < https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf > (accessed on 20-03-2018).

⁴UNODC, Human Trafficking- People for Sale, < https://www.unodc.org/documents/toc/factsheets/TOC12_fs_humantrafficking_EN_HIRES.pdf > (accessed on 15-02-2016).

bonded, compulsory or forced labor, involuntary servitude or sexual servitude across the world. The distinction between trafficking and smuggling is described as smuggling involves a transaction between willing parties; while trafficking is an attempt to profit from the exploitation of a trafficked person.⁵ Exploitation is the central element of human trafficking which includes forced labor including bonded labor and debt bondage, sexual exploitation such as prostitution, Slavery or practices similar to slavery, Servitude, the removal of organs, other forms of exploitation as defined by national laws – this may include: forced marriage, forced or coerced begging, use in criminal activities, use in armed conflicts, ritual or customary servitude, use of women as surrogate mothers, forced pregnancy etc.⁶ Prostitution, forced labor, organ transportation, begging and bonded labor are the consequences of human trafficking. Bonded labor is common in agriculture and brick kiln industries in Pakistan despite the Bonded Labor System (Abolition) Act, 1992 being a special law on the subject. Ineffective governance against ineffective land reforms or land distribution makes the people to compel for labor trafficking and bonded labor holding the same as modern form of slavery, so the law supra becomes ineffective in such situation.⁷ Public officials are involved in the committing of offence. Pakistan is a country of origin, destination and transit for human trafficking, especially women trafficking, while having underlying causes as the poverty, lack of education, gender discrimination and ignorance for their legal rights.⁸ The ineffective border management between Pakistan and Iran also makes the victims more vulnerable for cross border human trafficking.⁹ Pakistan

⁵ “Human Trafficking vs. Human Smuggling,” Human smuggling and human trafficking Centre, Fact Sheet, 2016.

⁶ UNITAR, “Human Trafficking and the role of local governments – good practices, challenges and way forward,” https://www.unitar.org/dcp/sites/unitar.org.dcp/files/uploads/newcoverhuman_trafficking_final.compressed.compressed.pdf > (accessed on 20-01-2019).

⁷ Nadeem Malik, “Bonded labor in Pakistan,” *Advances in Anthropology* 6 (November 2016): 127-136.

⁸ Shaneela Sadaruddin Khowaja and others, “Women trafficking: causes, concerns, care,” *Pakistan Journal of Medical Association* 62 (August 2012): 8, 835-838.

⁹ Muhammad Tehsin, “Iran-Pakistan relations: Challenges, constraints and opportunities,” *FWU Journal of Social Sciences* 11 (winter 2017): 2, 39-50.

remained under criticism for not having any dedicated law for the combat of offence of human trafficking, but in 2002, a specific law (PACHTO) along-with its rules on the subject was enacted. The international community has appreciated Pakistan for this effort. But the offence is still continued.¹⁰ Sex trafficking contributed to more than half of human trafficking. Although, labor trafficking is the oldest form of human trafficking but sexual trafficking has received much attention in the modern period.¹¹ Forced labor is a kind of human trafficking wherein the victims are treated inhumanely. The individuals are exploited in economic activities such as construction, manufacturing, agriculture, fishing, domestic work, and commercial sex industry. Among these victims, 71% are female and 28% are children. Women and children are the highest victims of sexual trafficking.¹² Pakistani children are especially more vulnerable for trafficking purpose as they are used and abused in the camel racing in the UAE.¹³ However, such child trafficking can be prevented by raising awareness campaigns in order to refine vulnerable communities of Pakistan for the adverse effects of their awful behavior with their own children.¹⁴ A common factor in human trafficking is the movement of victims across the borders from poor nations to the rich nations in search of better living. This is called the cross-border human trafficking. However, internal trafficking also exists in a country.¹⁵ Migration is also one of the causes for trafficking. Globalization is also the cause of increasing human trafficking, so the government of Pakistan requires developing economies by improving socio-economic conditions of the people so as to provide them basic requirements of life

¹⁰ Mrs Amna Imran Khan, "Human trafficking in persons: An overview of the situation," < <http://www.supremecourt.gov.pk/ijc/Articles/14/1.pdf> > (last accessed on 09-01-2015).

¹¹ Jenny Quy Ton, "Sex trafficking: Literature Review," < <https://sextraffickingqton.weebly.com/literature-review.html> > (accessed on 13-07-2015).

¹² UNODC, 2.

¹³ Safana Shaheen and others, "Factors responsible for child trafficking for camel racing in Pakistan," *World Applied Sciences journal* 25 (2013): 7, 1007-1011.

¹⁴ Syed Rashid Ali, "Child trafficking: Analysis of the leading familial determinants," *FWU Journal of Social Sciences* 8 (summer 2014): 1, 36-45.

¹⁵ Frances P. Bernata and Heather C. Winkeller, "Human Sex Trafficking: The Global becomes local," *Women and Criminal Justice, School of Criminology, Arizona State University, Phoenix* (2010).

as well as need to practical implementation of the rule of law to depress human trafficking in Pakistan.¹⁶ Masculinity, sexuality and illegal migration make use of wide empirical substance to discover the phenomena of human smuggling, migration and illegal work.¹⁷ Human trafficking represents a denial of a person's freedom of movement, rights to liberty, dignity and security. So human trafficking is also a human rights issue. Besides being a human rights violation, it is an issue of violence against women and children and violations of their fundamental rights. As stated by the Peel Institute on Violence Prevention's Report that women rights are human rights. The police and justice system have further enabled the exploitation against women and children because they have failed to protect them and to hold offenders accountable.¹⁸ The victims of sexual trafficking are treated as criminal and receive punishments. Most of the research on sexual trafficking has been directed by the protestors of anti-prostitution crusades and they adopt an exciting form of fundamental feminist model theory which does not differentiate between trafficking for forced prostitution and voluntary migration for sex work.¹⁹

The international law began to develop on the subject in the 18th century, even before the development of human rights movement that cropped up in the immediate end of World War-II. Evolution of single country enactment to UN multi-states treaties on human trafficking took more than two centuries. Abolition of black slave trade and white slave trade though international agreements are the example of international law on the

¹⁶ Tariq Majeed and Amna Malik, "Selling souls: An empirical analysis of human trafficking and globalization," *Pakistan Journal of Commerce and Social Sciences* 11 (2017): 1, 452-487.

¹⁷ Ali Nobel Ahmad, *Masculinity, Sexuality and Illegal Migration: Human smuggling from Pakistan to Europe* (Routledge: Studies in Migration and Diaspora, 2011).

¹⁸ "Our women and girls are sacred," interim report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2017). < <http://www.mmiwg-ffada.ca/wp-content/uploads/2018/04/ni-mmiwg-interim-report-en.pdf>> (accessed on 12-08-2018).

¹⁹ Janice G. Raymond, "Prostitution on demand: Legalizing the buyers as sexual consumers," *Coalition against Trafficking in Women* (2004): 1156-1186.

subject.²⁰ International law on human trafficking developed in an effective way gradually, but not steadily. It began to encompass every issue which came under its knowledge, so it did not develop abruptly. The related issues such as slavery, slavery like practices, forced labor, human smuggling etc. were abolished by the international law as and when they violated the human dignity. Every single offence is described in a single treaty. In the beginning of 21st century, the transnational organized crimes were given attention. One of them was the offence of human trafficking, so it was calculated in terms of such crimes. The Palermo Convention and Palermo Protocol are the result of long standing history of human trafficking. Various countries were obligated to adopt the standards contained in all such treaties.²¹ The effective international legal regime on the subject is the result of efforts made by the UN and its specialized agency, ILO.²² The most powerful and recent instruments of international law to set the way to define, prosecute and prevent the human trafficking are UN Convention against Transnational Organized Crime and its two Protocols i.e. the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air. The United Nations Office on Drugs and Crime (UNODC) formed these instruments, which have sustained the efficiency of international law to combat human trafficking. In support of implementing these conventions, the UNODC established the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007. The other relevant previous instruments are Slavery Convention (1926); the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); the Universal Declaration of Human Rights (1948), the International Covenants on Civil and Political

²⁰ Federico Lenzerini, "International legal instruments on human trafficking and a victim-oriented approach: which gaps are to be filled?" *International Human Rights Law Review* 4 (2009): 14, 205-238.

²¹ UNODC, 2.

²² Jean Allain, *slavery in international law: Of human exploitation and Trafficking* (Brill, 2013).

Rights (1966), The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), and the Convention on the Elimination of all Forms of Discrimination Against Women (1979). All these treaties set the groundwork for the contemporary conventions and efforts to combat human trafficking. However, the compliance of these standards is the most challenging task. The states are required to submit regular reports for their level of compliance, once the treaty is signed and ratified. The standards for human trafficking are sketched in two international documents i.e. Human Rights Standards for the Treatment of Trafficking Persons and the Recommended Principles and Guidelines on Human Rights and Human Trafficking which also ensure the treatment of trafficked persons as victims rather than criminals. The UN is also able to assess as to which country is complying with or in violation of the international standards.²³ The World Bank can play its good role in order to combat human trafficking internationally as the issue of human trafficking is analyzed as human rights concerns; therefore, the centre of consideration should always be given to the protection of the victim by acknowledging his rights.²⁴ Internationally, trafficking behaviors have been exclusively classified as crimes tackling with law enforcement strategies focused on criminalization and punishments. However, human trafficking is also a human rights issue, so a certain level of corresponding relation between human rights and criminal law approach is needed to effectively abolish the offence.²⁵ After the successful enactment of international law, the state parties are obliged to adopt the same in their national laws, so that the standards set by the international community should be

²³ Lindsey King, "International Law and Human Trafficking," *Topical Research Digest: Human Rights and Human Trafficking* 88-103. < <https://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>> (last accessed on 16-03-2016).

²⁴ Maria Fernanda Perez Solla, "Slavery and Human trafficking: International law and the role of the World Bank," 2009. < <https://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0904.pdf>> (last accessed on 15-06-2017).

²⁵ Valentina Milano, "the International law of human trafficking: At the forefront of the convergence between transnational criminal law and international human rights law?" (2018).

respected in a dignified manner.²⁶ To address the problem of human trafficking, Pakistan has enacted two laws i.e. PACHTO and PTPA. Sexual as well as labor trafficking is rampant in the country. Debt bondage is the major issue with respect to labor trafficking. Bonded laborers are called disposable people because they can be easily replaced.²⁷ The international law declared the human trafficking and prostitution as illegal through a number of instruments. Pakistan being a member state to those instruments also declared these acts illegal and introduced a criminalized system so as to completely abolish the same, but even then these offences are rampant throughout the country and still growing as mushrooms. Women and children are being exploited and discriminated more than ever before. The prostitution is the sexual exploitation, but the same is being treated as sex work. This makes the national legal response highly objectionable.²⁸ Pakistan was placed in the lowest rank of the US Tier system for not complying with the international standards to combat human trafficking; however, after the enactment of the PACHTO, it was upgraded to some better position. Provincial governments adopted some previously enacted laws as well as enacted some new laws relevant to the human trafficking. Even then, convictions were scarce, protection was nil and prevention was not up to the mark.²⁹ The current legal regime is not enough to combat human trafficking as law enforcement agencies themselves are involved in the committing of offence.³⁰ The US 2018 tier report held that Pakistan did not fully meet the minimum standards but still making significant efforts. However, the efforts are not commensurate to the scale of the problem in the real sense. The 2019 report concluded the same version as previously. The menace is still

²⁶ Judy Obiter Gama, "The application of international law into national law, policy and practice," < <https://www.who.int/tobacco/media/en/JUDY2000X.pdf?ua=1> > (accessed on 17-06-2018).

²⁷ Siddharth Kara, *Bonded labor: Tackling the system of slavery in South Asia* (Columbia University Press: 2014).

²⁸ Anwar Mohyuddin and Hafeez Ur Rehman, "Women and child trafficking for sexual exploitation in Pakistan," *Journal of Asian Development Studies* 2 (December 2013): 4, 23-36.

²⁹ US TIP Reports of 2010 to 2018.

³⁰ Muhammd Munir, "Trafficking in persons: Faulty regulations, pervasive corruption and flawed prevention in Pakistan," *Pakistan Journal of Criminology* 9 (July 2017): 3, 56-65.

uncontrollable in the true sense. The laws do not seem significant to combat the offence. In most of the case, the law enforcement agencies deem it difficult as to under which type of law the cases against human trafficking be registered due to some ambiguities in legislations.³¹ The prevention, protection and prosecution are questionable in practical terms, having some challenges ahead for Pakistan. The red book 2019 issued by the Anti Smuggling/ Trafficking wing of the Federal Investigation Agency of Pakistan provides the most wanted human traffickers, proclaimed offenders and court absconders involved in illegal immigration, human trafficking and human smuggling since 2006. The book provides the details along with their pictures. This sufficiently shows that the human trafficking is widespread in Pakistan.

Hypothesis Statement

After scrutinizing the fore-going literature, the following hypothesis has been developed:-

“The national legal regime on human trafficking is overlapping, contradictory and far from the international standards. Therefore, the same may be made significant in case it is reviewed and aligned with the international standards.”

Research Questions

In view of the aims and objectives supra of the thesis, the following research issues are fundamental to the discussion for human trafficking and are woven throughout the text of this thesis.

1. What is the scope and scale of the human trafficking in Pakistan?
2. What is the conceptual understanding of human trafficking? How its basic characteristics vary from other connected crimes such as slavery, slavery like practices, forced labor and human smuggling?

³¹ 2019 TIP Report.

3. What are the Islamic injunctions on the prohibition of human trafficking and its related acts?
4. How the international legal regime evolved to combat human trafficking? What are the international and regional standards to combat human trafficking?
5. What is the national legal response to combat human trafficking?
6. Whether Pakistan complies with these regional and international standards for combating the human trafficking?
7. Whether the national legal regime is significant enough to combat human trafficking?

Research Methodology

This research thesis is written in the qualitative research methodology approach. This methodology is a type of enquiry in which the qualities, instead of quantities, and the characteristics of a phenomenon are examined for greater understanding and explanation.³² In legal research studies, evaluation through qualitative approach is an appropriate methodology. Qualitative data is gathered mainly by means of documents analyses. The documents that are made use of include the international, regional and national instruments on human trafficking; and publications such as academic journals, books, survey reports, newspapers' articles and data bases. The national instruments such as constitution, general laws, special laws and case laws on human trafficking are taken into consideration. They are analyzed and compared for the purpose of enhancing validity. Secondary data is largely charted with already current sources being relied upon.

Since this research thesis adopts the critical evaluation of a legal regime, so an evaluation research methodology is a good consideration along with the qualitative

³² Lindy Wilbraham. "Qualitative Researching beyond Tools and Techniques," *PINS* 33 (2006): 74-78.

approach through the gathering of secondary data. Evaluation research measures a particular practice at a given site in terms of certain criteria.³³ While applying the same to this research thesis, evaluation research is used for weighing the national anti-trafficking legal response to criteria set in regional and international instruments.

Limitations and Strengths of the Study

Every research thesis has some limitations and some strength. In expectation to the present research thesis, the limitations are identified with respect to the research methodology which is the limitation of quantitative research methodology in the first place. It is claimed that quantitative research is essential to obtain more reliable data and to ensure a better understanding and management of the human trafficking phenomenon.³⁴ It is contended that research on human trafficking mainly tends to be descriptive, describing and defining the phenomena, or at most exploratory, exploring the nature and frequency of the problem.³⁵ However, being a legal type of research along with evaluation of a legal regime, the second approach is more appropriate and is adopted accordingly, by not including the quantitative research methodology in the present research thesis. This leads to the first limitation in the thesis. The second limitation is with respect to the area of law. Law is vast enough to include various areas in it such as civil law, criminal law, administrative law, corporate law, family law etc. This research study deals only with the criminal area of law and anti-human trafficking legal regime is being evaluated from the standpoint of criminal justice response. The third limitation pertains to the absence of comparative study with other countries. Such comparison requires a complete separate research, so it may divert the central argument of the thesis.

³³ Charles D. Hales and Douglas Astolfi. *Evaluating Education and Training Services: A Primer* (Florida: Saint Leo University, 2015).

³⁴ UNODC, 2009a:07.

³⁵ Andrea Di Nicola and others. *Prostitution and Human Trafficking: Focus on Clients* (Springer: New York, 2009).

The national legal regime is only compared with regional and international standards drawn from instruments on the subject.

Besides limitations, this research thesis has strengths as well. First of all, the qualitative approach to describe the definition of human trafficking contributes towards the true understanding of the phenomenon. Human trafficking is considered as a form of slavery or forced labor. Evaluating various documents present the difference and distinguished features among all these terms. It is pointed out that a bulk of literature exists on different aspects of slavery, but the same is still wanting concerning the present-day human trafficking. The very first chapter is relevant in this regard. It provides the conceptual clarity pertaining to the definition and other distinctive constituents of human trafficking and distinguishes it from other related acts such as forced labor, slavery, debt bondage, human smuggling etc. For the validity of its strength, this research thesis provides an in-depth discernment into the evolution of international instruments which transformed from transatlantic slave trade to contemporary human trafficking.

Value and Significance of the Research

This research study is valuable due to the fact that it discusses principally an important topic on both national as well as international level. By achieving the five-fold aims mentioned above, this research thesis will make a worthy contribution to the research paradigm on human trafficking in Pakistan from a legal perspective. The research will prove advantageous in litigation, in training of different stake-holders, and any future legal reforms on the subject. This research will be of value to other countries of the world that are in process of enacting anti-trafficking legislation. Even the countries that have legislated on the subject may find some guidance for review on existing legislation. Lastly, this research will contribute in our own country for review of existing legislation.

Chapters Outline

This thesis is divided into three parts which contain eleven chapters, excluding Introduction and Conclusions & Recommendations.

Part-I contains three chapters. Chapter 1 shows the situational analysis of Pakistan wherein the people are victims of human trafficking, bonded labor, etc. Internal as well as external human trafficking is deeply rooted in Pakistan through the vulnerable borders and other geographical locations. Chapter 2 provides the conceptual clarity of the phenomenon of human trafficking. To apprise the study and endorse an exhaustive understanding of human trafficking, this chapter scans the significant issues such as the definition of human trafficking, distinction of human trafficking with its related acts such as slavery, slavery like practices, forced labor, human smuggling etc. so as to enhance the understanding of the offence. Chapter 3 highlights the Islamic injunctions on the prohibitions of human trafficking, appraising the dignity of man and prohibiting the exploitation of any kind. Various verses from the Holy Quran and traditions of the Holy Prophet (PBUH) are enunciated. This chapter is a good contribution to the Islamic knowledge on the subject.

Part-II contains four chapters. How the international law against the human trafficking evolved from the ancient offences of black and white slave trades as well as slavery is the main theme of this part. Chapters 4 and 5 are non-modern period of international law wherein black slave trade and white slave trade are the main subjects of discussion. Both these slave trades were abolished through enactments on the social campaigns of the abolitionists. Next two chapters are most important ones because the international instruments had abolished slave trades but their rise with the new name i.e. human trafficking became the concern for the international community. International law developed during this period is truly called the modern period of international law.

Chapter 6 provides the evolution of international instruments developed on the subject during the period of the League of Nations (the League); while chapter 7 highlights the development of international law on the subject during the period of the United Nations (UN). The state parties joined hands under the flag of the UN to combat human trafficking by developing a number of different treaties which command state parties to comply with the standards embodied therein.

Part-III contains four chapters. Chapter 8 outlines the national legal response to combat human trafficking which comprises general and special laws. The general law includes Pakistan Penal Code (PPC) while special law includes, inter alia, the Prevention and Control of Human Trafficking Ordinance, 2002 (PACHTO) and Prevention of Trafficking in Persons Act, 2018 (PTPA). Chapter 9 provides certain legal principles which are related to the discussion of critical evaluation of the legal regime. These principles are very important on the subject and the Courts of the country have relied on these principles while deciding a number of cases. Chapters 10 & 11 address the central argument of the thesis by critically evaluating the national legal regime and providing the answer to the main research question. Chapter 10 is the critical evaluation of the PACHTO; while chapter 11 is the critical evaluation of the PTPA. Various provisions of general law, special laws, various legal provisions and international standards are analyzed together. On the basis of findings of these chapters, some recommendations are made for better combating human trafficking.

PART – I

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Chapter 01: Human Trafficking in Pakistan

1.1 Introduction

Before developing the conceptual understanding, evolution of international law and evaluating the national legal response to combat human trafficking, it is quite necessary to explain the nature and scale of human trafficking issue in Pakistan. The Turbat massacre and the Libyan (Zuwarah Coast) Boat Capsizing massacre are the sad incidents in the history of Pakistan with respect to human trafficking. The Turbat incident happened on 15th November, 2017 when 15 bullet-ridden bodies were recovered from Buleda Area of Kech district in Turbat, Baluchistan. Two days later, five more dead bodies were found on a short distance of same spot. The documents found on the dead bodies suggested that all the victims belonged to Punjab province and were being taken to Europe and Gulf States through Iran, Iraq and Turkey illegally for the sake of employments. The Supreme Court of Pakistan took suo motu notice on these incidents and questioned the role of agencies, in particular the FIA, in preventing the human trafficking cases in Pakistan. This prompted government to take strict action against the human traffickers.³⁶ In this regards, various human traffickers including the recruiters, transporters, harborors, and providers were arrested by different raids of FIA in districts Gujranwala, Gujrat, Sialkot Mandi Bahauddin and Lahore of Punjab province. The second incident of Libyan Boat Capsizing happened on 1st February, 2018 when a boat capsized off the Libya in Zuwarah Coast.³⁷ Around 90 people, most of them were from Pakistan, had drowned into the Mediterranean waters in their failed attempt to reach Italy. Eight FIRs were registered against the human traffickers in Pakistan – seven FIRs in district Gujrat and one FIR in district Faisalabad. These victims were transported from

³⁶ Dawn Newspaper dated 4th December, 2017; Geo News dated 22nd December, 2017; Pakistan Today Newspaper dated 17th November, 2017; the Nation Newspaper dated 22nd December, 2017.

³⁷ Zuwarah is located near Libya's border with Tunisia and is a favorite site for migrant boat departures to Europe.

Pakistan to Libya through various routes for destination to Italy for labor purposes. Pakistani nationals are among the migrants who attempt to cross the Mediterranean to Italy and Europe via Libya.³⁸

Human trafficking, being one of the largest criminal industries is run by organized criminals who have understood that if they deal in other big industries such as arms or drugs, they have to re-purchase after each sale, but if they deal in human beings, they can sell the same person over and again without any re-purchase. So they look into this business the high profits and low investment. Further, since it is a clandestine business, so there are little chances of prosecution as well. All these facts make in the rise of this business. All the countries of the world including developed, developing and under-developed are facing the issue. Pakistan, being a developing country, is not immune from its effects. As the offence is an organized one; hence, its effects can be seen in more than one country. Under such circumstances, Pakistan is an origin³⁹, transit⁴⁰, and destination⁴¹ country for human trafficking to negotiate for debts and disputes, or domestic servitude, or forced into sexual exploitation, with a large percentage of trafficking occurring within Pakistan.⁴² People within and outside Pakistan are made victims of human trafficking wherein they are subject to exploitation. Child trafficking in Pakistan is deeply rooted due to natural disasters, a large number of refugees, porous borders, poverty and presence of organized trafficking network. Both internal and international child trafficking take place but there is no exact data available. Various reports of NGOs recorded the cases of human trafficking in which majority number of victims are children. Various reasons can be

³⁸ International Organization for Migrants' spokeswoman, Olivia Headon told a Geneva briefing on boat capsizing off Libya incident, because Libya is the main gateway for migrants trying to cross to Europe by sea.

³⁹ Origin means the place from where the victims are taken.

⁴⁰ Transit means the place where the victims might be transported through and temporarily kept on the way to their final destination.

⁴¹ Destination means the place where the victims are finally reached for exploitation. This is the end country.

⁴² Child Trafficking and abduction, article published by Society for the Protection of the Rights of Child.

attributed to this lack of accurate data; among them is the insignificant anti-trafficking legislation because certified data on human trafficking mirror only those cases registered and prosecuted under the PACHTO and PTPA, but there is overlapping of national legislation, due to which various cases of human trafficking are not reported as human trafficking cases although human trafficking is involved in them.

Children are easily controlled; hence, they are prone to diversified abuses in the disguises of labor, trafficking, slavery, domestic servitude, camel jockeys etc. No exact data of children trafficking is available in Pakistan. However, there are at least 1.2 million to 1.5 million street children in Pakistan.⁴³ About 19000 children between 2-11 years of age were reportedly moved to Middle East for camel jockeys.⁴⁴ In *Muhammad Ramzan case and Muhammad Hanif case*,⁴⁵ the accused were found involved for child trafficking sending children to Middle East for camel race. About 20,000 to 40,000 children are involved in the business of prostitution in Pakistan.⁴⁶ About 4500 trafficked children are being used for bonded labor practices.⁴⁷ In *Dr. Zafar Iqbal case*,⁴⁸ the accused persons were allegedly transporting two children to Munich for exploitative entertainment. Pakistan's largest human trafficking issue is said to be bonded labor, focused in Sindh and Punjab provinces, in agriculture and brick-making to a large extent, and in the mining, carpet weaving, glass bangles, and fishing industries to lesser extent. Internal human trafficking is a part and parcel of national culture and a stain on the national

⁴³ Faran Emmanuel and others, "Street Children in Pakistan," A Study conducted by Azad Foundation, Pakistan, 2005.

⁴⁴ Abu Zidan and others. "Prevention of Child Camel Jockey Injuries: A Success Story from the United Arabs Emirates," *Clinical Journal of Sport Medicine* 22 (November 2011): 6, 467-471.

⁴⁵ Muhammad Ramzan versus the state, 2006 YLR 2998; Muhammad Hanif versus state, 2008 YLR 810 (Lahore).

⁴⁶ Anusheh Hussain, "The other side of Childhood: A Research on Male Child prostitution at a Bus Stand in Pakistan," A research project by SAHIL, 2004.

⁴⁷ Nadeem Malik. "Bonded Labor in Pakistan," *Scientific Research Publishing* 6 (2016): 127-136.

⁴⁸ *Dr. Zafar Iqbal versus the state*, 2006 YLR 1682 (Karachi).

character.⁴⁹ Internationally, Pakistan is not in a satisfactory position over the abolition of human trafficking.

1.2 Pakistan and the US Tier Ranking

The U.S government has assumed the character of universal sheriff over the issue of human trafficking, for which she has introduced some standards. The US government exercises its dominant authority to require the conformity of such standards. The US State Department Office to Monitor and Combat Trafficking in Persons (the TIP Office) has been issuing an annual Trafficking in Persons Report (TIP Report) since 2001 in which the efforts of countries to abide by the standards are ranked. This ranking is called the Tier ranking or Tier Placement. The Tiers are ranked into four categories i.e. Tier-1, Tier-2, Tier-2 Watch List and Tier-3 which signify a gauge of obedience to the minimum standards.⁵⁰ The annual TIP Report contains a calculation of governments' compliance with the recommended minimum standards set out in the Trafficking Victims Protection Act, 2000.⁵¹ The countries ranking in the lower grade of tier system are subject to economic sanctions by the U.S.⁵²

⁴⁹ The Express Tribune dated 28-03-2018.

⁵⁰ Tier-1 represents those governments with full compliance of minimum standards of Trafficking Victim Protection Act (TVPA); tier-2 represents those countries which do not fully comply with such minimum standards, but are making significant efforts to bring themselves into compliance with those standards; tier-2 Watch list represents those countries which do not fully comply with such standards, but are making significant efforts to bring themselves into compliance with those standards, and (a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; (b) there is failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; (c) or the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps over the next year; Tier-3 represents those countries which do not fully comply with the minimum standards and are not making significant efforts to do so.

⁵¹ Under section 108 (a), four minimum standards are set for countries to comply with, i.e. (1) the government of the country should prohibit severe forms of trafficking in person and punish acts of such trafficking; (2) for the knowing commission of any act of sex trafficking involving force, fraud, coercion or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault; (3) for knowing the commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offence; (4) the government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

In order to determine the last sub-clause i.e. 108 (a) (4), section 108 (b) stipulates that the following factors should be considered; (1) whether the government of the country vigorously investigate and prosecute acts

Initially, Pakistan did not take serious steps over the issue of human trafficking such as having no dedicated legislation at that time; while general criminal law was not comprehensive enough to deal with the issue. In its first report, the U.S. placed Pakistan in tier-3 countries' list because Pakistan did not fully meet with the standards of TVPA and had not made any significant efforts to combat human trafficking. In 2002, Pakistan was placed in tier-2 rank because a dedicated law, Prevention and Control of Human Trafficking Ordinance (PACHTO), was enacted. The government also supported several centers throughout the country giving shelters to women and trafficking victims as they go through legal proceedings. These victims were given access to medical treatment and limited legal representation. Temporary residences were provided to foreigner trafficking victims. The government proceeded for hiring thirty female personnel tasked with identifying women and children victims of human trafficking at 18 border stations. Various NGOs were also taken on board to raise awareness of trafficking. The FIA registered many cases against camel jockey traffickers. Pakistan retained its position in tier-2 countries' list till 2011 because sufficient progress was being shown by Pakistan.

of severe forms of trafficking that take place wholly or partly within the territory of the country; (2) whether the government of the country protects victims of severe forms of trafficking and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensure that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked; (3) whether the government of the country has adopted measures to prevent severe forms of trafficking, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons; (4) whether the government of the country co-operates with other government in the investigation and prosecution of severe forms of trafficking in persons; (5) whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to the same extent as person charged with other serious crimes, or to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition; (6) whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human rights to leave any country, including one's own, and to return to one's own country; (7) whether the government of the country vigorously investigates and prosecutes public officials who participate in or facilities severe forms of trafficking in persons and takes all appropriate measures against officials who condone such trafficking.

⁵² Section 110 of the TVPA provides for actions against governments failing to meet with minimum standards.

By the year 2014, Pakistan lost its position to tier-2 watch list because Pakistan failed to show, among others, satisfactory law enforcement efforts against the human trafficking. Internal trafficking was much broader area but Pakistan failed to deal it due to absence of federal laws to address the same. The implementation of contemporary laws was absent. Prosecution of offenders, protection to victims and prevention of offence were quite unsatisfactory.⁵³ Having been ranked in tier-2 watch list from 2014 to 2017, Pakistan retrieved its position of tier-2 countries' list in 2018. However, Pakistan is geographically vulnerable as such to combat human trafficking.

1.3 Geographical Location of Pakistan

Geographical location is a contributing factor towards the international human trafficking. Pakistan encounters remarkable troubles in border control, due to which cross-border human trafficking to and from neighboring countries is difficult to cope with. To the West, Pakistan divides its border area with Afghanistan called the Durand Line, covering almost 2550 kilo-meters which is highly penetrable. To its South West, the Islamic Republic of Iran is located, sharing border line of 912 kilo-meters. To its North, the Republic of China is located, which share 510 kilo-meters border area. To the West of China boundary, Afghanistan's area at Wakhan is situated which separates Pakistan and the Muslim Republic of Tajikistan. To the East lies India, dividing both the countries with border area of 2912 kilo-meters long which is not straight. To its South, Pakistan links with Arab countries, with 1046 kilo-meters long coastline on Arabian Sea in Sindh and Baluchistan. The traffickers, being highly organized use both land and sea routes to cross the victims in destination countries on both sides. However, the most recorded usual route of departure from Pakistan is the land route through Baluchistan to Iran. Iran route is safe in terms that there is a single border check post at Taftan that crosses into Mirjaveh on the

⁵³ US TIP Report, 2014.

Iran side.⁵⁴ In addition to this, Pakistani people cross into Iran by road or on foot, crossing from Mand Bullo, Pakistan, to Pishin District, Iran. In *Zafar Iqbal case*,⁵⁵ the Supreme Court of Pakistan showed its high concern over the issues of immigration into Pakistan, emigration from Pakistan, human trafficking and human smuggling. The Court held that there appears to be no enforcement of the applicable laws on the borders between Pakistan and Afghanistan at Torkham and Chaman, so human traffickers take it an opportunity for their malicious designs. The Supreme Court appointed two local commissions to ascertain the factual positions regarding borders at Torkham and Chaman. So, not only the people from the neighbor countries in Pakistan but also the people from Pakistan in the neighbor countries are the victims of labor as well as sexual trafficking.

1.3.1 Silk Route of Pakistan and Human Trafficking

The Silk Route geologically passes through Pakistan, Afghanistan, Bangladesh, China, Iran and Iraq. Pakistan has made bilateral agreements with countries such as Greece, Iran, Turkey and other European countries to co-operate in disseminating information regarding human traffickers through Interpol. In 2016, Pakistan also actively participated in the Budapest Process to initiate Regional Law Enforcement Co-operation for Silk Route Region.⁵⁶ The Silk Route Partnership for Migration was adopted on 19th April, 2013 chaired by Turkey under the Istanbul Ministerial Declaration by above-mentioned countries. The Declaration organized several initiatives around six priority areas of the Partnership as under: -

- i. To organize the legal migration in a better way;
- ii. To support the integration of migrants and respond to the discrimination;

⁵⁴ Zahid Ali Khan, "Balochistan factor in Pak- Iran relations: Opportunities and constraints," *A Research Journal of South Asian Studies* 22 (January-June 2012): 1, 121-140; Dr. Mansoor Akbar Kundi, "Borderline interaction: the case of Pak-Iranian Baloch," *IPRI Journal LX 2* (Summer 2009): 90-105.

⁵⁵ *Zafar Iqbal versus Abid Hussain*, 2015 SCMR 1795.

⁵⁶ Budapest Project is an advice giving forum with over 50 governments including Pakistan and 10 international organizations having objective to develop complete and sustainable systems for systematic migration which take place along the Silk Routes.

- iii. To strengthen the positive impression of migration on development;
- iv. To prevent and counter irregular migration and combat criminal networks involved in smuggling of migrants;
- v. To prevent and combat trafficking in persons, address its root causes and provide adequate protection and support to trafficked persons;
- vi. To promote international co-operation, protection and the respect of the rights of refugees.

Silk route countries remain a major source, transit and destination points for human trafficking and smuggling.⁵⁷ The land routes west to Pakistan are vulnerable to control by the smugglers and traffickers and Burmese and Bangladeshis are exploited by these criminals for forced labor, prostitution and begging.⁵⁸ However, the largest migrants are the Afghans. It is estimated that Pakistan is hosting 1.7 million registered Afghan refugees which is one of the biggest refugee populations in the world, additionally around 1 million residing illegally.⁵⁹ All such migrants are vulnerable to exploitative practices. In Pakistan, the Ministry of Interior (MOI) holds the remit for border policing which gives further responsibility to FIA for immigration control.

1.4 Internal Human Trafficking in Pakistan

Internal human trafficking means the human trafficking prevalent within the state borders. Internal trafficking is defined as those forms of non-consensual exploitation of individuals that only involves transportation within national boundaries of a state.⁶⁰ The local people are made victims and exploited in various work-places. The issue of internal human trafficking is much bigger than international human trafficking, but the same is not

⁵⁷ "Humanitarian Border Management in the Silk Route Region _ Afghanistan, Iraq and Pakistan," published by International Organization for Migration (IOM), 2014.

⁵⁸ Central Intelligence Agency, the World Fact Book, 2016. Available at <https://www.cia.gov/library/publications/the-world-factbook/fields/2196.html> (last accessed on 04-06-2018).

⁵⁹ UNHCR, *Repatriation of Afghan Refugees from Pakistan: Revised Supplementary Appeal*, (2016)."; Nasreen Ghufuran, "The Role of UNHCR and Afghan Refugees in Pakistan," *Strategic Analysis* 35 (November 2011): 6, 945-954.

⁶⁰ UNODC, *Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance*, (October, 2011).

considered adequately. The official data about the magnitude of internal human trafficking is more difficult to collect as compared to the international human trafficking due to the reasons that most of the occurrences of internal human trafficking are never reported to the police; however if registered, different types of crimes instead of human trafficking are mentioned on the report; some cultural practices of Pakistan are narrowly connected to internal trafficking that are never considered as human trafficking. Internal trafficking is the subject of informal economy; therefore, it is difficult to determine the location of internal trafficking. One of the main reasons for internal trafficking is the inflation rate. According to CIA's the World Fact-book, the inflation rate of Pakistan increased 4.1% in 2017 from 2.9% in 2016.⁶¹ It is prevalent across almost all the districts of Pakistan. In province of Punjab, the districts in South Punjab are mostly affected. Gujrat, Gujranwala, Sialkot and Mandi Bahauddin are also identified for internal human trafficking for forced labor. In province of KPK, Chitral is reported to be most affected. In provinces of Sindh and Baluchistan, internal human trafficking for bonded labor is highly prevalent. It is correctly said that Pakistan's major human trafficking problem is assumed to be bonded labor for which Punjab and Sindh are highly affected.⁶² There are also evidences of human trafficking within Pakistan. Some districts of Sindh such as Mirpurkhas, Mithi, Umarnot, Nawabshah, Badin, Thatta, Sanghar, Hyderabad, Khairpur and Tando Allah Yar are reputed to have higher incidents of bonded labor. It is estimated that 1.8 million people are bonded laborer; this figure is approximately 1% of Pakistan's total population.⁶³ The Asian Development Bank counts about 1.8 million people as

⁶¹ CIA World Factbook, 2016 <<https://www.cia.gov/library/publications/download/download-2016>> (accessed on 22-03-2019).

⁶² US TIP Report, 2018; Aurat Foundation, *Internal Trafficking of women and girls in Pakistan*, (December 2012); Child Trafficking and Abduction < <http://www.sparcpk.org/2015/Other-Publications/CT2013.pdf>> (accessed on 17-03-2019).

⁶³ US TIP Report 2012, P 276, 2017, 2018; ILO Report, *Strengthening Law Enforcement Responses and Actions against Internal Trafficking and Bonded Labor in Sind and Punjab Provinces, Pakistan*, A Project with the US Department of State's Office to Monitor and Combat Trafficking in Persons, 2013.

bonded laborers.⁶⁴ Mithi and Umarkot are also known for cross-border human trafficking between India and Pakistan.⁶⁵ Forced marriages are reported to be in practice in Kashmore, Qambar, Jacobabad, Ghotki, Shikarpur and Shadalkot.⁶⁶ The situation on brick kiln is much worse because such brick-kilns are located far away from the populated areas; hence, social network of workers is disconnected once they are employed on the brick-kilns. They got employed through jamadars who play the same role as of traffickers in human trafficking cases. Workers are very poor persons of the surrounding areas mostly belong to minorities and the kiln-owner traps them by giving a small amount of money as a loan. Then said loan is never paid off and whole family of workers remained under the control of the owner. Sardari system is prevalent in the province of Baluchistan which is almost alike the bonded labor system. Sardars or chiefs exact the same labor from the workers as the kiln-owners in Sindh and Punjab.

The children are the main victims of internal human trafficking because they have to help their elders in bonded labor system. The TIP Reports identify bonded labor as the major triggering factor behind human trafficking in Pakistan.⁶⁷ Pakistan's bonded labor is prevalent in all of the provinces but Sindh and Punjab provinces are mostly affected.⁶⁸ Mining, carpet weaving, brick kiln and fishing industries rely heavily on bonded labor. Children of both sexes are the victims of bonded labor. Further, the children are brought from rural areas with the promise of getting jobs for them in the cities. Once they reach there, they are made domestic servitude or brought to brothel-houses where they are exploited and treated as slaves. Many reported cases of internal child trafficking are

⁶⁴ Ibid.

⁶⁵ Aurat Foundation, *Internal Trafficking of women and girls in Pakistan*, (December 2012).

⁶⁶ Ibid.

⁶⁷ US TIP Reports 2010 to 2017.

⁶⁸ US TIP Reports 2001 to 2018; Fawad Hassan, "Chained, Debt Bondage in Pakistan," Dawn newspaper dated 20-01-2015; Salman Ali, "Bonded Labor in Pakistan: a Humanitarian Crisis," Daily Times dated 19-02-2015; Parvez Rahim, "Labor in Punjab," Dawn Newspaper dated 03-01-2019.

available such as most recently *Tayyabah Torture case*⁶⁹ is the famous case in Pakistan. Forced marriages of girls are also the contributing factor towards the issue. Trafficked children always belong to the socio-economic constrained families because such children are most neglected and abused ones. They are compelled to help in earning livelihood of their families. The traffickers take advantage of this vulnerable situation and traffic them for forced labor, prostitution etc. In addition to this, children are also sold, bought, rented and kidnapped to work in domestic servitude and prostitution.⁷⁰ Parents are also involved in the trafficking of their children such as in cases of camel jockeys. Parents sent their children due to financial needs and distress. Girls and women belonging to rural areas are taken to urban areas for commercial sex exploitation and involuntary domestic servitude.⁷¹ They are also sold into forced marriages and so-called husbands convey them across Pakistan where they are compelled for commercial prostitution.

Internal trafficking of women is mostly occurred for prostitution but forced labor is also exacted from trafficked women. Women belonging to Hazara ethnic and Afghani resident in Pakistan are mostly trafficked.⁷² These women are mostly trafficked for sexual exploitation. Female victims are recruited through forced marriages or deceived through promises of better jobs. Cruelty of the husbands or other family members is also the reason for the women to leave her home and engaged into prostitution. In district Rajanpur, a market was discovered by a NGO where the women and young girls were

⁶⁹ *Raja Khurram Ali Khan versus Tayyaba Bibi etc.*, 2019 YLR 98 (Islamabad). In the instant case, the court held that the minor maid was transported to the house of he accused as a consequence of child trafficking where she was allegedly mal-treated like slaves and exploited. However, the accused persons were not punished for offence of human trafficking, rather were punished for some other offences.

⁷⁰ UNODC, *Human trafficking and migrant smuggling routes from Pakistan to neighboring and distant countries*, (November, 2012); Shahid Ilyas Khan, "The menace of human trafficking," Newspaper Daily Times dated 20-05-2019; Muhammad Majid Bashir, "Ins and Outs of human smuggling and trafficking," Newspaper Pakistan Today dated 22-02-2017; Shahid Hussain, "Pakistan a key player in global women trafficking trade," Newspaper International The News dated 02-01-2015.

⁷¹ US TIP Reports 2001 to 2017; S. Huda, "Sex Trafficking in South Asia," *International Journal of Gynecology and Obstetrics* 94 (2006): 374-381.

⁷² ILO Report, 63.

being sold like animals.⁷³ These women were taken to other parts of the country for prostitution. Diamond Market (*Heera mandi*) area of Lahore is famous for prostitution where the women and girls from all Pakistan, particularly South Punjab region, are brought for sexual exploitation. Such types of brothel houses are also available in other cities of Pakistan such as Sargodha, Layyah etc. Most of the women and children are exploited in prostitution in a situation when they ran away from their homes due to any reason and became vulnerable for sexual exploitation by the traffickers. Such women and girls are easy targets for traffickers to engage them in immoral trade. Some victims have to work over-there because their other family members are already involved in such activities. Significant numbers of girls are also trafficked for sexual exploitation who are best profitable commodities for exploiters. Most of the women and girls are brought there as dancers (*Mujra women*) only with their consent.⁷⁴ However, they are subsequently compelled for sexual work as well. Their previous consent is obtained through misrepresentation as having no prior knowledge that they would be likely to do sex work. In such situation, they become victim of human trafficking if refuse to perform sex work but are compelled to do so. Therefore, consent obtained through coercion or misrepresentation invalidates the previous consent. Such women and girls are given a small portion of earnings while major portion is retained by the persons who are managing them, usually the pimps etc. Traditional practices such as swara and vanni are sometimes used as a means to enable internal trafficking.

1.5 International Human Trafficking

International human trafficking, being the transfer of trafficked persons across the national borders, is of two types.

⁷³ Ibid.

⁷⁴ Saad Khan, "Mujra in Patriarchies: Working class women in Lowbrow Pakistani Entertainment," <<https://medium.com/@khajistan/showgirlsofpakistan-e015b7926105> > (accessed on 09-02-2018).

1.5.1 Human Trafficking to Pakistan

It is the importation of trafficked persons from other countries to Pakistan for exploitative purpose. Pakistan is the destination country in this type of human trafficking cases. The trafficking of Afghani, Russian, Nepali, Iranian, Chinese and Bangladeshi women and girls to Pakistan is mostly committed for the purpose of sexual exploitation.⁷⁵ Trafficking to Pakistan for the purpose of labor exploitation is not committed because labor trafficking is committed mostly internally and there is no need to traffic persons for labor purposes due to the fact that Pakistan being developing country and un-employment situation is self-sufficient in labor force. The only persons trafficked to Pakistan are female folk only and only for sexual purposes. In *Zafar Iqbal case* supra, the MOI told that about five million illegal immigrants were living in Pakistan in 2012. The irregular migrants are among the large number of victims of trafficking to Pakistan. Women and children are trafficked to Pakistan for sexual exploitation, sometimes in the form of forced marriages.⁷⁶ The presence of Chinese, Indians, Russians, Nepali, Iranians and Bangladeshi women in Pakistan is reported for sexual work. Pakistan serves as a destination point for women who are trafficked from Burma, Bangladesh, India, Afghanistan and the Central Asian States.⁷⁷ Czech and Slovak women have been reported travelling to Pakistan to marry Pakistan men.⁷⁸ Afghani women and children are also trafficked to Pakistan for sexual exploitation and bonded labor. Chinese, Iranian, Nepali and Russian women are also trafficked to Pakistan for sexual exploitation.⁷⁹

⁷⁵ Gurnam Singh and Harbilas Singh. "Human Trafficking: A Conceptual Framework," *Journal of Siberian Federal University, Humanities and Social Sciences* 4 (1980): 485-500

⁷⁶ Ibid.

⁷⁷ US TIP Reports 2001 to 2017; Muhammad Majid Bashir, "Ins and Outs of Human Smuggling and Trafficking," *Pakistan Today* dated 22-02-2017.

⁷⁸ 2016 Status Report on Trafficking in Human Beings in the Czech Republic, Security Policy and Crime Prevention Department, Prague, 2017.

⁷⁹ TIP report of 2019.

1.5.2 Human Trafficking from Pakistan

Pakistan is an important transit country for various nationals, particularly the Afghan nationals. Afghanistan and Bangladesh use Pakistan as a transit country to reach the Gulf States, Europe and Australia. However, no existing statistics are available on how many foreign nationals use Pakistan as a transit country. Bengali migrants use Karachi as a transit point to go for exploitative work in Iran.⁸⁰ Women and children are trafficked from East Asian countries and Bangladesh through Pakistan to the Middle East.⁸¹

Pakistan has usually been a source country for migration as well, mostly driven by the need for economic advancement. The principal regions of destination are the Middle East, European and Asian countries. It was estimated in 2016 that nearly 10% of Pakistan's labor force is abroad based; most of them are illegal migrants using unofficial channels including human smuggling and trafficking.⁸² A majority of persons from Pakistan originate from Sindh, KPK and Central & Southern Punjab for trafficking into Gulf States, Europe, United Kingdom and Australia.⁸³ Pakistani victims are also trafficked from Baluchistan to Iran, then are conveyed to Turkey or Greece for exploitative labor. Some victims are further transported through Western Balkans Route to Former Yugoslav Republic of Macedonia, and then green border between Serbia and Hungary, or between Croatia and Slovenia.⁸⁴ Quetta in Pakistan is the main source of trafficking, from where the victims are brought to Karachi or Islamabad and exit Pakistan

⁸⁰ Enterprise for Business and Development Management (EBDM), "Baseline Study on Illegal Migration, Human Smuggling and Trafficking in Pakistan," Conducted for Basic Education for Awareness Reforms and Empowerment in Collaboration with Action Aid Pakistan, Peshawar, June 2009.

⁸¹ US TIP Reports 2001 to 2015; Bimal Kanti Paul and Syed Abu Hasnath, "Trafficking in Bangladeshi Women and Girls," *American Geographical Society, Geographical Review* 90 (2000) 2: 268-276.

⁸² ILO Report, "Labor Migration from Pakistan: 2015 Status Report," Ministry of Overseas Pakistanis and Human Resource Development, Pakistan, 2015.

⁸³ UNODC, *Annual Report on Human Trafficking and Migrant Smuggling 2015*, (UNODC Research and Analysis Centre, Federal Investigation Agency, 2015).

⁸⁴ Human Rights Commission of Pakistan, *Human Trafficking through Quetta: A Report by Baluchistan Chapter*, (2010).

by air and fly to Thailand or Malaysia or Dubai.⁸⁵ Pakistani nationals emigrate to abroad, particularly to the Middle East and Europe in search of better living. Men are trafficked from Pakistan to Hungary, UAE, EU for forced labor.⁸⁶ To enter the EU, they use the Eastern Mediterranean Route, by both land and sea, through blue and green borders. The most common route adopted land route from Pakistan to Iran to Turkey and then Greece.⁸⁷ Traffickers use a chain of strategies; they managed crossing of the victims on valid passports and visas from Pakistan, and then travel by air to Malaysia or Thailand, then they travel secretly to Indonesia, from where they reach their final destination to Australia by sea. Then they are exploited in forced labor or sexual work. Trafficking of male victims to EU for forced labor is reported much. Majority of Pakistani trafficked victims of forced labor are found in Spain. A number of Pakistanis from Gujranwala, Gujrat and Mandi Baha Uddin Districts of Punjab migrated to European countries in the 1960s and 70s who were welcomed because of cheap youthful labors and they well settle over there.⁸⁸ This influenced their relatives, neighbors and other people to emigrate to other countries for which they started to struggle. Western countries' policy of refusing to grant legal migration opportunities to those intending migrants developed a strong inducement to somehow cross the state borders even if through illegal means. The migrant smugglers decide to take advantage of the situation and began to send the desperate intending migrants to those countries illegally.

The women and children are trafficked to Middle East for the purposes of sexual exploitation, domestic servitude and bonded labor.⁸⁹ The trafficking of women and children to the Persian Gulf for sexual exploitation is also rampant. Women and girls are

⁸⁵ Ibid.

⁸⁶ TIP Report of 2010; Rothna Begum, "Dispatches: Trafficking and Forced Labor in the United Arab Emirates," 2014 < <https://www.hrw.org/news/2014/06/20/dispatches-trafficking-and-forced-labor-united-arab-emirates>> (accessed on 17-03-2019).

⁸⁷ FIA Report on Human Smuggling and Trafficking, 2016.

⁸⁸ Ibid.

⁸⁹ TIP Reports 2001 to 2010.

trafficked to UAE to work over-there as dancers and subsequently subjected to sexual exploitation. Dancing girls from Pakistan are also trafficked to Oman and Bahrain. In 2019, a new trend of Pakistani women trafficking came on record wherein the Chinese males were reported to traffic the Pakistani females under the cover of marriage and brought them into China where they were reported to indulge into sexual practices.⁹⁰ Pakistan is a country of origin for young boys who are kidnapped or bought and sent to work as camel jockeys in the Gulf States, UAE and Qatar for camel racing industry.⁹¹ These children are trafficked from Pakistan to UAE through Oman and Sudan.⁹² They are chosen as camel jockeys because of their light weight. Further, when they cry during race, the camels get irritated and run faster. Sometimes, these children are trafficked using forged documents that declare them to be grown-ups.⁹³ This is one of the worst forms of child exploitation.

1.6 Conclusion

Pakistan is a source, transit and origin country for human trafficking. Its geographical location is a contributing factor towards the backing of this menace. People from Pakistan are trafficked to richer countries for better employments but they are exploited by a number of people ranging from recruiters to actual exploiters. To recognize the first aim, the objective of this chapter of the thesis is to point out the true picture of

⁹⁰ Dawn, "Investigations uncover China-Pakistan trafficking nexus for prostitution," dated 18-06-2019; The Express Tribune, "China to support Pakistan in crackdown against human traffickers," dated 10-05-2019; the Diplomat, "Why and how Pakistan Christian girls are smuggled to China," dated 24-05-2019; The News International, "Pakistan China working closely on women trafficking," dated 12-05-2019; TRTWorld, "Pakistani girls trafficked to China in new bride market," dated 07-05-2019; Pakistan Today, "More Chinese human traffickers busted as embassy supports crackdown," dated 10-05-2019; CBS News, "Pakistani officials claim women trafficked into prostitution in China after marriage," dated 17-06-2019.

⁹¹ US TIP Report 2001; Syed Mahmood Asghar and others, "Camel Jockeys of Rahim Yar Khan," *Save the Children, Pakistan Rural Workers Social Welfare Organization* (2004); Bianca Daw, "Child Trafficking: Problems and Solutions," <
https://www.academia.edu/2065674/Child_Trafficking_Problems_and_Solutions > (accessed on 17-03-2019).

⁹² Abu Talib Mohammad Monawer and Dewan Mahboob Hossian. "Child Labor: Islamic Perspective," *Esteem Academic Journal* 12(December 2016): 2, 15-30.

⁹³ Documents fraud begins with preparing false birth certificates, so it makes easy to apply for identity document and passport.

human trafficking along with some available statistical data in Pakistan. This chapter gives answer to the first research question in the manner that international as well as internal human trafficking is rampant throughout Pakistan. However despite of all this, there is little known to the true understating of the human trafficking in Pakistan and is often misconceived with other offences. To understand the proper connotation of human trafficking, the next chapter is substantial on the subject.

Chapter 02: Conceptual Understanding of Human Trafficking

2.1 Introduction

This chapter features the perception of Gould that in order for effective response to combat human trafficking, its painstakingly understanding is requisite, because clarity in concepts always results into effective measures for abolition of any problem. This chapter will provide some conceptual clarity about the human trafficking and its related acts i.e. slavery, practices similar to slavery, forced labor and human smuggling. All these abuses are undoubtedly interconnected and generally considered as same but actually are not the same. The role of conceptual context is to construct an arrangement for understanding, defining, interpreting, comparing, distinguishing and explaining a phenomenon. Clarification and difference between various related acts to ensure better understanding is sine qua non. So it is quite necessary to examine the problem of human trafficking thoroughly before critically evaluating and recommending any response to combat it. Actually, the definition of human trafficking evolved through a multitude of different phenomena which is covered in part-II ahead. However, before going through the discussion, the historical perspective of human trafficking is necessary to address.

2.2 History of Human Trafficking

Since the time immemorial, the human trafficking was a part of human civilization. The powerful nomadic tribes used to raid and capture the weaker tribes and brought them at their places as slaves for extracting exploitative work. Male captives were exploited for labor; while female captives were exploited for both labor as well as sexual practices. The ancient society was utterly uncivilized and there was no concept of societal fabric at that time. With the passage of time, those nomadic tribes turned into civilizations; the geography of the world was demarcated into different societies and states were established therein, but the exploitation of weaker people did not come to an

end even in the modern civilizations. Naturally, all the states of the world are not enjoying the common privileges, so the weaker states are under the anxiety of the stronger states, same on the concept of stronger and weaker tribal system mentioned above. Tribes converted themselves into societies but the nature of human beings could not be changed. Exploitation of the weaker and vulnerable people is the issue unanswered even in the contemporary modern period.

To abridge the travelling distance from one region to the other region of the world, water routes were considered the best courses because the world was not too advanced in technology to use aerial or terrestrial routes to reach the destination. Various voyages were set in and new areas of the world were discovered. Trade contacts were established between the states.⁹⁴ When the sea crew reached the weaker states, an idea scratched in their minds to capture their people for exploitative labor in their own states. This inclined the scheme of Atlantic slave trade which involved the shipping of enslaved people and then their sale out by slave traders. The vast majority of those enslaved people were the Africans from Central and Western Africa who were transported to America.⁹⁵ So, the history saw the first Atlantic slave trade of the black people which is commonly known as the black slave trade.

2.2.1 Black Slave Trade

As supposed from its name, the black slave trade refers to the enslavement of African people for exploitative labor. The first Atlantic slave trade took place in 1494 when Christopher Columbus in his second voyage returned to Spain with slaves from

⁹⁴ When America was discovered through Atlantic travel, it was called the New World. The Old World was Africa and Europe. This Atlantic travel established the contracts between the Old World and New World.

⁹⁵ Carolyn A. Brown and Paul E. Lovejoy, "Repercussions of the Atlantic Slave Trade: The Interior of the Bight of Biafra and the African Diaspora," *Africa World Press, Inc., the Harriet Tubman Institute for Research on the Global Migration of the African People* 14 (January 2010). ISBN 1-59221-357-X.

Hispaniola as tribute for his Sovereign.⁹⁶ Another known black slave trafficker in the medieval period was Sir John Hawkins, the naval commander, in the year 1562.⁹⁷ He gained such profits from this capturing business that in the coming years, the slave trade became one of the greatest money making industries in the contemporary world. By the late 17th century, United Kingdom had become the top-tier nation-state in the international trade of slaves.⁹⁸ This caused the arrival of large number of Africans into Euro-America for the purpose of cheap exploitative labor and slavery came to be correlated with Africa and Atlantic slave trade.⁹⁹ Such exploitative labor was used up in the sugar and tobacco colonies in the Americas,¹⁰⁰ while fishing villages such as London, Bristol and Liverpool thrived into international ports.¹⁰¹ It is estimated that 9.5 million black people were transported as slaves from Africa to Americas and other places.¹⁰² The business of labor exploitation of the trafficked enslaved black Africans was at its peak onward the 15th century. However, in the late 17th century, the slave trade was considered as against the norms of society and various social movements stood up against it which succeeded in enacting laws to oust the slave trade in the respective states.

⁹⁶ Juan Friede and Benjamin Keen. *Barolome de Las Casas in History: Towards and Understanding of the Man and His Work* (DeKalb: Northern Illinois University Press, 2008).

⁹⁷ Human Cargo, the Transatlantic Slave Trade, its abolition and contemporary legacies in Plymouth and Devon Plymouth City Museum and Art Gallery. Sir John Hawkins sailed from Plymouth to West Coast of Africa and became the first English slave trader. At the cost of Guinea, he kidnapped 400 Africans men and women and sold them into Saint Domingo (Haiti). From 1562 to 1567, Hawkins is believed to have enslaved up to 1400 Africans for profitable business of slaves. < http://plymhearts.org/wp-content/uploads/2016/03/human_cargo_education_pack_1sm.pdf > (accessed on 23-07-2017).

⁹⁸ Ibid

⁹⁹ James Walvin. *Black and White: The Negro and English Society 1555-1945* (London: Allen Lane the Penguin Press, 1973); Paul Edward and James Walvin. *Africans in Britain, 1500-1800* (England: Cambridge University Press, 1976).

¹⁰⁰ V.C.D. Mtubani. "African Slaves and English Law," *PULABotswana Journal of African Studies* 06 (November 1983). < <http://pdfproc.lib.msu.edu/?file=/DMC/African%20Journals/pdfs/PULA/pula003002/pula003002007.pdf> > (accessed on 01-08-2018).

¹⁰¹ James Walvin, *The Black Presence, a documentary history of the Negro in England, 1550-1860* (London: Schocken Books, 1972).

¹⁰² James A. Rawley, *The Transatlantic Slave Trade: A History, Revised Edition* (Lincoln and London: University of Nebraska Press, 2007).

2.2.2 White Slave Trade

In the late 19th century, the issue of white slavery in Europe and the United States (U.S.) emerged. As supposed from its name, the term refers to the enslavement of white people. The European females were procured by the non-Europeans with the objective of sexual exploitation. At the initials of 20th century, the number of white women engaged in sex work increased; females from the United States and Western Europe were trafficked and toiled as whores in the Middle East, Asia and South America.¹⁰³ Initially, the white slave trade was abolished through enactments. White slave trade referred only to the sexual exploitation of white women and girls; while women from non-white were also victims of such exploitation, therefore, the international law on the abolition passed a law regarding the suppression of exploitation of all women, so that there should not be any ethnical discrimination. Like black slave trade, the white slave trade was also abolished through social movements. However, the details of the abolition laws of black and white slave trade are not the mandate of this chapter; therefore, the same would be discussed in part-II of the thesis.

The black and white slave trades have been proscribed for more than a century but they still exist with some modern appearance i.e. the human trafficking. It is the business of fellow living humans for the purposes of slavery, forced labor and acts parallel to slavery. So, the game of exploitation only changed its name and nothing else. The relation between both the terms is discussed in detail below.

2.3 Analogy between Slave Trade and Human Trafficking

Departure from one place to another is an essential element throughout the human existence. Almost every creature on the earth migrates in search of better livelihood while crossing the local, national and international barriers. The migration process of human

¹⁰³ Karen E. Bravo. "Exploring the Analogy between Modern Trafficking in Human Beings and the Transatlantic Slave Trade," *Boston University International Law Journal* 207 (June 2007): 25, 207-295.

beings is unsafe on the account that it is guided and controlled by other human beings such as travel agents etc, so it may lead to exploitation and result into human trafficking.¹⁰⁴ These travel agents facilitate to cross the state borders through legal as well as illegal means. The people, being illegal migrants and vulnerable, are subsequently victimized into slavery like practices. It is estimated that more than four million irregular migrants are living in Pakistan; out of whom around 2.7 million are Afghans, succeeded by the collective populace of Bangladeshi, Indians and Burmese peoples.¹⁰⁵ Pakistani nationals attempt for irregular migration to European Union and Australia. In between 1980s and 1990s, the issue of human trafficking appeared in the notice of policy makers and the public. The people were subjected to labor and sexual exploitations upon promises to employments abroad. Once conveyed across international borders, they were denied off their primary rights like right to movement, freedom, health etc. The slave trade, referred to as old slavery, is compared to the human trafficking, referred to as new slavery, in connection with the deplorable reception of the victims, monetary profits of the offender and discrimination of the victims. In the old slave trade system, the victims were captured, transported into ships as in case of African slaves, and then sold out. The term slave trade is construed in the Slavery Convention, 1926 in the following manner: -

“All acts involved in the capture, acquisition, or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged; and in general, every act of trade of transport on slaves.”¹⁰⁶

The definition of human trafficking has almost all these elements. In slave trade, the victims were captured and acquired through coercive means and then transported, sold

¹⁰⁴ Gurnam Singh, 75.

¹⁰⁵ United Nations on Drugs and Crime, *Recent trends of human trafficking and migrant smuggling to and from Pakistan*, (July 2013).

¹⁰⁶ Article 1 (2) of Slavery Convention, 1926.

out and disposed off for exploitative labor. The definition of human trafficking also lies all these elements in it. In slave trade, the offenders were not only sellers and purchasers, but also the captors, receivers, transporters, and transferors. These offenders are also included in the description of human trafficking. The captors in black slave trade and lurers in white slave trade are now called the traffickers in human trafficking. So it may be concluded that the slave trade is still present in the contemporary world with a new name of human trafficking.

2.4 Confusion about Human Trafficking and its Related Acts

Though human trafficking has achieved the attention everywhere in the world, but what is human trafficking is not understood in the true sense. It is called the present day slavery. Further, slavery like practices can still be identified in existence and archived everywhere in the world. Though human trafficking is closely related with slavery and its related practices but they are identical neither under the law nor in practice. However, various elements are similar in all such offences, making it a challenging undertaking to differentiate between human trafficking and slavery along with its related practices. Human trafficking is not the form of slavery or forced labor. However, it is true that without discoursing the forced labor, slavery and its related acts, the debate over human trafficking is only piece-meal and anything which is in piece-meal is always incomplete. Hence, human trafficking goes side by side all these terms. Although, element of forced labor is common in all these abuses and human trafficking at all times includes some usage of debt bondage, forced labor, or slavery¹⁰⁷, so this has led to the confusion about the terms. All the terms have separate and distinct instruments in international as well as in national laws. So in order to make the differences more clear and specific, all the terms are explained as under: -

¹⁰⁷ Ann Jordan. "Slavery, Forced Labor, Debt Bondage, and Human Trafficking: From Conceptual Confusion to Targeted Solutions," *American University, Washington College of Law, Centre for Human Rights and Humanitarian Law* 2 (February 2011).

2.4.1 Forced labor

Forced labor refers to situation in which persons are coerced to work. The international law addressing forced labor is embodied in the ILO Convention No. 29 with the following definition;

*“Forced or compulsory labor shall mean 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.”*¹⁰⁸

The definition comprises three essential elements i.e. work or service¹⁰⁹, menace of penalty¹¹⁰, and involuntariness.¹¹¹ The Convention does not impose prohibitions on forced labor absolutely as some of the kinds of forced labor are legalized therein.¹¹² The definition above refers that when people are exposed to corporeal and mental aggression, and have constraints employed on their autonomy of movement, they are undergoing forced labor. Forced labor primarily encompasses work done short of concurrence and reasonable compensation.¹¹³ However, the key definitional feature of forced labor is its involuntariness. The consent of victim is material in cases of forced labor. It is always extracted from a person who has not offered himself voluntarily. His consent must be obtained through coercion. There is nothing in the definition that such person is exploited. Definition only includes the coercive labor and not the exploitative labor. So it is

¹⁰⁸ Article 2 (1) of the ILO Forced Labor Convention, 1930 (No. 29).

¹⁰⁹ All work or service refers to all types of work, service and employment, occurring in any activity, industry or sector, including in the informal economy.

¹¹⁰ The menace of penalty refers to a wide range of penalties used to compel someone to perform work or service, including penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological threats etc. The penalty may also consist of a loss of rights or privileges such as promotion, transfer, access to new employment etc.

¹¹¹ It refers to the free and informed consent of a worker to enter into an employment relationship and his freedom to leave the employment at any time.

¹¹² Under article 2 (2) of the Convention No. 29, the term forced labor shall not include (a) work of a purely military character, (b) work of normal civic obligations of the citizens of a fully self-governing country, (c) convict labor performed for a public performance, (d) work in cases of emergency, (e) minor communal services by the members of the community for the community.

¹¹³ Lain Currie and Johan de Waal, *The Bill of Rights handbook, 6th Edition* (Cape Town: Juta and Company, 2013).

significant to observe that forced labor is not the same as the exploitation of a worker.¹¹⁴ It is even possible for a worker to be paid high salary but if it is extracted from him involuntarily or under the menace of threat, then it would reduce to the forced labor. The definition embodies a variety of situations in which a person is forced to work against his will. Let us explain it with an example. "A" is looking for a job and willingly consents to an employment under some terms and conditions. After his joining, he finds the said terms as different from the terms promised by the employer. In such situation, if he is unable to leave the employment because of the threats extended by his employer, or his identity documents are confiscated by the employer. He has no other option but to carry on with the employment is said forced labor. However, where "A" is free to quit the work if he finds another one, but even then he remains in the employment out of his economic needs will not come in the meaning of forced labor. It is, therefore, concluded that forced labor is distinguished from human trafficking and slavery on account that its definition does not consist of the notions of exploitation and ownership which are essential elements in cases of human trafficking and slavery respectively.

2.4.2 Slavery

Slavery refers to a situation where proprietorship over another person is exercised, thus allowing owners to possess slaves that could be purchased and sold out. It is called the chattel slavery. Slavery is the topic of International law and embodied in the UN Conventions. It has distinct legislations from the human trafficking. A considerable quantity of literature designates human trafficking as a contemporary practice of slavery. If this stretch is correct, then all the slavery conventions may be made applicable to the human trafficking cases as well. So it is again necessary to find clarity of the relationship

¹¹⁴ As the ILO observes that forced labor cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives.

between the human trafficking and slavery. The Slavery Convention, 1926 expounds it as under: -

“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”¹¹⁵

Slavery is more authoritarian than forced labor as the person is held under the ownership, instead of coercion, of another person which turns the human being into chattel without rights. Notion of ownership is complete as compared to simple control over another person as in case of forced labor. Slavery includes the proprietorship prerogatives of the owner and the devastation of the slave's legal personality¹¹⁶. The UN Slavery Convention, 1926 makes out that forced labor can advance into conditions analogous to slavery¹¹⁷, so all the cases of slavery involve forced labor but not vice versa. Unlike forced labor, the international prohibitions on slavery are absolute. Slavery is a social school of thought to which the society identifies slaves as a distinct class of human beings without having rights and officially sub-standard to others. The definitions of slavery and forced labor do not have the element of exploitation in them. They are declared as illegal because they are against the dignity of a person and norms of society. They are only the forms of exploitation. Slavery is internationally recognized as a distinctive offence in customary international law¹¹⁸ and has attained the status of jus cogens norm.¹¹⁹

¹¹⁵ Article 1 of the Convention.

¹¹⁶ Jean Allain, *The legal understanding of Slavery: From the Historical to the Contemporary — the Introduction*, (Oxford: Oxford University Press, 2012). ISBN 978019966046.

¹¹⁷ Article 5 of the Convention.

¹¹⁸ Customary international law refers to the general practices of states which over time becomes binding law. Article 38 (1)(b) of the ICJ Statute, it involves the principle of customs which is to be considered among the primary source of international law.

¹¹⁹ Jus cogens norms comprise preemptory norms in international law in respect of which no derogation is ever permitted. These norms are rooted in the natural law principles and any law inconsistent with them is considered null and void. So slavery constitutes an offence of international law and its prohibition by international law is a jus cogens norm.

From the discussion above, it is made clear that the main distinguishing aspect of slavery is the ownership rights exerted over another person which element is not included as a requirement for definition of human trafficking. It is thus concluded that if human trafficking is considered as a form of slavery, then its definition must have the component of ownership; if the element of ownership is included in the human trafficking, then this would curtail the definition to the extent of actual exploiters only and other traffickers such as recruiters, transporters, sellers etc. would go unpunished because they usually do not exact actual exploitation from the trafficked person. Further, human trafficking is not the ownership over the trafficked person, hence, his legal personality, unlike the slavery, is not destructed completely. Furthermore, the modus operandi used in the slavery is the holding slaves as valuable property for the slave's life span. In cases of human trafficking, once the exploitative services are no longer required, the trafficked person is then treated like a disposable commodity. The slaves are purchased by the owners for services which may be exploitative in nature or not, but the trafficked persons are hired or even purchased for exploitative services by the traffickers. Thus, sellers and purchasers are the main offenders in the slavery, but trafficking often serves a network with various offenders assigned with their respective roles. Having discussed the various differences between the slavery and human trafficking, it can be rightly established that human trafficking is not included as a concept of slavery and cannot be said as the modern form of slavery because it does not match with the requirements of slavery.

2.4.3 Practices Similar to Slavery

These practices themselves are not the slavery but are similar heinous offences. Most of the authors agree that human trafficking is not a traditional slavery, but it is to be looked upon as a slavery-like practice. Apart from traditional slavery, several practices

subsist that lack the conditions of slavery, still hold the victim in a state of servitude.¹²⁰ The word servitude is usually used to wrap such slavery like practices.¹²¹ So servitude differs from slavery in terms that it is a wider expression that does not require ownership over a person. The slavery like practices are embedded in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956. The Convention includes debt bondage, serfdom and forced marriage as practices similar to slavery and such practices are the forms of servitude. They are further defined as under: -

2.4.3.1 Debt Bondage

Debt bondage, commonly noted as bonded labor, is a person's promise of labor or services as collateral for the repayment of a loan or any other commitment. In most of the cases, debt is constantly increased or the services are under-rated, the debt is never liquidated. Under international law, it is defined as under: -

*"The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."*¹²²

Debt bondage has the essentials of (1) pledge by debtor, (2) personal services, (3) undefined length of service. Bales argues that there are two distinctive forms of debt bondage.¹²³ The first form of debt bondage is inherited one, meaning thereby the debtors are ensnared in bondage, not because they have literally borrowed the amount themselves,

¹²⁰ Haysom N., "Servitude, Forced Labor and Slavery," Fact-sheet, March, 2018. < https://www.echr.coe.int/Documents/FS_Forced_labour_ENG.pdf (accessed on 01-08-2018).

¹²¹Hester Beatrix kruger. "Combating Human Trafficking: A South African Legal Perspective," *University of Free State, Faculty of Law* (November 2010).

¹²² Article 1 (a) of the Convention.

¹²³ Kevin Bales and Meredith Turshen. "Disposable People, New Slavery in the Global Economy," *Journal of Public Health Policy* 22 (2001).

rather their debts or servile status is hereditary from their ancestors.¹²⁴ This can conclude that families of the debtors are owned by the owners who are under the control of such owners. The second form entails the actual borrower who remains unable to repay the debt due to false accounting, high interest rate and continuous addition. This type of debt bondage relates with the cases of human trafficking. Our national legal framework also embodies the debt bondage under Bonded Labor System (Abolition) Act, of 1992. It is defined as under: -

“An advance (peshgi) obtained, or presumed to have been obtained, by a bonded laborer under, or in pursuance of, the bonded labor system.”¹²⁵

As per definition, there must be a relationship of creditor and debtor between the master and servant. The debtor has entered into an agreement for exploitative work. In most of the cases, the workers are trafficked into bonded labor; forced to work under the deplorable conditions; suffer the threat of abuse and exploited with no legal recourse. To conclude, debt bondage is different from the forced labor in terms that unlike forced labor, the person deliberately pledges himself to work as a means of repayment of debt. It is also different from the human trafficking in terms that there is no concept of loan and its repayment in human trafficking.

2.4.3.2 Serfdom

Serfdom is a relationship between landlord and tenant. It refers to a state under which a tenant who is called a serf is made unavoidable to toil on landlord's land and deliver services to him by virtue of his serf character. It is defined as under: -

“The condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate

¹²⁴ Arnab K. Basu and Nancy H. Chau, “Exploitation of Child Labor and the Dynamics of Debt Bondage,” *Journal of Economic Growth* 9 (2004): 2, 209-38.

¹²⁵ Section 2 (b) of the Act.

services to such other person, whether for reward or not, and is not free to change his status."¹²⁶

In case of serfdom, there must be a relationship of tenant and landlord. In that regard, the serfdom is different from human trafficking.

2.4.3.3 Forced Marriage

Human trafficking for the purpose of forced marriage is problematic worldwide. Forced marriage is one in which either of the parties is married without the consent or will. The United Nations expresses forced marriage as a form of human rights abuses because it infringes the norm of freedom of an individual. It is also expressed in Universal Declaration of Human Rights (UDHR) that a woman's right to select her partner and go into the marriage contract is fundamental to her life, dignity and equality as a human.¹²⁷ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) does not provide forced marriage as a form of exploitation, but the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956 prohibits forced marriage in the following words: -

*"Any institution or practice whereby: (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) a woman on the death of her husband is liable to be inherited by another person; (d) any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor."*¹²⁸

¹²⁶Article 1 (b) of the Convention.

¹²⁷ Article 16 of the Declaration.

¹²⁸ Article 1 (c) of the Convention.

The definition clearly negates the cultural practices of giving women in marriage for solving disputes between the tribes as well.

2.4.3.4 Servitude

There is no precise definition of the term servitude but it is prohibited under international instruments. Servitude is different from other related terms. Since Supplementary Convention on Slavery provides that a person of servile status is a person in one of the above-mentioned slavery like practices, so it can be inferred that the term servitude is adopted as an umbrella term to cover practices similar to slavery. Servitude not only comprises slavery like practices but also all forms of trafficking in children and women.¹²⁹ When a servant is bound by a signed or forced contract which is usually called an indenture, and then to work for a certain employer for a definite time period is called the indentured servitude. On completion of the contract, the indentured servant is given freedom.

The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and European Convention on Human Rights also prohibit servitude but do not define the same.¹³⁰ Servitude is different from slavery in that it does not require the ownership. The Travaux Préparatoires of the ICCPR explain that slavery has to be intended in its traditional sense such as involving the devastation of one's juridical personality. The servitude is associated with dominance and degradation. In *Siliadin versus France case*,¹³¹ the European Court of Human Rights defines servitude as being a

¹²⁹ Dr. Silvia Scarpa. "The definition of Trafficking in Adult Persons for Various Forms of Exploitation and the Issue of Consent: A Framework Approach that Respects Peculiarities," *Groningen Journal of International Law* 2 (2013): 1, 151-161.

¹³⁰ Article 4 of both the laws.

¹³¹ *Siliadin versus France*, Application No. 73316/01 of 2005. In this case, the human trafficking was contemplated by the European Court of Human Rights for the first time. The applicant was a female Togolese national who lived in Paris. Her identity documents such as passport etc. were confiscated by the employer and she had been living a very miserable life as an unpaid servant for several years since childhood. Relying on Article 4 of the European Convention (Prohibition of slavery and forced labor), she challenged her status as slave and requested that French criminal law did not furnish her proper protection against the "servitude", or at the very least against the "forced and compulsory" labor which in practical

compulsion to make available one's services that are inflicted upon him by the use of coercion, and is to be associated with the concept of slavery. The indentured servitude closely touches the definition of forced labor and debt bondage, but it is not the forced labor in strict sense. It is different from debt bondage in that debt bondage requires a debt or loan by the employee from the employer, but no such loan or debt is the requirement in case of indentured servitude.

2.4.4 Human Trafficking

Consensus on defining human trafficking is challenging to attain. Some analysts insist that virtually any illegal migration for the purpose of obtaining work, especially migration leading to prostitution, irrespective of whether the person consented or was aware of the type and conditions of work at the destination, is human trafficking.¹³² Human trafficking is the dealing in human beings for the purpose of forced labor, sexual slavery and other related acts. However, human trafficking is a slippery concept, something that is hard to pin down and come to grips with.¹³³ The human trafficking is defined in different legislations as under: -

The international law on the subject is embodied in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of 2000. It defines human trafficking as under: -

“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 of a position of vulnerability or of the giving or

terms had made her a domestic slave. In this case, the Court held that the applicant had, at least, been subjected to forced labor and held in servitude within the meaning of Article 4 of the Convention. However, the Court further announced that it could not be assessed that the applicant had been held in slavery in the traditional sense of slavery.

¹³² Siddharth Kara. *Sex Trafficking: Inside the Business of Modern Slavery* (Columbia: Columbia University Press, 2009).

¹³³ Amanda J. Gould. “From Pseudoscience to Protoscience: Estimating Human Trafficking and Modern Forms of Slavery,” second annual inter-disciplinary Conference on Human Trafficking at the University of Nebraska, held on October, 2010.

receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."¹³⁴

The UN General Assembly defines human trafficking as under: -

"The illicit and clandestine movement of persons across national borders with the end goal of forcing women, girls and children into sexually oppressive and exploitative situations for profit for recruiters, traffickers and crime syndicate, as well as other illegal activities related to trafficking such as forced domestic labor, false marriages, clandestine employment and false adoption."¹³⁵

The regional law of SAARC countries defines human trafficking as under: -

"Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking."¹³⁶

The national law on the topic is embodied in two legislations i.e. the Prevention and Control of Human Trafficking Ordinance (PACHTO), 2002; and the Prevention of Trafficking in Person Act (PTPA), 2018. The former defines human trafficking as under:

"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 for such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3."¹³⁷

The latter defines human trafficking as under: -

"Any person who recruits, harbors, transports, provides or obtains another person to do so for compelled labor or commercial sex acts through the use of force, fraud, or coercion commits the offence of trafficking in persons."¹³⁸

All the above definitions show that human trafficking is a different term and phenomenon from the slavery, forced labor and practices similar to slavery. They are

¹³⁴ Article 3 (a) of the Protocol.

¹³⁵ UNGA, 1994.

¹³⁶ Article 1 (3) of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 1997.

¹³⁷ Section 2 (h) of the Ordinance.

¹³⁸ Section 3 of the Act.

usually misconceived and considered as a same phenomenon. Forced labor, slavery and practices similar to slavery are the purposes of human trafficking but they are not the human trafficking. Human trafficking is not a single episode; rather it involves multiple acts, means, offenders and jurisdictions. Further, it involves multiple purposes such as commercial sex, forced labor, illegal adoption, forced marriage, and removal of organs. It is a distinct offence as compared to other related acts. So, human trafficking is a phenomenon rather than a singular offence. It commences its process with the recruitment, or abduction of a person and carries on with the transportation and entry of the victim into another area. All this process is followed by the exploitation segment in which the victim is forced into labor or sexual practices. However, one more phase of this process may take place which does not relate to the victim but the offender only. This phase is the laundering of the proceeds of the crime. The offender finds it essential to launder such proceeds in order to continue his illegal business activities with impunity.

2.5 Three Constituents of the Definition

The definition of human trafficking comprises three essential segments i.e. acts, means and purpose. The acts are the conduct of the traffickers to entrap the victims. They include the transportation, harboring, recruitment, transfer, or receipt of persons. These actions are prohibited under the law. Recruitment is the initial step of the phenomenon. The practices for recruitment include the promise for good job, lure for better livelihood, forceful or other deceitful methods etc. These practices vary from case to case. Thereafter, the next step is the transportation or transfer. The victims are transported through various routes at the destination. The destination may be within the country or cross-border. Trafficking routes all the time contemplate one consistent factor- victim will be moved to where the demand exists for his services as well as the prospective earnings of his exploitation are the maximum. At the destination, the victims are received by the

trafficker and then harbored at that place in order to exact exploitative labor from him. It is not necessary that all these acts must be done by a single person, rather they may be done by several persons and all such persons are defined as traffickers. This segment stipulates that what is done?

The above-mentioned acts are committed by means of the threats¹³⁹, or use of force¹⁴⁰ or other forms of coercion¹⁴¹, of abduction¹⁴², of fraud¹⁴³, of deception¹⁴⁴, of the abuse of power¹⁴⁵ or of a position of vulnerability¹⁴⁶ or of the giving or receiving of payments or benefits to achieve the consent of a person having the control over another person. Means are the methods used by the traffickers to commit the offence. These are the prohibited methods enlisted in the definition. They are not defined anywhere in the Protocol/ Ordinance, but their definitions are provided in other national statutes. This segment stipulates that how it is done?

The above-mentioned acts are committed through above-mentioned means for the purpose of exploitation. It is the most important element of human trafficking because in

¹³⁹ Threat is a communicated intent to inflict harm or loss on another or on another's property, especially one that might diminish a person's freedom to act voluntarily or with lawful consent.

¹⁴⁰ Force is the power, violence or pressure directed against a person. The forceful methods range from threat of violence to direct force such as abducting or capturing a person and beating him.

¹⁴¹ Coercion is the conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it. The term coercion in article 1 (e) of the Model Law against Trafficking in Persons of the United Nations Office on Drugs and Crime (UNODC Model Law) is defined as the intimidation and indirect force, such as threats against, and assaults on, the victim's family or loved ones, are also included under coercion, in the category of forceful methods.

¹⁴² Abduction is the compelling by force or by any deceitful means and inducing any person to go from any place.

¹⁴³ Fraud is the suggestion of that which is not true; the active concealment of a fact by one having knowledge or belief of the fact; a promise made without any intention of performing it; any other act fitted to deceive; and any such act or omission as the law specially declares to be fraudulent.

¹⁴⁴ Deceptive methods include the recruitment of a victim through false promises or other forms of deception. Most of the people are trafficked through this method instead of forceful methods. The deceptive techniques are considered easy to lure the victims by using false promises or misrepresentations etc.

¹⁴⁵ The abuse of position refers to any situation in which the person involved has no real and acceptable alternative, but to submit to the abuse involved. In this method, force is not applied, rather the persons in authoritative positions such as teachers, parents, guardians, employers, leaders use their authority wrongly to aid the traffickers.

¹⁴⁶ Position of vulnerability refers to the situation where a person is in a position to easily lured by the traffickers due to his immaturity of mind, low status in society, discrimination, tender age or illness etc. Such as children, women, minorities, poor people etc.

the absence of this element, human trafficking cannot be committed. This segment stipulates that why it is done?

2.6 What is Exploitation?

The word '*exploitation*' is defined in Black's law dictionary as the act of taking advantage of something, especially the act of taking unjust advantage of another for one's own benefit.¹⁴⁷ Exploitation refers to the use of the person in work or other activities for the benefit of others and to the detriment of the person's physical or intellectual health and progress.¹⁴⁸ Benefit may be either positive or negative, but in this case, it is always used in negative sense. Both exploitation and benefit are the terms of economics, meaning thereby the exploiter must have some monetary advantage consequently. If there is no economic advantage to the exploiter at the verge of the exploited, there is no human trafficking. Exploitation may take place from the very initial stage of the human trafficking such as at the time of recruitment, but the actual exploitation takes place at the place of destination. However, actual exploitation need not have been taken place, it is completed even at earlier stage such as at the time of recruitment or even when the trafficker plans for it. Exploitation is complete when it is proved that the trafficker did the prohibited acts with the intent to exploit the trafficked person, even if the victim was not ultimately exploited.¹⁴⁹ However, it is always difficult to prove the exploitative intent where such exploitation has not so far materialized, due to the reason that intention is a subjective element.

¹⁴⁷ Bryan A. Garner, *Black's Law Dictionary*, Eighth Edition, s.v. "exploitation."

¹⁴⁸ Lara Jerassi. "From Exploitation to Industry: Definitions, risks and Consequences of Domestic Sexual Exploitation and Sex Work among Women and Girls," *Journal of Human Behavior in the Social Environment* 25 (2015): 6, 591-605.

¹⁴⁹ Even when the trafficker plans for trafficking but before execution of the plan, the trafficker was arrested, it is sufficed that the trafficker intended to exploit the victim. The intention of trafficker is very much relevant in this regard. Intention or *mense rea* is one of the essential elements of the crime. The intention consists of two elements: one of conative or intellectual element necessitating that the accused has knowledge of the act, the state of affairs and the illegality, and other is cognitive element demanding that the accused pointed his will towards a certain act.

In the present research study, as the human trafficking is discussed in the perspective of labor and sex; hence, the exploitation will also be described in both the contexts. As human trafficking is an organized crime, therefore, exploitation is also organized. Exploitation is the overarching subject-matter which incorporates all forms of human trafficking. Exploitation is a qualified rather than absolute term. The people are coerced or lured into exploitation. Conceptually, exploitation is either consensual or non-consensual.¹⁵⁰ Consensual exploitation refers to the insufficiency of economic prospects which lead to the discriminating dealing of the exploited person who has no other option but to bow down himself against the state of affairs. The exploiter takes the advantage of this situation and gets maximum benefits for himself. Conversely, non-consensual exploitation contains the elements of coercion, fraud, and deception. The exploited person is given either luring promises or forced to accept exploitative work arrangement against his will. Legal standards make both the forms of exploitation as a matter of criminal justice law.

The Palermo Protocol defines exploitation in the following words: -

“Exploitation shall include, at a minimum, the 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.”¹⁵¹

The words ‘*at a minimum*’ included in the definition show that there is space for other forms of exploitation, if arise in future. It means other forms of exploitation are not excluded. So human trafficking is not restricted to a couple of forms of exploitation, rather exploitative practices are diverse and new methods of exploitation may appear constantly. When we talk about the child trafficking, only two elements are sufficient to involve which are the acts and the purpose. The element of means is not essential while

¹⁵⁰ Johannes Koettl. “Human Trafficking, Modern Day Slavery, and Economic Exploitation,” *SP Discussion Paper, Social Protection and Labor, The World Bank* 0911 (May 2009).

¹⁵¹ Article 3 of the Protocol.

prosecuting the cases of child trafficking. The essential in its place is that it must involve an intention by the trafficker to exploit the child labor. If a victim is under the age of 18 years, the use of coercive or deceptive means is not necessary. The child trafficking has been described as the worst forms of child labor.¹⁵² The purposes mentioned under section 3 include forced labor, slavery, exploitative entertainment, removal of organs or illegal adoption. Due to complex nature of the phenomenon, the human trafficking is defined separately by each country in accordance with its own problems and other relevant factors. Various countries ratified the Palermo Protocol, but define the human trafficking in their respective local legislations differently because it embraces a varied series of activities, players, violators and approaches; thus a universal accepted definition is difficult to follow. In all the definitions of human trafficking, the element of exploitation is common, but what is the scope of exploitation in each country is not common. The definition varies from state to state. It goes through several phases- ranging from luring, recruiting, transporting, controlling etc. at the place of destination and at the end the most important is the exploiting. Different actors may be involved at different phases and have different approaches to complete their assigned tasks. It is an offence of various forms of exploitation, including exploitation of a sexual or labor nature, begging, forced marriages, trafficking for body parts, illegal adoptions, or recruiting child soldiers, leaving a test for the law makers to interweave so many trafficking parts in one universal definition. Therefore, a solo collectively conventional definition for the expression human trafficking lasts not less than a challenging task.

It is, however, evident from the definitions above that the forms of exploitation are the forced labor, prostitution of others or other forms of sexual exploitation, servitude, slavery or practices similar to slavery, adoption or the removal of organs which are

¹⁵² ILO Convention No. 182.

measured as the material corrupt practices involved in the offence of human trafficking. The offence of human trafficking requires at least one of these offences included in it. These offences are only the forms of exploitation which is a chief component of offence of human trafficking. When there is exploitation of any of these forms, it converts into human trafficking. The exploitation can take place in any socio-economic sector in which labor or services might be exacted from people.¹⁵³ Exploitation in reference to human trafficking is a form of abuse that is excessive in nature, either as a result of the seriousness of physical or emotional manipulation i. e. threats and violence, or as a result of a multitude of restrictions that are imposed on the victim.¹⁵⁴ Therefore, these acts themselves are not human trafficking unless coupled with exploitation. They may be illegal acts without exploitation, but once exploitation is mixed with them, they transfigure into human trafficking. Exploitation is a restraint on the sovereignty of selection, movement, and liberation of a person who finds himself in an exposed position and this disturbs his personal, moral and physical integrity. Therefore, abuse of the victim that is not excessive in nature can establish criminal conduct that is tackled through prosecution and punishment under the criminal law, but the same cannot be considered as human trafficking. In like manner, slavery itself is not the human trafficking. Both the terms are not interchangeable, although some elements may be common. The human trafficking is a step supplementary to the slavery.

Let us illustrate it with an example. If 'X' imports 'Y' as slave, but treats him gently and does not exploit his status of being slave. It is prohibited and illegal but it is not human trafficking itself. Where 'Y' gets undue advantage over 'X' and exploits him, this is called the human trafficking. Same is the case of forced labor. Where 'X' gets labor from 'Y' without his will, however, pays him full wages as required by the state or

¹⁵³ Conny Rijken. "A human rights based approach to trafficking in human beings," *Security and human Rights* 20 (2009): 3, 212-222.

¹⁵⁴ Ibid.

even high wages, it is prohibited and unlawful but then again it is not the human trafficking itself. But where 'X' does not pay to 'Y' commensurate to his labor, then it would be called the human trafficking. It is co-related with the exploitation. It is, therefore, concluded that all cases of human trafficking include slavery or forced labor¹⁵⁵, but all cases of slavery or forced labor are not the human trafficking. It is established with precision that where there is no exploitation, there is no human trafficking. On the basis of above categorization, the exploitation can be further divided into two types i.e. labor exploitation and sexual exploitation. The exploitation covers, but not limited to, the person's labor and sex. However, both the terms mark that undue advantage is taken from the vulnerability of the person.

2.6.1 Labor Exploitation

The labor is always associated with wages and working environment. If any of these is not commensurate with the services or labor exacted, then it is called labor exploitation. Labor exploitation is an act of treating working class unreasonably for one's own benefits. Labor trafficking is not defined anywhere in the Palermo Protocol in clear words but it must prohibit human trafficking for any exploitative determination, including human trafficking for the purpose of forced labor or services. Force or compulsory labor is not defined in the Protocol. It has its own distinct features at international law as discussed previously. It consists of work done without harmony and always without reasonable and fair recompense. Labor trafficking is a phenomenon prevalent in a wide range of markets, including formal as well as informal economy. However, informal economy is much affected from the menace as compared to formal economy.¹⁵⁶ Brick-kiln, agriculture, mining, and sports industries are much affected for forced labor in

¹⁵⁵ The exceptions are the cases of human trafficking for removal of organs or adoption.

¹⁵⁶ Informal economy of Pakistan is more than 70% of the total economy. The reason is that informal sectors are unregulated sectors of labor market such as there is no written agreement of employment, usually no labor inspection, no extension of labor laws, no tax payment by the laborers etc. The victims can be easily exploited with little possibility of being noticed.

Pakistan. For forced labor practices, the physical energy of the person is required; hence, adult male persons are indulged in such practices, but this is not the universal rule.

Women and children are not exceptions to forced labor. ILO Convention No. 182 states that forced child labor and child trafficking are the worst forms of child labor. Since both labor and exploitation are economic terms, so it will be appropriate to look into labor exploitation within the economic perspective. Exploitation is not distinctive of the capitalism which divides the society into two main classes- an exploited class (working people) and exploiter class (aristocratic). The former produces the wealth and the latter appropriates it. Marxist theory can be applied to the labor and exploitation of workers. Karl Marx defines exploitation in more scientific way as to the forced appropriation of the unpaid labor of workers.¹⁵⁷ Under this definition, all working class is exploited. According to him, the unpaid labor of workers is the ultimate source of profit. All the wealth of the capitalists is due to the uncompensated labor of working class. For this, exploitation is at the root of the capitalism.¹⁵⁸ A Marxist's approach to human trafficking is effective in rationalizing the economic disparity which cause increasing the incidents of human trafficking. Likewise, labor exploitation is also associated with feudalism. It is the method of constructing society around associations derived from the holding of land in exchange for service or labor. The serf works on the land belonging to the lord. The product or produce on the land also belongs to the lord. At the reap, the serf gives a share of the crops to the landlord. So in order to determine whether the work in a particular context is exploitative or not, it is necessary to consider the factors such as the age of person, the condition of work contributing the person's physical or psychological development, the hours spent for a day, the amount of pay etc.

¹⁵⁷ Richard Garner, "The Marxian Theory of Exploitation: A Critique," *Libertarian Alliance* 115 (2013). <<http://www.libertarian.co.uk/sites/default/lanotepdf/econn115.pdf>> (accessed on 01-08-2018).

¹⁵⁸ Karl Marx was strong opponent of labor exploitation and in his view, the way to get rid of the exploitation is to have a completely different society- the socialism- in which there is no handful minority at the top that rules over the majority.

2.6.2 Sexual Exploitation

Sexual exploitation is defined in Palermo Protocol as '*exploitation of the prostitution of others*' and '*other forms of sexual exploitation*'¹⁵⁹; while it is defined in PACHTO as '*exploitative entertainment*'. The Palermo Protocol does not define its terms; while PACHTO defines its term as all activities in connection with human sports or sexual practices or sex and related abusive practices.¹⁶⁰ Sexual exploitation is the gaining of monetary or other benefit by involving another person in prostitution or other sexual services such as pornographic activities; whereas exploitation of prostitution of others is defined as an unlawful obtaining of financial or other material benefit from the prostitution of another person. Sexual exploitation is the sexual abuse of any person, particularly children and women. It may be either commercial or non-commercial.¹⁶¹ Human trafficking involves the commercial sexual exploitation because the benefits can only be exacted from this type of exploitation. Commercial sexual exploitation covers prostitution, pornography, forced marriage etc. Sexual exploitation can also involve the use or threat of force with the object of forcing a person to take part in sexual acts performed by third persons.¹⁶² The conduct which amounts to coercing or deceiving an adult person into prostitution constitutes human trafficking.¹⁶³ The vulnerable section of society becomes victims of prostitution and pornography in which 98% are girls and women; while 2% are boys and trans-genders.¹⁶⁴ The high demand for sexual services leads to expansion of sex markets which in return increases the demand for sexual trafficking. The victims are often beaten and confined in rooms, so that they could not

¹⁵⁹ Article 3 of the Protocol.

¹⁶⁰ Section 2 (f) of the PACHTO.

¹⁶¹ Non-commercial sex work is called the survival sex in which the women girls engage in the sex work because of their extreme needs such as for shelter, food, clothes etc. They are not run by traffickers, rather they involve themselves in this profession, so there are no monetary benefits to any other persons.

¹⁶² "Abuse and Exploitation," Action for Rights of Child, Revision Version 04/01. < <http://www.unhcr.org/3bb81aea4.pdf> > (accessed on 02-08-2018).

¹⁶³ Herter Beatriz Kruger, "Combating Human Trafficking: A South African Legal Perspective," A PhD thesis submitted in the Faculty of Law, University of Free State, November, 2010.

¹⁶⁴ Tim Swarens. "How many people are victims of sex trafficking?" *IndyStar* (11th January, 2018).

escape from the brothel house. Their condition is not less than the slaves. Karl Marx also identifies prostitution as common to capitalism. Women are excessively influenced into human trafficking by reason of their lower economic and social status. According to him, capitalism is the cause of prostitution and sexual exploitation because the means of production are privately owned under capitalism, so trafficked women and children are privately owned and put to immoral work for the profits of their traffickers.¹⁶⁵ This is capitalism at its most obnoxious. In a nutshell, the human trafficking is a business of profits or monetary gains.

2.7 Classification of Human Trafficking

Since the ways humans are exploited are different, so the types of human trafficking are also different, because each type of exploitation has its own exclusive methods, recruitment tactics etc. The traffickers entrap both male and female genders for different purposes, within or outside the country. This creates the need to categorize the human trafficking. According to the Griffin and Wilson (2012), there are two main classification of human trafficking i.e. labor trafficking and sex trafficking. Both types of human trafficking are associated with labor exploitation and sexual exploitation as discussed earlier. Labor and sex can be rightly said the purposes of human trafficking.

Labor trafficking under fraudulent or coercive circumstances can be quite harsh. It manifests itself in unfair deductions from wages, lack of pay altogether, confiscation of passports, inhuman working and living conditions, deprivation of liberty such as preventing workers from leaving the workplace, beating and sexual assault.¹⁶⁶ It includes practices where trafficked persons carry out their services compulsorily and are forced by physical assaults, serious threats, or other forms of coercion to perform such services. The

¹⁶⁵ Michelle Brock, "Capitalism and Sex Trafficking: My musings on the Communist Manifesto," 10th January, 2011. <<http://hopeforthesold.com/capitalism-sex-trafficking-my-musings-on-the-communist-manifesto/>> (accessed on 22-08-2018).

¹⁶⁶ Ronald Weitzer. "New Directions in the Research of Human Trafficking," *The Annals of the American Academy*, AAPSS 653 (May 2014).

liberty of victims of trafficking for forced labor is often constrained and varying amount of ownership is exercised. It generally comprises the carrying of the trafficked person to some other place by force or by false promises of lucrative occupation, but reaching the destination place, they find themselves in entirely adverse environment such as exploited by debt bondage, long working hours, no or minimum wages, confiscation of identification documents, hazardous working conditions, physical assault and confinement.

Sexual trafficking is the major concern of human trafficking discourse. Most writings, policy-making and law enforcement has focused on the issue of sexual exploitation.¹⁶⁷ Sex trafficking is mostly close to commercial sex-related work. Exploited work is also common in this category. Work is always defined in terms of labor. Therefore, all human trafficking comprises the ratio of labor trafficking, making the sex trafficking a specific sub-category. It can be argued that sex trafficking involves the work that is considered to be prohibited or immoral. However, there are countries in the world where legalized prostitution is acceptable within the margins of licensed brothel. In those cases, sex trafficking is not the sub-category of labor trafficking.

2.8 Distinction between Human Trafficking and Human Smuggling

Human trafficking is frequently mixed up with human smuggling. Both the offences are overlapped with each other due to some similarities such as both are profitable businesses; involve violation of laws of migration, labor, prostitution etc.; and transnational. Smuggling is often followed by exploitation because the smuggled migrants have to face exploitation similar to trafficking at the destination country. Smuggled migrants, like trafficked persons, are often trapped in debt bondage.¹⁶⁸

However, both have separate international as well as national laws. Internationally,

¹⁶⁷ Ibid.

¹⁶⁸ Kevin Bales, "Testing a theory of Modern Slavery." <
<https://glc.yale.edu/sites/default/files/files/events/cbss/Bales.pdf> > (accessed on 18-08-2018).

human trafficking is embodied in Palermo Protocol; while human smuggling is embodied in the Protocol against the Smuggling of Migrant by Land, Sea and Air. Nationally, human trafficking is embodied in PACHTO and PTPA; while human smuggling is embodied in the Prevention of Smuggling of Migrants Ordinance, 2018.

Like slavery and forced labor, human trafficking is also not the alike as of human smuggling. Human trafficking is most of the times addled with human smuggling. Both the acts have separate notions and law, but are mixed most of the time due to the lack of proper understanding of them. In the perspective of transnational crime, both are two distinct crimes. Human trafficking is already defined in the preceding paragraphs; while human smuggling is defined as under: -

“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 a permanent resident.”¹⁶⁹

The definition above demonstrates the main element as illegal entry of the migrants. In sum, the smugglers arrange for the banned entrance into another country for their customers for some money and nothing else. Their agreement automatically terminates as soon as the client reaches the destination country. The table No.01 will further differentiate both the terms.

S. No.	Nature	Human Trafficking	Human Smuggling
1	Type of Crime	It is a crime against person because the person trafficked is exploited.	It is a crime against state because there is no victim in the smuggling offence and the smuggled person is himself the participant of the offence.
2	Nature of Crime	It is exploitative in nature. The relationship between the trafficker and victim remains continued in order	It is commercial in nature. The relationship between smuggler and migrant comes to an end once the

¹⁶⁹ 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, 2000.

		to maximize the monetary gains.	migrant crosses the border illegally
3	Rationale	It is an organized recruitment or movement in which exploitation of the victim is necessary element with end goal of profit.	It is also organized movement of persons with end goal of profit, but element of exploitation is missing.
4	Border Crossing	Border crossing is not a necessary element. As per definition of Palermo Protocol, human trafficking may be committed within the borders of a state.	Illegal border crossing is a describing component. It involves conveyance, or obtaining of a prohibited admission of a person into another country of which he is neither an inhabitant nor a perpetual occupant.
5	Consent of Victim	The victims may either consent or not but consent is always irrelevant, due to the practice of force, fraud or coercion at any stage.	Consent given by the migrant is an essential element. The smuggled people are also the part of offence because they involve themselves in an unlawful arrangement, so expressively accord to be dishonestly conveyed across international borders by remunerating to smugglers to provide them the services.
6	Means	The means used in trafficking are coercion, deception and fraud.	Such means are missing from the definition of smuggling. The smuggled migrants participate voluntarily for illegal entry into other country. More precisely, they pay to smugglers for the same.
7	Purpose	It is always committed for some purpose which is an exploitation of the trafficked person.	The sole purpose of human smuggling is to take benefit from facilitating the illegal crossing of an international border
8	Status of being Victim	The traffickers recruit a person by way of some illegal means for the purpose of exploitation. So the trafficked persons, once identified, got the status of trafficking victims.	Smuggled migrants are not given the status of victims; rather they are participant in the criminal conspiracy to cross the state borders. The client himself makes request to the agent for illegal border crossing for which

			he pays a handsome amount.
9	Relationship	This may also happen in trafficking cases but not in all cases. The trafficking relationship lasts even at the last stop of destination which involves continuing exploitation of the victim to make profits for the traffickers.	The relationship between the smuggled migrant and smuggler discontinued as soon as the migrant reaches the destination country.
10	Commodity	Commodity is the human being.	Commodity is the service.

2.9 Organized Crime and Organized Criminal Group

Human trafficking is undoubtedly an outlet of organized crime. The term 'organized crime' appears to have emerged in the late 1800s in the U.S. when the practice of traffic in liquor was prohibited. The prohibition ended the legitimate trade of liquor and thereby created demand for an unlawful supply which was commonly called the bootlegging.¹⁷⁰ The bootlegging facilitated to the establishment of organized crime. The element of organized or organization separates the individual crime from the crimes committed by the groups of people. Organization has been described as a group or assembly of persons who collaborate to achieve mutual intentions, or a body of persons formed for a common purpose.¹⁷¹ To organize the offence of human trafficking forming a criminal network may involve recruitment, document forging, corruption, transportation, illegal border crossing, harboring, enforcing, and exploitation. The FBI describes organized crime as a continuing criminal conspiracy with an organized structure that is successful because of its use of fear, corruption and violence.¹⁷² There is consensus of international perspective on the common features of organized crime namely:-

- Planned criminal activity for the profit.

¹⁷⁰ Bootlegging was when people made, transported and sold liquor illegally. It was a risky business to get into but the profit was huge. Bootleggers used to smuggle alcohol in the foreign countries.

¹⁷¹ Bryan A. Garner, Black's Law Dictionary, Eighth Edition.

¹⁷² Bill McMath, FBI, personal communication, August, 2001.

- A conspiracy of a continuing enterprise formed around social, ethnic, or business relationships, or around a certain product or opportunity.
- Use of violence, threats, and intimidations to achieve the goals.
- Use of corruption to protect its interests and avoid arrest and prosecution.¹⁷³

The Joint Action 733 of 1998 introduced the very first definition of the organized crime in international law as under: -

“Within the meaning of this joint action, a criminal organization shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.”¹⁷⁴

The Framework Decision replaced the definition of criminal organization as a blend of the Joint Action and the Convention against Transnational Organized Crime, 2000 (Palermo Convention) definitions in the following terms: -

“Criminal organization means a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain directly or indirectly, a financial or other benefit.”¹⁷⁵

The Treaty of Mutual Assistance in Criminal Matters, 1973, illustrates an international definition of organized crime as under: -

“An organized crime means an association of individuals for periods of time for profits by both illegal and legal means.”

Organized crime is the illicit exercises of the members of a very systematized and methodical organization involved in contributing illegitimate merchandises and services,

¹⁷³ Jones and Bartlett, “Organized Crime as defined by Laws, Agencies and Governments,” Jones and Bartlette Learning. <http://samples.jbpub.com/9781449648046/22572_CH01_V1.pdf> (accessed on 02-08-2018).

¹⁷⁴ Article 1, Paragraph 1 of the Joint Action. It has been the legal instrument in force within the EU until the entry into force of the Framework Decision (2008/841/JHA), on 11th November, 2008.

¹⁷⁵ Article 1 of the Framework Decision.

including but not limited to gambling, prostitution, loan-sharking, narcotics, labor racketeering, and other unlawful activities of members of organizations.¹⁷⁶ The organized crime gained considerable attention in the late 1900s which led to the passage of United Nations Convention against Organized Crime. The Convention does not contain the precise definition of organized crime, instead it includes the definition of organized criminal group. It defines an organized criminal group as under: -

*"An organized criminal group is a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, a financial or other material benefit."*¹⁷⁷

Structured group is further defined as under: -

*"A group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure."*¹⁷⁸

From both the definitions above, it is clear that human trafficking is a planned crime committed by the traffickers together with the intention of exploitation by indulging various offenders to complete the offence. Risto Pullat defines organized crime as a criminal group that comprises at least three persons that has a permanent division of tasks among the members that commit serious crimes, or influences authorities in an illegal fashion.¹⁷⁹ From the discussion above, it is concluded that participation in an organized criminal group is proscribed; such group has three members at minimum; is dynamic for a long period of time; has the arrangements and structure; and works under a shared understanding. More precisely, organized crime is a project crime__ a project ranging from preparing false documents to exploited work in the field.

¹⁷⁶ The Omnibus Crime Control and Safe Street Act, 1969.

¹⁷⁷ Article 2(a) of the Convention.

¹⁷⁸ Ibid. Section 2(c).

¹⁷⁹ Risto Pullat. "Criminal Hierarchal Characters: Models of Organized Crime in the Baltic Sea Region," *SLAK Journal* (2009).

2.10 Transnational in Nature

It is provided in Organized Crime Convention that this Convention is applicable to offences only that are trans-national in nature and committed by the organized criminal group. An organized criminal group has already been defined in the preceding paragraphs. Now what is transnational in nature and how it is relevant to human trafficking will be looked into ahead. An offence is transnational in nature if: -

“(a) it is committed in more than one state; (b) it is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another state; (c) it is committed in one state but involves an organized criminal group that engage in criminal activities in more than one state; or (d) it is committed in one state but has substantial effects in another state.”¹⁸⁰

However, it is always not true that human trafficking is transnational in nature as in case of internal human trafficking. Further, it is again always not true that human trafficking is always carried out by an organized criminal group as in case of single trafficker. However, it is clear that it is always an organized crime. Such organization need not be carried out by an organized criminal group. A single trafficker may well organize the whole phenomenon. Pakistan became member to the UN Convention against Organized Crime by signing and ratifying on 14th December, 2000 and 13th January, 2010 respectively. Pakistan also includes the definition of Organized Criminal Group in its special legislation on the subject, the PACHTO, in the following words: -

“Organized criminal group means a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing any offence under this Ordinance, in order to obtain, directly or indirectly, any financial or other material benefit and includes a person knowingly receiving or distributing benefits accruing form the commission of any offence in relation to human trafficking by an organized criminal group.”¹⁸¹

¹⁸⁰ Article 3(2) of the Convention.

¹⁸¹ Section 2 (j) of the PACHTO.

The PACTO makes the human trafficking an organized crime, but does not define the organized crime. Unlike un-organized crime, the organized crime has become difficult challenge for criminal justice system in Pakistan because of the complicated chain of offenders involved in the phenomenon. Most of the criminals may not live within the state borders.

2.11 Offenders Involved in Human Trafficking

Human trafficking is an offence which is mostly committed by an organized group. Different offenders play their respective role as assigned to them. Two types of offenders are involved as such offenders as natural persons and offenders as artificial persons. Offender is defined as a person who has committed a crime. The word 'person' has been defined in PPC as *person includes any Company or Association, or body of person, whether incorporated or not.*¹⁸² Black's Law Dictionary defines person 'a human being'. These definitions show that the person includes any gender of human being, whether male or female, any Company or Corporation. In simple words, it includes the natural as well as artificial juridical persons. Following are the two types of offenders involved in human trafficking cases.

2.11.1 Offenders as Natural Persons

Offenders are the persons who are involved in the offence of human trafficking and are punished accordingly. Natural offenders are those persons who are human beings, instead of non-human being entities. Natural offenders are further classified as ___ offenders who have contact with victims; and offenders who have contacts with traffickers. They are discussed in detail below.

¹⁸² Section 11 PPC.

(i) Traffickers

The persons who have direct dealing with the persons trafficked are called the traffickers. They are recruiters, harborers, transporters, providers, receivers, sellers and purchasers. Defining human trafficking as an organized crime establishes the notion that offenders are two or more persons who organize themselves to commit illegal activities together making the organized criminal group. The definition is also very much clear on this point that all the prohibited acts are not required to be committed by the same person, although it is the fact again that all such acts can be committed by one single person. However, it is almost run by organized criminals. Human traffickers are always rationale beings who make choices to commit the offence based on costs and benefit. They adopt utilitarian belief to get maximum benefit and make rational choice.

(ii) Facilitators or Abettors

The persons who have no direct dealing with the persons trafficked, rather they have dealing with the traffickers are called the abettors. They facilitate the traffickers in the commission of the offence of human trafficking. They are also the part of organized criminal group. Without their aid, the traffickers may have difficulties to get crossed the state borders to the persons trafficked or to continue with the exploitative practices. The activity of human trafficking is based on supply and demand. The traffickers may act as intermediaries between buyers and sellers. In such transactions, human beings are treated as commodities.¹⁸³ The abettors may be private persons and public officials, but most of the facilitators are public officials such as police officials, passport officers, coastal guards etc. Private persons may include travel agents, hotel managers, farmers, intermediaries etc. All these persons take their respective shares in the whole phenomenon of human trafficking. The Organized Crime Convention criminalizes the offence of corruption offered or

¹⁸³ Sidharth Kara in his article titled 'Disposable People' says that such human beings are attractive commodities because they are relatively non-perishable, portable, re-useable, and re-sellable.

given to a public official in order that such official may act or refrain from acting in the exercise of his official duty.¹⁸⁴

2.11.2 Offenders as Artificial Persons

Legal persons, as contrast to natural persons, are non-human entities such as companies, corporations etc. They are also called the artificial or juridical persons. The offenders discussed in the afore-mentioned title are natural persons. In addition to natural persons, legal persons are also involved in the offence of human trafficking. The definition of word 'person' includes not only living person but also juristic person. Even an incorporated company which is only a juristic person can be guilty of an offence.¹⁸⁵ Corporations, unless exempted, are also subject to criminal liability.¹⁸⁶ The role of companies as prospective committers of human trafficking has become a problem of increasing concern because cases of influential transnational organizations being accused of engaging in exploitative practices overseas are often reported.¹⁸⁷ Undoubtedly it is easy for a company, as contrast to individuals, to recruit potential victims of human trafficking for exploitative purposes. The association between human trafficking and corporate associations are considered so significant that it has been proposed that the trafficking industry is steadily rising due to its frequency with the commercial world.¹⁸⁸ The Palermo Convention requires state parties to impose sanctions against such legal entities as under:

"Each state party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal person for participation in serious crimes involving an organized criminal group and for the offences; The liability of legal persons may be criminal, civil or administrative; such liability shall be without prejudice to the criminal liability of natural persons who have committed the offences; Each state

¹⁸⁴ Article 8 of the Convention.

¹⁸⁵ *State of Maharashtra versus Syndicate Transport co. Ltd.*, AIR 1964 Bombay 195.

¹⁸⁶ *West Bengal versus Corporation of Calcutta*, AIR 1967 SC 997.

¹⁸⁷ Silvia Rodriguez Lopez. "Criminal Liability of Legal Persons for Human Trafficking Offences in International and European Law," *Journal of Trafficking and Human Exploitation*, Paris Legal Publishers 1(2017): 1, 95-114.

¹⁸⁸ Tara M. Parente. "Human Trafficking: Identifying Forced Labor in multinational Corporations and the Implications of Liability," *Brazilian Journal of International Law* 11 (2014): 1, 146-161.

parties shall ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuade criminal or non-criminal sanctions including monetary sanctions."¹⁸⁹

However, the prosecution against corporations is still very rare. Some critics argue that legal entities cannot commit crimes; however, when definition of human trafficking is placed in adjustment with corporations' role, it appears that the corporations can commit any of the acts, by exhausting any of the means, and for any type of the exploitation. The corporations recruit victims, transports them, deliver them with the documentation required to be brought to the site where they will be employed and exploited, and acquire benefits from that exploitation.¹⁹⁰ Various cases are reported in the UNODC case law database of employment agencies used to lure young women abroad, convincing them to sign contracts to work as dancers or waitresses finally to end up being exploited as prostitutes.¹⁹¹ So employment agencies, multinational construction companies are involved in such practices. Now the question arises how the juridical persons are held criminally liable for the offence of human trafficking as non-human entities cannot be imprisoned? According to PPC, the offenders are liable for ten types of punishments for their criminal acts.¹⁹² The last two punishments such as forfeiture of property and fine are relevant to the punishments of juridical persons in cases of human trafficking. The juridical persons may be fined and their property may also be forfeited on conviction. The proceeds of such offences may be confiscated in favor of the state. Such proceeds may also be awarded to the sufferers of human trafficking as compensation.

¹⁸⁹ Article 10. Liability of legal persons.

¹⁹⁰ Suzanne Hoff and Katrin McGauran. "Engaging the Private Sector to End Human Trafficking: A Resource Guide for NGOs," *La Stranda International Center for Research on Multinational Corporations* (2015).

¹⁹¹ Silvia Rodriguez 95.

¹⁹² Section 53 PPC provides for punishments as Qisas, Diyat, Arsh, Daman, Tazir, Death, Imprisonment for life, Rigorous imprisonment, Simple Imprisonment, forfeiture of property, and fine.

2.14 Conclusion

To conclude, human trafficking is often misunderstood with its related acts such as migrant smuggling, slavery, forced labor, bonded labor and servitude. But it is a distinct crime having unique characteristics. The principal drive of this chapter is to make clarity among all the associated terms and to understand human trafficking rightly by expounding the basic characteristics. This chapter is the objective of second aim of the thesis and also the answer to the second research question in the manner that the offence of human trafficking has distinct characteristics from its other related acts supra but it is equally true that without discussing the related acts, the discussion of human trafficking is incomplete because all such acts are inter-connected.

Since a conceptual understanding on the subject has been developed in this chapter and on its basis, the relevant international standards and national legal regime will be evaluated in the following chapters, but before doing that it is quite important to address the Islamic principles on the prohibition of human trafficking and its related acts because Pakistan being an Islamic state does not pass any law inconsistent with the Islamic injunctions. Hence, the following chapter will afford some Islamic principles so as to enhance the understanding of the subject in the light of Islamic injunctions as well.

Chapter 03: Islamic Injunctions on the Prohibition of Human Trafficking

3.1 Introduction

This chapter entails the Islamic principles from the sources of Islamic law that are exercised in understanding, addressing and combating the human trafficking. It elaborates the prohibition of human trafficking and its related acts on one hand, and protection & rights of victims on the other. Islam has articulated a societal structure founded on the fundamental human rights. This system favors neither the rise of a capitalist class nor of a technocrat class or bureaucracy but of an egalitarian system in which the rule of law overcomes. Two different concepts of law are existing in the world i.e. Divine origin Islamic law and man-made positive law. In Islamic states, the latter is always guided by the former. Any conflict between the both shall nullify the latter. Islamic law is the code of laws followed by the Muslims in their daily lives and has its basis in two main sources i.e. the Holy Quran and the Sunnah; although there are other sources of Islamic law as well.¹⁹³ The fundamental objective of the Holy Quran is to form a sustainable societal mandate on earth that will be unprejudiced and morally centered. For this purpose, the individuals are significant because collectively they form a society. The Holy Quran provides rights which all human beings ought to have. A large number of human rights are referred to for the purpose of protection of the society; the detail of those is provided in the proceedings paragraphs. The teachings of Islam base upon the Doctrine of Certitude (Ilm ul Yaqeen) in the matter of good and evil or beauty and ugliness. Anything that is morally beautiful must be done; while anything that is morally ugly must be avoided. Encouraging what is virtuous and prohibiting what is sinful is the basic principle

¹⁹³ Ijma, qiyas, Istislah, Maslah al Murasalah, Istidlal, Illat, Urf and Taqlid.

of Islam.¹⁹⁴ Now what is morally good or bad, a man cannot answer for the same. In this regard, Allah sent his Messengers with clear teachings. The Holy Quran says as under: -

*“And whatever the Messenger has given you- take; and whatever he has forbidden you- refrain.”*¹⁹⁵

3.2 Dignity of Man

Islam has set out admirable humanitarian standards for a society. The Holy Quran says, *“Verily, we created man of the best stature.”*¹⁹⁶

According to the classical theory, the Islamic law consists of express injunctions of the Holy Quran; the legislation introduced through the practice of the Prophet (PBUH); and the opinions of the jurists. The word *shariah* is used for the Islamic law. *Shariah* is not an inert code, but rather a living and growing one. It encompasses the entirety of the Allah Almighty’s commandments which are called the Orders (Ahkaam) and includes all human actions; rights and obligations.¹⁹⁷ These *ahkaam* are divided into five categories; obligatory (Wajib)¹⁹⁸, prohibited (Haram)¹⁹⁹, recommended (Mandub)²⁰⁰, disapproved (Makruh)²⁰¹ and permissible (Mubah)²⁰². Every conceivable human act is categorized

¹⁹⁴ The principle is called as ‘*Amar Bil Ma’roof wa Nahi anil Munker.*’ It is reported that the prophet (PBUH) said, “Whoever amongst you sees an evil, he must change it with his hand. If he is not able to do so, then with his tongue. And if he is not able to do so, then in his heart and that is the weakest form of faith.”

¹⁹⁵ Al-Quran 59:07. It is important to note that all the English translation of Quranic verses has been taken from “the Quran Translated” by Muhammad Marmaduke Pickthall.

¹⁹⁶ Al-Quran 95:4.

¹⁹⁷ Farrukh B. Hakeem and others. “Policing Muslim Communities: Comparative International Context,” *Springer Science Business Media, New York* (2012). ISBN 978-1-4614-3551-8.

¹⁹⁸ It is an act whose commission is demanded by the law-giver in certain and binding terms, e.g. the payment of zakat, the fulfillment of promises and many other acts that are required by the law-giver from His subjects. The law-giver has determined penalties for the omission of such acts. The rule for this act is that in doing that there is reward for him; while omitting it, without a legal excuse, entails a penalty.

¹⁹⁹ It is an act whose omission is required by the law-giver in certain and binding terms, e.g. murder, giving false evidence, corrupt practices, misappropriation of another’s wealth, unlawful sexual intercourse, exploitation of others and many other acts that are prohibited by the law-giver from His subjects.

²⁰⁰ It is a demand by the law-giver for the omission of an act without making it binding and without assigning any blame for its omission.

²⁰¹ This type of act is the opposite of obligatory. It is an act whose omission has been demanded by the law-giver in certain terms through probable evidence, e.g. making an offer for sale where the offer of another is pending.

²⁰² It is an act where the law-giver has granted a choice of commission or omission without blame or praise for omission or commission.

under one of the afore-mentioned *Ahkaam*. To understand all these five *Ahkaam* is very much necessary to differentiate between the acts that are morally commanded and that are legally enforceable.²⁰³ This division of five acts distinguishes the Islamic legal system from positive legal system.²⁰⁴ The Muslim scholars agree upon the five-folded goals of *shariah* such as the protection of life, reputation, religion, ownership and personal human honor & dignity.²⁰⁵ Any significant violation of these would constitute the corruption on the earth (*fasad fil arz*). Through its more definite social transformation, the Quran aims at supporting the weaker segments of the society i.e. children, women, slaves, migrants, and those chronically in debt etc.

3.3 Slavery and Islam

Slavery was well established institution in pre-Islamic Arabia as well as in rest of the ancient world. Even after the advent of Islam, the slavery continued. Slave-owners used to treat their slaves inhumanely; physical torture and exploitation were common. Therefore, some critics contend that slavery is permissible in Islam and not prohibited in clear terms²⁰⁶ and there are no prohibitions for human trafficking in which the victims are treated as slaves because slavery is permitted, it means human trafficking, in other words, is also permitted in Islamic culture. But this is not the true. The critics have not understood the true meaning of slavery and human trafficking instead. Slavery has different elements from human trafficking while the both are being mixed up by them. The Holy Prophet (PBUH) expelled all inhumane practices and recommended the release of slaves being one of the great qualities in Islam. To abolish this inhumane practice, the

²⁰³ The same argument was expressed in *Gobind versus Inayatullah case 7 All. 775, 781 (1885)*. It was held that moral obligations differ from legal obligations and this distinction must be observed or else it could lead to error and confusion.

²⁰⁴ In positive legal system, the acts are only two which are either lawful or unlawful.

²⁰⁵ Fazal-Ur-Rehman, *Major themes of the Quran: Second Edition* (University of Chicago Press, 2009).

²⁰⁶ Kendra Bakerink and Caitlin Hawes. "Oppression and Exploitation: Sex Trafficking in Islam," *UMASs DARTMOUTH* (December, 2004). < <http://www.umassd.edu/eportfolio/wms/uchawes/islam.htm> > (accessed on 29-04-2016).

Holy Prophet (PBUH) himself freed his slave, Zaid Bin Haris (RA). Islam rejects all claims of slavery and prohibits the human trafficking and its related acts as well. Islam has set out exceptional philanthropic principles for society. It considers that everyone born neither unclean into the world nor can anyone be debarred from anything by the mere fact of his birth; all persons are born free and they have the right to live and die free. Islam requires the slave masters to treat their slaves gently and not exploitatively. A slave can redeem himself upon payment to his master. It recommends the humane treatment to the slaves. The Holy Prophet (PBUH) never hit with his hands at all, not upon women, nor slaves.²⁰⁷ The holy Quran says as under: -

*“Show kindness to parents, and to near kindred, and orphans, and the needy, and to the neighbor who is of kin to you and the neighbor who is not of kin and the fellow traveler and the wayfarer and the slaves whom your right hands possess.”*²⁰⁸

Islam has openly prohibited the nascent practice of apprehending a man who is at liberty and to make bound him as slave or to trade him into slavery. A tradition of the Holy Prophet (PBUH) said: -

*“There are three groups of people against whom I shall myself be a plaintiff on the Day of Judgment. Of these three, one is who enslaves a free man, then sells him and eats his money.”*²⁰⁹

Both the Quran and Traditions repetitively urged to treat slaves humanely. They address slavery broadly, but viewing it as an exceptional condition and restricting its scope. The Holy Quran in its various verses discusses slavery and strongly encourages releasing of the slaves. Islam declares it a reward to free the slaves, and such an act was encouraged as a way to make-up for one's own wrong-doings because to free a slave is an act of worship. The plea for humane treatment to slaves is reiterated in the traditions of the Holy Prophet (PBUH) as under: -

²⁰⁷ Sahih Muslim, Volume 6, Virtues, Book 30, Number 5756.

²⁰⁸ Al-Quran 04:36.

²⁰⁹ Sahih Bukhari, Volume 3, Sales and Trade, Book 34, Number 430.

“God has ordained that your brothers should not be your slaves, therefore, he whom God has ordained to be the slave of his brother, his brother must give him of the food which he himself eats, and of the clothes with which he clothes himself, and not order him to do anything beyond his power”²¹⁰; “Whoever frees a Muslim slave, Allah will save all the parts of his body from the hell, as he has freed the body part of the slave”²¹¹; “Free the slaves at the time of lunar or solar eclipse”²¹²; “He who has a slave-girl and educates and treats her nicely and then manumits and marries her, will get a double reward”²¹³; “Verily wicked are those who purchase human beings or who trade in human bodies”²¹⁴; “He who beats his slave without fault or slaps on his face, his atonement is freeing this slave”²¹⁵; “Since when have you enslaved the people while their mothers gave them births as free”²¹⁶

Islamic society is extremely egalitarian and certainly not let anyone to enslave people or to exploit a person’s labor. The Holy Quran says: -

“It is righteousness to believe in God, and to spend your substances for the ransom of the slaves.”²¹⁷

Both Quran and Traditions strongly discourage the society of slaves in which they are exploited. As discussed in chapter 2, where there is no exploitation of human being, there is no human trafficking. Since Islam strongly dejects the exploitation of slaves, rather exhilarates to treat them with kindness or even to free them, so Islam addresses to abolish human trafficking as well. It urges to abolish slavery form the world so that all human beings may be treated with dignity and respect. Muslim scholars also reject slavery through Ijma. Ijmaa of the Muslim jurists condemns society having slaves. They recognize that the institution of slavery is now obsolete and the contemporary society cannot afford the same. Ijmaa was developed from the abolitionist verses of the Quran

²¹⁰ Sahih Bukhari, Volume 3, Manumission of slaves, Book 46, Number 721.

²¹¹ Sahih Bukhari, Volume 3, Manumission of slaves, Book 46, Number 693.

²¹² Sahih Bukhari, Volume 3, Manumission of slaves, Book 46, Number 695,696.

²¹³ Sahih Bukhari, Volume 3, Manumission of slaves, Book 46, Number 720, 723.

²¹⁴ Tirmidhi, Chapter 36, Number 1715.

²¹⁵ Sahih Muslim Book 18, Number 95 and 1605.

²¹⁶ Kanzul Amaal, Volume 4, page 455; V.A. Syed Muhammad, “Islam and Human Rights,” p. 85.

²¹⁷ Al-Quran 02:177.

and Sunnah. It is concluded that though frequent reference is made to slaves in Islam; however, it is wrong to say on account that Islam expressly sanctions slavery and human trafficking for the purpose of slavery and consequently human trafficking cannot be abolished in Muslim countries. It is again made clear that when a slave is treated by his master exploitatively, this is human trafficking. But if he is not treated in such manner, then it does not fulfill the definition of human trafficking. Islam abhors mal-treatment and exploitative labor or sex from slaves and also talks about their rights; hence, human trafficking is also abhorred by the tenets of Islam. It is precisely held that Islamic law is on the same page with international law on the issue of human trafficking.

3.4 Women Rights in Islam

Before the advent of Islam, women-class was the most neglected section of the society. Islam gave much respect to them with equal rights to men. Islam has given legal recognition to the dignity and rights of women. It holds that women are also human beings, so they must be treated like that. The Holy Quran declares: -

“Lo! Men who surrender to God, and women who surrender, and men who believe and women who believe, and men who obey and women who obey, and men who speak the truth and women who speak the truth, and men who persevere (in righteousness) and women who persevere, and men who are humble and women who are humble, and men who give alms and women who give alms, and men who fast and women who fast, and men who guard their modesty and women who guard (their modesty), and men who remember God much and women who remember God much; God has prepared for them forgiveness and a vast reward.”²¹⁸; “And women have rights similar to the rights to those of men in a just manner”²¹⁹; “Force not your slave girls to whoredom that you may seek enjoyment of the life of the world, if they would preserve their chastity”²²⁰.

²¹⁸ Al-Quran 33:35.

²¹⁹ Al-Quran 02:228.

²²⁰ Al-Quran 24:33. This verse was revealed when one of six slave girls was compelled by her master to live by prostitution and she complained to the holy Prophet (PBUH).

3.5 Children Rights in Islam

Islam gives much importance to the children. The people in the society have their respective responsibilities for the children. The Holy Prophet (PBUH) said: -

“The person who is not affectionate and merciful to the children will not be treated mercifully.”²²¹; “Whoever is the cause of separation between mother and child, by selling or giving, Allah will separate him from his friends on the Day of Judgment.”²²²

The analogy of second Hadith can be deducted to any other prohibited act such as prostitution, forced labor etc. The work or labor has enough emphasis in Islam because work is considered as worship, responsibility, human co-operation and obligation.

3.6 Prohibition of exploitation

Islam gives much importance to mankind and believes human beings as the supreme creature of Allah Almighty. It is well known principle that man is a social animal, so Islam contemplates man as an intimate portion of the society. Islam considers the life of man as one and indivisible; it considers the life of an individual as an inseparable portion of the life of the society whose individuals require and complement each other in the Islamic scheme of social order; man has to be individual and collective entity at the same time. Anything that takes down the prestige of an individual is negated by the Islamic scriptures. Exploitation of man is one of them. Exploitation of any kind is categorically prohibited in Islam. It is the basic constituent of the definition of human trafficking and distinguishes it from other similar crimes such as human smuggling, slavery, forced labor etc. The detailed discussion has already been written under 2.6 of chapter 2. Islamic law summaries an overall exclusion of exploitation and equally forbids particular kinds of exploitation such as labor exploitation, sexual exploitation etc. The Holy Quran prohibits certain acts which are analyzed as forbidden or haram because they

²²¹ Sahih Bukhari, Volume 8, Good manners and Form (Al-adab), Book 73, Number 26.

²²² Tirmidhi, Chapter 52, Number 1283.

involve a component of exploitation. Such acts include the exploitation of another's property which is discussed in the words of Allah as under: -

*"Oh, you who believe, eat not each other's property by wrong means."*²²³

The Holy Prophet (PBUH) said: -

*"Do not sell the female singers, nor purchase them, nor teach them to sing and there is no good in trade in them, and their prices are unlawful."*²²⁴

In this verse, the prohibition of bribery is pointed out. Corruption of public officials such as border guards, customs officers, law enforcement agencies and other government officials is a backing factor to the human trafficking. The Islamic injunctions also address the labor and sexual exploitation which are being discussed in detail below.

3.6.1 Prohibition of Labor Exploitation

Islam has described exploitation of workers as the severest likely abuse of human rights and dignity. It has put down recommendations for its avoidance. It cannot endure this type of exploitation in any form even for a while. The Holy Prophet (PBUH) said: -

*"The rich commits crime by defraying payments."*²²⁵

In any workplace, there is always a relationship of employer-employee. Islam suggests that an employer should not exploit his employee, rather should consider him as member of his own family. The Holy Prophet (PBUH) said: -

*"Those working under you are like your brothers whom God has made your subordinates. So he who has his brother working under him let him feed and clothe what he feeds or clothes himself."*²²⁶

The Holy Quran says: -

*"Allah only assigns a soul something that it can cope with."*²²⁷

²²³ Al-Quran 04:29.

²²⁴ Tirmidhi, Chapter 31, Number 3195.

²²⁵ Sahih Bukhari, Dar ul Fikr, Bairut, Volume 4, Number 464.

²²⁶ 40 Hadith Nawawi, Number 24.

While telling the story of Moses and Shoaib, the employer Shoaib asks Moses:

*"I do not want to be hard on you (by placing more burden on you) and you will find me an honorable man (straightforward) in these matters, if Allah wishes."*²²⁸

Trafficking for the purpose of forced labor is one of the most prevalent forms of human trafficking. This type of trafficking involves verbal contracts, non-compensation, exploitative working hours, hard physical labor, restriction of movement etc. Islamic law clearly prohibits the exploitation of labor.²²⁹ Islam respects work and labor; dignity of labor has been recognized at every stage and any violation in this regard is considered as against the injunctions of Islam for which strictures have been passed against the transgressors. There are four basic principles of Islamic labor law, the violations of which integrate forced or exploitative labor under the notion of human trafficking.

(i) Contractual Obligation

Contractual obligation is the binding obligation that comes from the terms of contract between the parties. When an employer employs an employee, he must fulfill all his contractual obligations. Thus clear contracts of work should be made with the workers before a worker enters into a work agreement and this is for his security in job and also a motivation to work honestly and enthusiastically. The Holy Quran says: -

*"Be faithful to your pledge to God when you enter into a pact."*²³⁰

The traditions of the Holy Prophet (PBUH) said: -

*"Whoever takes away the rights of a worker should be considered as an oppressor"*²³¹; *"Give the body its due share of rest and said that your body and your*

²²⁷ Al-Quran 02:286.

²²⁸ Al-Quran 28:27.

²²⁹ Adnan A. Zulfiqar, "Religious Sanctification of Labor Law: Islamic Labor Principles and Modern Provisions," *University of Pennsylvania Journal of Labor and Employment Law* 9 (2007): 421.

²³⁰ Al-Quran 02:177.

²³¹ Sahih Muslim, Kitab ul Buyu, Book 10, Chapter 10. See generally Khalil-ur-Rehman. "The Concept of Labor In Islam: The Employer and the Employee Islamic Concept," (1972).

*family have a right on you*²³²; *“Those who work for you are your brothers upon whom Allah has given you authority, so if one has under your control, he should be fed and clothed with the like of what you eat or wear. You should not over-burden him with that he cannot bear, and if you do so, help him in his hard job.”*²³³

(ii) Payment of Wages

Wages must be paid forthwith at the time of completion of work and as per agreed terms. The Islamic tradition advocates for timely wages i.e. wages must be rewarded to the worker at once on conclusion of the settled contract. The Holy Prophet (PBUH) said: -

*“Allah will be an opponent on the Day of Judgment of one who employs a worker and takes full work from him but does not pay him for his labor”*²³⁴; *“Pay the worker his wages before his sweat dries”*²³⁵; *“I am the opponent of three on the Day of Resurrection, and if I am someone’s opponent I will defeat him: A man who makes promises in My Name, then proves treacherous; a man who sells a free man and consumes his price; and a man who hires a worker, makes use of him, then does not give him his wages”*²³⁶; *Pay every rightful claimant his dues.*²³⁷

In Islam, a worker is not entitled to anything until the completion of his work. The Islamic scholars have clarified this matter by providing an instance of brick-maker. Where a person employs another person for making a certain quantity of bricks, then he is entitled for his employment when he has prepared the bricks and not before that. According to Islam, even if a worker does not demand for his labor, the employer must be alive to his rights and acquainted with his complete obligation. He should fulfill his responsibility, failing which he shall be held liable before Allah Almighty on the Day of Judgment.

²³² Sahih Bukhari, Volume 8, Good manners and Form (Al-adab), Book 73, Number 155; Sunan Abu Dawud 1369.

²³³ Sahih Bukhari, Volume 8, Good manners and Form (Al-adab), Book 73, Number 76; Sunan Al-Jami’a Tirmizi, Chapter 29, Hadith 1945.

²³⁴ Sahih Bukhari, Volume 3, Sales and Trade, Book 34, Number 430.

²³⁵ Sunan Ibn e Maja, Volume 3, Chapter 4, Wages of workers, Number 2443; Baihaqi, Volume 6, page 121, Mishkat Bab ul Ijara, Page 45.

²³⁶ Sahih Bukhari, Volume 3, Sales and Trade, Book 34, Number 430; Sunan Ibn e Maja, Volume 3, Chapter 4, Wages of workers, Number 2442.

²³⁷ Sahih Bukhari, Volume 3, Sales and Trade, Book 34, Number 430.

(iii) Specified Compensation

Prior fixation of the compensation for work is also necessary. The Holy Prophet (PBUH) forbade the forcing of the laborer to enter upon his work before settling his wages.

The Holy Prophet (PBUH) said: -

*“When you are employing a worker, you have to tell him how much he will be compensated for his labor.”*²³⁸

(iv) Definite Work

The labor must be definite; working hours must be set-up; and employees should not be forced to work beyond their capacity. The Holy Quran provides for guidelines on rest and leisure of workers being his basic rights as under: -

*“Of His mercy has He appointed for you night and day that therein you may rest, and that you may seek His bounty, and that perhaps you may be thankful.”*²³⁹

The Holy Prophet (PBUH) said: -

*“Man owns something (labor and energies) to himself, something to his body, something to his wife (family), something to his eye (psychic or aesthetic satisfaction)”*²⁴⁰; *“Those who do wrong with their servants cannot enter the Heavens”*²⁴¹; *“Giving light work to sub-ordinates will be rewarded on the Day of Judgment.”*²⁴²

Naturally the owner should like to extract as much labor from the worker as possible from him. A Muslim scholar, Maulana Manazir Ehsan Gillani, suggested that the basic necessities of an employer and employee should be the same and the number of working hours should be fixed according to the capacity of each worker.²⁴³ In the case of setting working hours, employers are told not to force employees to work beyond their

²³⁸ Baihaqi; Musannaf Abdur Razzaq.

²³⁹ Al-Quran 28: 73.

²⁴⁰ Sahih Bukhari, Number 5199.

²⁴¹ Sunan Al-Jami'a, chapter servants, volume 6, Number 77.

²⁴² Kanz ul Ummal, Majma Uz Aawaid, narrated by Ibn e Maja in his compilation of valid hadith, and shuhaib al Arnauth stated that its narration is valid.

²⁴³ Khalil-ur-Rehman, 231.

capacity and if the work-load is excessive, then they are required to share the burden.²⁴⁴ So Islamic labor law prohibits exploitation in labor area and lays down a broad set of instructions on the subject. In any labor at work-place, Islamic ethical principles should be followed.²⁴⁵ Hardship and harm are inflicted in forced or compulsory labors which are condemned by the Islam. The Holy Quran says: -

*"Allah desires for you ease. He desires not hardship for you."*²⁴⁶

Coercion and deception are also prohibited under the Islam. The Holy Prophet (PBUH) said: -

*"Whoever cheats is not one of us."*²⁴⁷

From the discussion above, it is concluded that enslavement, degradation, oppression, exploitation, coercion and deception for any reason whatsoever are prohibited. It is seen that cases of human trafficking usually involve the violations of above said Islamic injunctions. All these traditions show that no one should be overworked or exploited in work; proper physical and mental rest should be provided to the workers; payments should be priory specified, commensurate & adequate and made immediately once the work is done.

The Holy Quran commands: -

*"Lo! A clear proof has come to you from your Lord; so give full measure and full weight and wrong not people in their goods, and work not confusion in the earth (do not spread mischief on earth) after the fair ordering thereof."*²⁴⁸; *"O you who believe, fulfill all contracts."*²⁴⁹

²⁴⁴ Abu Talib Mohammad Monawer, 93.

²⁴⁵ They are based upon the four important principles such as goodness, relationship with others, equity and accountability.

²⁴⁶ Al-Quran 02:185.

²⁴⁷ Sunan Ibn e Maja, Chapter 36, Number 2224; Sahih Muslim, Book 24, Number 5309; Tirmidhi, Chapter 28, Number 1250; Sahih Bukhari, Volume 9, Book 86, Number 93.

²⁴⁸ Al-Quran 07:85.

²⁴⁹ Al-Quran 05:01.

It means that exploiting the labor of a worker amounts to mischief on the earth. Islam is a religion comfortable to human nature, so it is called Deen-e-fitrat (religion of nature). Islam emphasizes the dignity of every human being to live a better life. So in order for honorable existence of human beings, every individual is given the choice to adopt any lawful profession with his free will. Under Islamic law, the main guiding principle of the labor is the emphasis on work. According to Yusuf Al-Qaradawi, work is the first weapon to fight poverty.²⁵⁰ The Holy Prophet (PBUH) is reported to have said: -

*"There is no better food what has been earned by the use of both the hands."*²⁵¹

The act of earning livelihood for his family is considered to be equal to worship— a religious duty.²⁵² Considering all these, there is sacred backing for safeguarding the rights of workers. Therefore, Islamic law provides guidance about the labor context. Islamic law takes a very strict approach towards the payment for services. The Holy Quran says: -

*"Those who believe and perform good work, their earnings will never be withheld."*²⁵³

It means that wages are a right, not the generosity from the employer. In case of non-payment for services rendered, the person evading is severally condemned. The Holy prophet (PBUH) said: -

*"I am the opponent of three persons on the Day of Resurrection, and if I am someone's opponent, I will defeat him; a man who makes promise in my name, then proves treacherous; a man who sells a free man and consumes his price; and a man who hires a worker, makes use of him, then does not give him his wages for his labor."*²⁵⁴

This Hadith prohibits forced labor. It is explained by Allama Ibn al Hajar Asqalani in the following words: -

²⁵⁰ Yusuf Al- Qaradawi, "Economic Security in Islam," *Beirut, Dar ul Irshad* 1 (1969): 34.

²⁵¹ Sahih Bukhari, Volume 3, Sales and Trade, Book 34, Number 25.

²⁵² Syed Hussain Nazar, "Ideals and Realities in Islam," 2nd Edition, (1975): 98.

²⁵³ Al-Quran 95: 06.

²⁵⁴ Foot note 234.

“By taking work from someone without payment to him his legitimate wages is equivalent to pressing a free man into slavery and to produce goods from his labors, since when he has reaped the benefits without offering compensation, he has purchased the laborer and in effect has regarded him as a slave whom he has purchased.”²⁵⁵

The Holy Prophet (PBUH) said: -

“When a person fulfills the rights of Allah and the rights of his servants, he got two rewards.”²⁵⁶

Islam provides for equal pay for equal work. The Holy Quran says: -

“I never cause loss to the labor of a worker, be that male or female²⁵⁷; To them, we shall pay the price of their works and they will not be paid diminishingly.”²⁵⁸

How much concern the Holy Prophet (PBUH) had shown for the rights of workers is conveyed by his last words just before his demise which are narrated by Hazrat Ali (R.A) as under: -

“Always keep prayers in your mind and of the rights of the people who are your dependents.”²⁵⁹

Hazrat Umar, the second Muslim caliph, used to determine wages according to the conditions prevalent in the city and the employee's personal needs.²⁶⁰ Islamic juristic dialogues recommend that the amount of wages should be at least at a level that would enable the worker to fulfill all his and his family's basic needs in a humane manner.²⁶¹ It is, therefore, clear that the Islamic law recommends the payment of wages to the workers should be made immediately at the completion of work; such payment should commensurate his services rendered; wages must be fixed; wages should not be undervalued; and the work for which wages are received must be defined.

²⁵⁵ Ahmad Bin Ali Bin Hajar, Fateh Bari, Darul Fikr Bairut, volume 4, Number 418.

²⁵⁶ Sunan Al-Kubra, Bairut, Volume 8, Number 12.

²⁵⁷ Al-Quran 03: 195.

²⁵⁸ Al-Quran 11: 15.

²⁵⁹ Sunan Abu Dawud, chapter slaves, Number 336.

²⁶⁰ This was also evident from the tradition where the Holy Prophet (PBUH) gave double the share in ghanimah (war spoils) to the persons with families as compared to the unmarried persons.

²⁶¹ Abdul Ghaffar Ismail and others, “Bringing Work Back in Islamic Perspective,” *Prosiding Perkem VI, Jilid 2* (2011): 247-262. ISSN: 2231-962X.

3.6.2 Prohibition of Sexual Exploitation

Human Trafficking for the purpose of sexual exploitation is the second most prevalent form of human trafficking throughout the globe. To complete the contents of this chapter, the Islamic framework for combating human trafficking now would be discussed pertinent to this specific form of exploitation. Women and girls are the particular victims of this exploitation who are compelled to undergo into such situations. Islamic law forbids the acts of sexual exploitation and prostitution. The Holy Quran says:

*"Force not your maids to prostitution when they desire chastity, in order that ye may make a gain in the goods of this life."*²⁶²

The Holy Prophet (PBUH) said: -

*"It is prohibited the earning of the prostitutes and the money given to a soothsayer."*²⁶³

The Islamic traditions categorically suggest the performance of work to be lawful only. As the sexual trafficking is committed for the purpose of sexual exploitation of persons; hence, such practice is clearly in breach of the Islamic injunctions. Islam injunctions categorically forbid the sale and purchase of a person and hold all human beings to be owned exclusively by the Allah Almighty. According to the Holy Prophet (PBUH): -

*"It is prohibited to deal unlawfully in a Muslim's blood, property and honor"*²⁶⁴;
*"I would be a claimant against three groups of people on the Day of Judgment; one of which included a person who enslaves a free man, then sells him and eats this money."*²⁶⁵

This means that he consumes the money of his body by indulging him/her in immoral activities. Islamic society abhors prostitution to that extent that a prostitute could be disowned and thrown out from her family home by her own mother. The Islamic law

²⁶² Al-Quran 24:33.

²⁶³ Sahih Bukhari, Volume 3, Sales and Trade, Book 34, Number 439; Sahih Muslim, Book 18, Number 163.

²⁶⁴ Sahih Muslim, Book 18, Number 17.

²⁶⁵ Sahih Bukhari, Volume 3, Sales and Trade, Book 34, Number 403.

provides severe punishments to prostitutes. Prostitution is strongly condemned in Islamic society as they are religious offenders. This clearly disallows the sale of another human being, as no human being can be possessed by another.

3.7 Categorization of Crimes in the Islamic Law

Since this thesis relates with the criminal law and criminal justice system, so it is again necessary to look into this aspect from the Islamic point of view. There is no unanimously acknowledged definition of the word crime or offence. It is basically an act harmful to the individual as well as the society. Such acts are not only forbidden, but punishable also, if committed. In a positive legal system, the acts are either lawful or unlawful. Committing the unlawful acts is the definition of crime. In Islamic law, the acts are five in number and are defined according to the degree of the obligatory character of the same as discussed earlier. Inaction or failure to protect victims of trafficking or compensate them for the harm they suffer is a prohibited act (haram).²⁶⁶ Islamic law classifies the offences into three different categories i.e. Hudood²⁶⁷, Qisas²⁶⁸ and Tazir²⁶⁹. On the basis of this categorization, the offence of human trafficking is discussed in Islamic law as under: -

3.8 Human Trafficking: A Tazir Crime or Hudood Offence in Islamic Law?

There may be a debate in the legal fraternity as to whether the crime of human trafficking is a tazir or hadd offence under the Islamic law? As discussed earlier that tazir crimes are those of which punishment is not fixed by Allah Almighty. The offence of

²⁶⁶ UNODC, *Combating Trafficking in Persons in accordance with the Principles of Islamic Law*, (June, 2009).

²⁶⁷ Hudood punishments are those punishments that have been prescribed by the God in the Holy Quran or the Sunnah of the Holy Prophet Muhammad (PBUH). These are fixed punishments and their applications is the right of God. The purpose of these punishments is three-fold such as retribution, deterrence and expiation.

²⁶⁸ Punishment prescribed under Islamic law for murder and personal injury is known as Qisas. This means the infliction of injury on the wrong doer that is exactly equal to the injury that was inflicted on the victim. In simple words, it means the same type of injury on the same part of the body of the offender. In one word, it may be called the 'retaliation'.

²⁶⁹ Tazir was defined as a form of discretionary punishment that was to be delivered for transgression against God, or against an individual for which neither fixed punishment nor penance was prescribed.

human trafficking is specifically discussed neither in any of the verses of Holy Quran nor in the traditions of Holy Prophet (PBUH); hence, the judge has the authority to punish the offender as per the provisions of positive law. On the other hand, it is argued that human trafficking constitutes a clear violation of one's right to personal security which is one of the five essentials of Islam.²⁷⁰ So the organized human trafficking may entail elements of the crimes of corruption on earth (*fasad fil arz*).²⁷¹ Generally, Islamic criminal law recognizes five major offences as hudood offences which include Al-Sariqa (theft), Al-Hiraaba & *fasad fil arz* (robbery and corruption on earth), Al-Zina (illicit sexual relations), Al-Qadhf (slandorous accusation of un-chastity), and Shurb al Khumr (drinking alcohol). The Muslim jurists are not in agreement on the exact number of hudood offences as five. Some decreases the hudood offences as four in number.²⁷² Imam Malik (RA) and Imam Shaf'i (RA) increase the list of hudood offences by adding rebellion (waging war against government) and Irtidad (apostasy). Some adds the offence of Al-Firar Min Al-Zahf (running away from the battle field during jihad). So the jurists are not in consonance with the exact number of hudood offences. Since the offence of human trafficking may entail the elements of *fasad fil arz*, so it has become quite necessary to look into the hudood offence with respect to *fasad fil arz*.

3.9 Fasad fil Arz and Human Trafficking

'*Fasad*' is an Arabic word which means corruption, mischief, depravity or rottenness. In the Islamic perspective, it attributes to spreading mischief on the land or disturbance of the public peace.²⁷³ Al Baydawi defines *fasad* as to depart from straight

²⁷⁰ UNODC, 266.

²⁷¹ The Muslim scholars agree upon the five folded goals of Shariah such as the protection of life, reputation, religion, ownership and personal human honor & dignity. Any significant violation of these would constitute the corruption on the earth (*fasad fil arz*).

²⁷² For instance El-Awa says that drinking alcohol and apostasy offences are not included in the hudood offences as punishment of both of these is prescribed neither by the Holy Quran nor by the Sunnah.

²⁷³ Oliver Leaman, *Controversies in Contemporary Islam* (London: Routledge, Taylor and Francis Group, 2014).

and normal conditions and used the term for various wrongful acts including playing with the honor of people which ultimately leads to a chaos and annoyance in the world system. It is a generic term that includes every violation of Divine law. Its opposite is *islah* or *salah*. Both the terms may be used in the sense of profit and loss for a certain act.²⁷⁴ Any mischief which is made among the people of the land is called '*fasad fil arz*'. So the phrase *fasad fil arz* is open to wide interpretation. The notion is described in various places in the Holy Quran. However, it is often related with behaving wickedly upon the earth and is opposed to setting things aright upon it. In the Islamic criminal jurisprudence, it has not been used for the commission of any particular crime or immoral act. The Holy texts use this phrase for a number of acts ranging from minor offences such as demolishing crops and measuring less, infringing agreements etc., to heinous offences such as murder, dacoity, polytheism, atheism etc. The Holy Quran says:-

"And when it is said unto them, "Do not work corruption upon the earth," they say, "We are only working righteousness"²⁷⁵; "Nay, it is they who are the workers of corruption, though they are unaware"²⁷⁶; "Verily, Allah does not like the transgressors; and do not create mischievous acts on the earth"²⁷⁷; "Eat and drink of God's provision, and behave not wickedly upon the earth, working corruption."²⁷⁸

Al-Maraghi while explaining the first verse stated that the elements and sources or acts which themselves do not amount to *fasad* but ultimately lead to it, may also be

²⁷⁴ Qazi Fazal Ilahi and Dr Humayun Abbas, "The Quranic concepts of *fasad fil arz*: Crimes within its purview and the punishments awarded under it," *Peshawar Islamicus* 5 (2014) 2.

²⁷⁵ Al-Quran 02:11; 03:11-12.

²⁷⁶ Al-Quran 29:12

²⁷⁷ Al-Quran 07:55-56. The same concept is provided in chapter 12, verse 73 of the Quran when the brothers of Hazrat Yusuf were leaving his palace and a bowl was found in their luggage. The brothers prayed that they are not the thieves and transgressors; having no intention to commit *fasad* on earth by stealing the bowl. In chapter 13, verse 25, it is provided that the people who do not fulfill their promises, and are not constant towards their relations are committing *fasad fil arz*. In chapter 26, verse 152, it is prohibited to follow those people who commit *fasad fil arz* and are reluctant to reform themselves. In chapter 26, verse 183, it is provided to measure the things correctly and any deviation would cause *fasad fil arz*. In chapter 27, verse 48, when the people cut the legs of the she camel and also planned to kill Hazrat Saaleh (A.S.), they committed *fasad fil arz*. A renowned Muslim Scholar, Hazrat Saeed bin Musayib, states that even to cut unnecessarily the government coins comes within the definition of *fasad* (Sunan Abu Dawud).

²⁷⁸ Al-Quran 29: 60.

brought within the sphere of *fasad fil arz*.²⁷⁹ The phrase has also broad meaning in the Sunnah. Even breaking the relations with kith and kins is said to be a form of mischief.²⁸⁰ Ibn-e-Abbas stated that *fasad fil arz* is interpreted as open disobedience against Allah Almighty. This term has been used in the broadest sense for various acts ranging from armed assault, rape, murder, avoiding idolatry, destruction of natural environments, threatening political figures to any other acts which may cause disturbance to human dignity including decadence and immorality and also associated with morally egregious acts and serious sins, particularly violence against others.²⁸¹ Fakharuddin Al-Razi considers 'working corruption upon the earth' to be the prohibition against any act that corrupts bodies through violence and wealth through fraud or theft. Where the offenders are found likely to be the potential danger to the community, the principle of *fasad fil arz* applies to their case.²⁸² If the particular objectives and purposes of a thing when do not remain intact or become ineffective is called *fasad fil arz*.²⁸³ So where the life, property or honor is not protected or obstacles are created in enforcing the Islamic way of life is termed as *fasad fil arz*. Where the crime is committed in a shameful and brutal manner, leaving its awful impression not only on the victim but on his family and society as a whole and in doing so, a number of other offences are also committed by the offender. In such a situation, the offence is not counted as a single offence but falls within the sphere of *fasad fil arz*.²⁸⁴ Let us take the example of human trafficking in the light of this situation. Human trafficking is a heinous offence in which the human beings are exploited by other human beings and treated like animals by degrading their dignity. They are sold

²⁷⁹ Ahmed Mustafa Al-Maraghi. *Tafsir Al-Maraghi*. Dar Ul Fikr, Beirut 1974, Volume 1, page 53.

²⁸⁰ Sahih Bukhari, Volume 8, Good manners and Form (Al-adab), Book 73, Number 16.

²⁸¹ Syed Hossein Nasr, Caner K. Dagli, Maria Massi Dakake, Joseph E.B. Lumbard, Mohammed Rustom, *The Study Quran: A New Translation and Commentary* (New York: HarperOne, 2017).

²⁸² Hikmatulah etc. versus the state (2007 SCMR 610 Shaari' at Appellate jurisdiction).

²⁸³ Umar Ryad, "Islamic Reformism and Christianity: A Critical Reading of the Works of Muhammad Rashid Rida and His Associates (1898-1935), *Leiden Boston* (2009).

²⁸⁴ Qazi Fazal Ilahi, 274.

and purchased like commodities. Such offences are committed by the offenders in organized manners. This marks the unpleasant feelings not only on the victim but also his/her family and society. *Fasad fil arz* is defined as term including both local and international terrorism as well as broader anti-social activities such as organized crimes like drugs trafficking, trafficking in persons, extortion etc.²⁸⁵ In a nutshell, *fasad fil arz* is a term that can include any offence that offends the social construction of the society. So the Islamic criminal jurisprudence developed on the account that there is no legal bar to include any heinous offence in the definition of *fasad fil arz*, including the offence of human trafficking.

In 1981, a Saudi fatwa declared that *hiraba* being a hadd offence should cover offences of sexual honor as well.²⁸⁶ On the analogy of this fatwa, the offence of human trafficking falls in the category of hudood offences. This is a distinct interpretation of hudood offences which differs from the conventional Islamic jurisprudence. In 1989, the Federal Shariat Court of Pakistan (FSC) ruled that the heinous offences should be brought within the definition of *hiraba*.²⁸⁷ The commentators of the Holy Quran, Council of Islamic Ideology and Superior Courts have ruled that punishments required in the Quranic verse 05:33 supra should be given wide interpretation to cover various other offences of heinous nature and not to be confined to the offence of *hiraba* only. For this purpose, the Council in its annual report of 2006-07 put forward the recommendations to the government of Pakistan that the definitions of *hiraba* and *fasad fil arz* should be stretched to include any heinous offence such as terrorism, rape and murder etc. and they should not be limited only to the offence of highway robbery. Further, the punishment for such

²⁸⁵ Mohammed Muniruzzaman, International Islamic University, Islamabad, Pakistan. <<https://www.ummah.com/forum/forum/library/learn-arabic-and-other-languages/qur-an-and-islamic/348821-what-is-corruption-and-fasad>> (accessed on 10-04-2019).

²⁸⁶ Liv Tonnesson. "Women's Activism in Saudi Arabia: Male Guardianship and Sexual Violence," *Chr. Michelson Institute (CMI) Report* (January 2016).

²⁸⁷ PLD 1989 FSC.

cases must be commensurate to the relevant Quranic verses. An interpretation on the same analogy has also been developed by the Federal Shariat Court in *Mian Abdul Razzaq Amir Case*²⁸⁸ wherein the Court discussed the hudood offences in some details. While deciding three connected Shariat petitions, the primary discussion was on the point, inter alia, that what is the true meaning and scope of the term hudood; and how it should be explained with particular reference to the number and nature of offences as well as human affairs for a proper appreciation of contemporary constitutional and legal provisions and for future legal instruments? The consensus issues, inter alia, were framed as follows: -

1. What is the meaning and scope of the term hudood with particular reference to article 203 DD (1) of the Constitution?
2. How are punishments and offences classified according to the Islamic teachings and what categories of offense are within the ambit of hudood; thus within the exclusive jurisdiction of the FSC?

It was observed therein that the scope of the term hudood is wide enough to cover all categories of offences relating to the property, human body, dignity and honor. On the basis of this principle, ten categories of offences were declared to cover into the hudood offences for the purpose of article 203-DD (1) of the Constitution, including the offence of human trafficking being one of them. It was further held as immaterial for the purpose of these petitions whether penal provisions relating to kidnapping, abduction, enticing, prostitution, buying or selling a person for the purpose of sexual work etc. are retained in the Pakistan Penal Code, 1860, or the Prevention and Control of Human Trafficking Ordinance, 2002, or any other legal instrument for the time being in force.²⁸⁹ What is material being that all such offences relating to the enforcement of hudood are within the

²⁸⁸ *Mian Abdul Razzaq Amir etc. versus Federal government of Islamic Republic of Pakistan etc.*, PLD 2011 FSC 1.

²⁸⁹ It is made clear that the Prevention and Control of Human Trafficking Ordinance, 2002 was the contemporary law at that time which has now been repealed and replaced by the Prevention of Trafficking in Persons Act, 2018.

exclusive jurisdiction of the FSC. Therefore, the offence of human trafficking is severer in nature and falls within the sphere of *hiraba* which is one of the hudood offences. It is concluded that the Islamic criminal jurisprudence developed by stretching the offence of human trafficking into the definition of *fasad fil arz* and then developed thereto by placing the same into the definition of hudood offences.

3.10 Conclusion

Islam categorically prohibits exploitation of human beings and ordains punishments on those who violate the Divine law in this regard. Labor exploitation and sexual exploitation are strongly condemned, and human trafficking is against the injunctions of Islam. Some Islamic scholars, therefore, place the offence of human trafficking in the category of *hudood offences* and consider it an offence which creates mischief on earth (*fasad fil arz*). The objective of third aim of this thesis is to look into the Islamic principles on the subject. This chapter is the answer to the third research question holding therein that Islamic law categorically outlaws the exploitation of human beings and human trafficking consequently and place it into the category of highly censured acts such as *hudood offences* and *fasad fil arz*. As discussed earlier that law is either divine-made or man-made. This chapter has addressed the former kind of law. Now what is the man-made law for abolition of human trafficking is the subject matter of following chapters.

PART-II

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Non-Modern Period of International Law: The Slave Trades

International Day for Remembrance of Black Slave Trade and its Abolition is celebrated on 23rd August of every year so that the memory of this crime should live forever for future generations.

This page is the preface of the chapters 4 and 5 of the thesis. As discussed earlier that the black slave trade and white slave trade were two menaces since the ancient world, so the international law initially developed to abolish the both. The chapters 4 and 5 have been partitioned as the non-modern period of international law wherein both the slave trades were legally abolished. This period is called by the researcher as the non-modern period of international law because there was no corporate body of the nation-states for their mutual interests and solution of common issues during this period. So in order to understand the evolution of international law on the subject of human trafficking, the non modern period of international law is of worth discussion which has been addressed under chapters 4 and 5 of the thesis. This non-modern period of international law spans from 14th century till the advent of League. In this period, due to absence of one common international institution or body, the state-parties made treaties with each other.

Chapter 04: Non-Modern Period of International Law: Black Slave Trade

4.1 Introduction

The ancient society was utterly uncivilized and there was no concept of societal fabric at that time. The beginning of international law in such a period is not less than a wonder. Thinking the international law in ancient times just clicks the cognizance that how persons from even the most diverse cultures can relate to one another in a peaceful and mutually beneficial fashion. Before considering the legal history and issues surrounding the abolition of black slave trade, its factual history is worth-mentioning. The black slave trade, as supposed from its name, is the trade of black race people i.e. the Africans. It refers to the historical dealings in African people for the purpose of exploitative labor extracted from them by the Europeans. This slave trade was mainly done against the men as against the women and children because the male gender was high in demand for the labor fields. The 15th through 19th centuries, the Atlantic Ocean became the bridgework connecting three continents of the world in the trade of human beings. They were traded just like chattel or commodity. The African slaves were transported to the New World.²⁹⁰ Approximately 9.5 million Africans were shipped from Africa to the Americas and elsewhere.²⁹¹ Another research shows the estimated number of Africans sold into forced labor in the Western Hemisphere was 10 million.²⁹² Some more study shows that during the period mentioned above, more than 12.5 million men, women and children were known to had been forcefully enslaved and taken from Africa for exploitative labor services; out of whom, approximately 2 million did not reach the

²⁹⁰ The new world is historically important because the Europeans discovered America and gave it the name of new world as opposed to old world i.e. Afro-Eurasia. It is the Earth' Western Hemisphere which includes the Americas, Caribbean and Bermuda Islands.

²⁹¹ Cynthia Clark Northrup. "The American Economy: A Historical Encyclopedia," 1 (2003): 460. ISBN 1-57607-867-1; Alan J. Singer, "Teaching Global History: A Social Studies Approach," *Taylor and Francis* (2011). ISBN 13: 978-0-203-83236-3.

²⁹² Jacqueline W. Holzer, *Aspatial analysis of human trafficking in greater Los Angeles*, A Dissertation, (USC Graduate School: University of Southern California, 2010).

Americas, having died in transit²⁹³; some reports reported the enforced movement of African slaves up-to 28 million.²⁹⁴ The figure is fluctuating but it is clear that the estimates are in millions. These slaves were specifically subjected to labor slavery as contrast to sexual slavery.²⁹⁵ Although, slavery had roots from the ancient times but it became known with the Trans-Atlantic slave trade in the medieval period, which quickly became synonymous with the capture, enslavement and extreme human degradation of people from Africa. In this respect, the Trans-Atlantic Slave Trade is different from the ancient slavery. The Atlantic slave trade spanned from period of 1494 to 1890, during which period international law on the subject evolved and the people recognized their value of rights and liberties. This period formed a well-established inter-continental marketplace connecting Old World with New World i.e. Europe and Africa with the Americas. So the Atlantic slave trade is the worst page of history in which the Africans were captured, sold and transported through sea for exploitative labor with inhumane conditions.

4.2 Start of Conflicting Laws on the Subject

The Britishers used to treat the Africans as nothing but articles of trade which fact can be corroborated in the Charter of newly set up trading company named and styled as '*The Royal African Company*' in 1672. The Charter of the Company approved it a marketplace to trade in any redwood, Negroes, elephants' teeth, guinea grains, hides, wax, slaves, and other commodities.²⁹⁶ The economy of United Kingdom was flourishing due to the cheap labor of slaves; slave trade and slavery were considered as legal and

²⁹³ David Brion Davis and Robert Forbes. "Foreword," *William and Mary Quarterly* 58 (2001): 7.

²⁹⁴ BBC News, Monday 3 September, 2001, 13:45 GMT. < <http://news.bbc.co.uk/2/hi/africa/1523100.stm> > (accessed on 05-01-2018).

²⁹⁵ Jeremy Ball, *the Atlantic Slave Trade: A Unit of Study for Grades 7-12* (Los Angeles: National Centre for History in Schools, 2000).

²⁹⁶ Lisa Karee Parker, *A World of our own: William Blake and Abolition* (Georgia State University, December, 2006); David Richardson, *Bristol, Africa and the Eighteenth-Century Slave Trade to America: Volume 1, the years of Expansion 1698-1729* (Bristol's Records Society's publication, Volume XXXVIII, 1986).

essential. The UK wanted to establish monopoly on the trade; hence, a series of English Laws were enacted with respect to Atlantic trade, intituled, Navigation Acts of 1651, 1660 and 1663.²⁹⁷ These Acts were designed to regulate colonial trade, based on strict, monopolistic and mercantilist principles.²⁹⁸ It was agreed in the said Acts that only the English vessels would carry away all the goods for trade. As the Negroes were considered as items of trade; hence, the Navigation Acts indirectly made it legal to trade in trafficking of slaves. This fact was confirmed in 1677 when the English Solicitor-General, in an appeal on the issue of Negroes as goods, declared explicitly that Negroes ought to be esteemed goods and commodities within the Acts of Trade and Navigation.²⁹⁹ Meanwhile, the British Parliament passed the Habeas Corpus Act, 1679 which muddled the issue. The Act provided protection to everyone against illegal apprehension, confinement or removal to a foreign country. Now there was legal guarantee of the rights of the individuals, even to Africans. There was, therefore, an ambiguous situation regarding the status of Negroes because Navigation Acts along with Solicitor General's decision and Habeas Corpus Act were standing at quite opposite poles.

Since slavery and slave trade were rampant throughout the globe, France's King Louis XIV passed a decree in 1685, called the Code Noir or Black Code,³⁰⁰ being one of

²⁹⁷ In 1642, during the reign of Oliver Cromwell, the parliament exempted exports and imports from all duties and a few years later, all goods carried to the Southern Colonies in English ships were put on the free list. This was a good news for the American Colonies which gave a chance to the America to stand on its own feet. Additionally, it was necessary for the Britain to restrict the Dutch shipping, the biggest competitor to the England. The rise of Dutch carrying trade threatened to drive out the English shipping from the sea. The British sensed the situation that economy of Britain might be decrease and the Colonial America as well as Dutch may break its monopoly of trade, hence, the UK decided to pass a regular law on the issue, and the Navigation Act of 1651 was introduced, so that monopoly of British Colonial trade for the benefits of British merchants may be ensured, to the detriment of the Dutch maritime trade. All the Acts were called the Acts for the Encouragement of Trade or the Staple Acts, because they encouraged the British merchants to trade in commodities.

²⁹⁸ Mtubani, 100.

²⁹⁹ W. Noel Sainsbury and J.W. Fortescue. *Calendar of State Papers Colonial, America and West Indies, 1677-1680* (London: Stationary Office, 1896).

³⁰⁰ The laws especially passed concerning the slave trade and negro slave were generally known as Le Code Noir, the Black Code. First version of Code Noir was prepared in 1685 by Jean Baptiste Colbert, a French politician who once served as Minister of Finances from 1665 to 1683 under the rule of King Louis XIV. After his death, his son Marquis de Seignelay concluded the document. It was ratified by the King and

the most important French Codes throughout its history. It marked the historic conditions of slavery in French colonial empires.³⁰¹ In these colonies, slave labor was the instrument of the economy as well as its highest capital investment.³⁰² This legislation was applied to all people i.e. black and white people. The Code regulated the life, death, sale, purchase, religion and treatment of slaves by their masters in all French colonies. In short, it synchronized the slave trade and slavery.

4.2.1 Legal See-Saw of Conflicting Court Rulings

On the other hand, the slaves decided to get redressed their freedoms under the Habeas Corpus Act, 1679 considering the same as an opportunity. Various habeas corpus petitions (Freedom Suits) were filed on behalves of the slaves for the recognition of their valuable rights, challenging the so-called right of property in them. The majority of the courts initiated responding the petitions in favor of the slaves. It is most interesting to write that before passing of the Act 1679, there were diverse rulings of the courts available regarding the legality of the slave trade and slavery. For instance, in the most famous *Cartwright's case*,³⁰³ the court ruled that English law could not recognize slavery because England was too pure an air for a slave to breathe in. Slavery was condemned and considered as the worst form of human degradation. But still it continued in practice without any formal legalization. It occurred just two years earlier of the Act 1679 when the formal legalization of English ownership of Africans was announced in 1677 in the

adopted by Saint Domingue, one of the French colonies on the Caribbean island of Hispaniola from 1659 to 1804, in 1687. The second version of Code Noir was passed by King Louis XV in 1724.

³⁰¹ French colonial empire refers to the two overseas French colonies that came under its rule from 16th century onwards. First colonial empire remained in existence until 1814 and second colonial empire started with the conquest of Algiers in 1930 and ended in 1960. France established its colonies in Americas, Caribbean and India in the 17th century; in Africa, Indo-china and South Pacific in 19th century.

³⁰² Vernon Valentine Palmer. "The Origins and Authors of the Code Noir," *Louisiana Law Review* 56 (1996): 2, 263-407.

³⁰³ *Cartwright case* of 1569. The very first recoded court case on the exploitative labor and abusive treatment to slave appeared in 1569 when a man namely Cartwright was arrested on the allegations mentioned-before. He had brought the slave from Russia to England. the same ruling was also passed in *Hector Novimeis' case* of 1580.

King's bench case titled *Butts versus Penny*³⁰⁴ which categorically ruled that Africans are only merchandise and they be treated as goods or commodity. Case laws on two different views were present on the record. But the Africans fought for their rights of freedom just after the passing of statute of Habeas Corpus Act, 1679.

The history then saw a legal battle in Britain for the emancipation of slaves who were exploited by their masters. The same ambivalent situation was again seen at the hands of conflicting rulings of the court. The *Butts case* supra was immediately followed by a number of court decisions such as *Noel versus Robinson* in 1687; *Chambers versus Warkhouse* in 1693; and *Gelly versus Cleve* in 1694, all of which upheld the legitimacy of property in Africans. In *Pearne versus Lisle case (1749)*,³⁰⁵ the Lord Chancellor Hardwick despite the Habeas Corpus Act, describing the utter dehumanization of African slaves, ruled that African slaves were, indeed, chattels as far as English law was concerned and a slave is as much a property as any other thing. Conversely, various decisions were announced in favor of emancipation and anti-bondage. In *Smith versus Gould case*,³⁰⁶ the chief justice, Sir John Holt, ruled that in common law no man could have property in another and that law took no notice of Negroes being different from other men. In *Smith versus Brown & Cooper case*,³⁰⁷ again Sir John Holt ruled that a slave became free as soon as he arrived in England and one may be a villain in England but not a slave. In the case of *Shanley versus Harvey case*,³⁰⁸ the Lord Chancellor following the rulings of *Cartwright's case* (1569) and *Smith's case* (1706), ruled that as soon as a man sets foot on English ground, he is free, with further adding that a Negro may maintain an action against his master for ill-usage, and may have a habeas corpus if restrained of his liberty. This judgment clearly explained that exploitative service/ labor

³⁰⁴ *Butt versus Penny*, (1677) 2 Lev. 201.

³⁰⁵ *Pearne versus Lisle*, (1749) Amb. 75, 27 E.R. 47.

³⁰⁶ *Smith versus Gould* (1706), 2 Salk. 666, 92 Eng. Rep. 338.

³⁰⁷ *Smith versus Brown & Cooper*, 2 Ld. Raym. 1274, 91 Eng. Rep. 566.

³⁰⁸ *Shanley versus Harvery*, (1762) 2 Eden 126, 28 E.R. 844.

from a Negro is categorically outlawed. In the famous *Somerset versus Stewart case*,³⁰⁹ the Lord Mansfield settled two thin points of English law; a master could not seize or remove a slave from the realm against his will, and a slave could secure a writ of habeas corpus to prevent that removal. This judgment declared chattel slavery as unsupported by the common law and decided that the state of slavery is of such a nature that it is incapable of being introduced on any reasons, whether moral or political, but only by positive law i.e. statutes. It is so odious that nothing can be suffered to support it, but positive law. It was then clear that slavery and slave trade had never been authorized by the statutory law, but only by the common law. After various judgments pronounced against slavery and slave trade, the common law also unsupported the same, particularly after the famous judgment of *Somerset case* which evidenced to be the precursor in the abolitionist movement. This legal see-saw of various judgments was a struggle to validate or invalidate the exploitative labor from slaves.

4.3 Struggles by Abolitionists

Many white activists set foot in the field of abolition of black slave trade and slavery in the 18th century. They were called the abolitionists.³¹⁰ *Somerset case* furnished abolitionists with some of the most potent ideological weapons in their arsenal.³¹¹ By 1783, an anti-slavery movement had been launched among the British public to abolish

³⁰⁹ *Somerset versus Stuart* (1772) 98 E.R. 499.

³¹⁰ Plymouth also played an important role in abolishing Transatlantic Slave Trade because they had contacts with the abolition movement in Britain. In 1727 at Plymouth, a non-conformist religious organization called The Religious Society of Friends (more commonly known as Quakers) chaired a meeting for abolition of slave trade. the Quakers were instrumental in advancing the support within the general public that accorded to the ultimate signing of the 1807 Act for the Abolition of the Slave Trade. Some more non-conformist groups were also active in calling for the abolition of the trade, such as the Methodists and their leader John Wesley. Methodism had become so popular in Devon and Cornwall that it could almost have been described as the established church of the area. The Methodists refused to add sugar in their cups of tea as a form of protest against the slave trade, as sugar was a commodity traded for enslaved people, and the plantations were run on trafficked slave labor.

³¹¹ William M. Wiecek. "Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World," *the University of Chicago Law Review* 42 (1974): 86, 86-146.

the black slave trade throughout the Empire. So in the anti-trafficking legal regime, the social movements led the constructive roles in the development of the law.

The history viewed a mishap at the hands of Zong massacre which added fuel for ending of the slavery and slave trade and the issue became at an intense stand in the late 18th century in Europe and later on, a stern basis for abolitionist movements.³¹² Recognition for abolition became increasing day by day and people began to condemn the scourges publicly. Initially, the abolition was inspired by religion, but later-on joining the Cause by the private individuals and secular associations that had been influenced by the ideas of the Enlightenment, the abolitionists developed a network not only in Britain, but also in the remaining world.³¹³ The abolitionists were one of the first examples of civil society movement propounding a humanitarian cause.³¹⁴ On 22nd May, 1787, the Society for Effecting the Abolition of the Slave Trade was formed by a group in London which demanded the government to pass a law for the abolition of slavery, coupled with menaces of capturing, trafficking and selling of Africans into slavery be also disregarded.

4.4 Enactments by the British Parliament

Although the government was convinced by the demands of the abolitionists but did not intend to abolish slavery and slave trade instantaneously, but gradually. William Pitt, the then prime minister, sensing the issue, established a Committee of Privy Council for Trade and Foreign Plantation, to examine the question of slave trade thoroughly. The

³¹² Zong was an insured slave-ship in which slaves were being trafficked from Africa to Jamaica in 1781 for the purpose of exploitative labor services. The ship was over-crowded, carrying 17 crew-men and 442 slaves including their families which were normally more than twice the capacity of lifting burden. During the sail, the ship was not in a position to reach the destination safely due to the overburdened situation and scarcity of food items, hence, the crew, first of all, jettisoned all 54 women and children. The decision was to throw out the women and children was based on the premise that the male slaves were the assets while their families were liabilities because male slaves were to exploit in the labor services. This act did not satiate the burden of the ship, hence, 78 male slaves also thrown out in next few days, killing a total of 132 slaves who were being trafficked to Jamaica. 10 male slaves, afterwards, jumped into the river as a protest of their inhuman treatment.

³¹³ Guglielmo Verdirame, *The United Nations and Human Rights: Who Guards the Guardians?* (Cambridge University Press, 2011). ISBN 978-0-521-84190-0.

³¹⁴ D.B. Davis, *The Problem of Slavery in the Age of Revolution: 1770-1823* (Cornell University Press, 1975).

Committee failed to present its report within requisite time due to uncertain situations to abolish slavery. William Pitt engaged William Wilberforce to raise and debate on the issue in the House of Commons.³¹⁵ On May, 1788, the very first parliamentary debate on the issue was occasioned. It was quite unexpected that notwithstanding the gravity of the issue, no one on the floor debated seriously on the abolition of the slave trade, rather debated on the regulation of the slave trade as the abuses perpetrated on the ship board were not considered humane, although the original agenda was to condemn this outrageous traffic which ought not to be regulated but wrecked completely.³¹⁶ The reason behind not to abolish slave trade altogether was the vested interests of many stakeholders who were involved in making money through slave trade and slavery; this fact prevented them to debate in the House for its abolition unreservedly.³¹⁷

Sir William Dolben, a representative from the Oxford University, succeeded in grasping the attention of the William Pitt and was given the task of drafting a bill on the issue. His proposed bill was forwarded to the House of Lords for sanction which was eventually approved after some necessary amendments on 10th July and very first British legislation to regulate, for a limited time, the Shipping and Carrying Slaves in British Vessels from the Coast of Africa, intituled, Slave Trade Regulation Act, 1788 (also known as Dolben's Act) appeared in the legal history of the subject. The enactment made it illegal to carry, bring or transport slaves from the Coast of Africa to any parts beyond sea, in any such ship or vessel, in any greater number than prescribed by the law and any

³¹⁵ William Wilberforce was the then Parliamentarian and was one of the leading abolitionists. He wrote in his diary on 28th October, 1787 that God Almighty has set before me two great objects, the suppression of the slave trade and the reformation of manners. John Piper, *Amazing grace in the life of William Wilberforce* (Gross way Books, 2006); John Pollock, *Wilberforce* (New York: St. Martin Press, 1977). ISBN 978-0-09-460780-4, OCLC 3738175.

³¹⁶ The hypocrisy of the British people could be easily seen when they rather to raise voice against slave trade, raised voice against the inhuman treatment of slaves during the middle passage. Middle passage refers to the part of the slave trade where Africans were transported across the Atlantic to the New World.

³¹⁷ Jessica Moody, *The Memory of Slavery in Liverpool in Public Discourse from the Nineteenth Century to the Present Day* (A Ph.D. thesis submitted in Department of History, University of York, April, 2014).

defiance shall be punished in the form of fine.³¹⁸ The duties of masters, owners and surgeons of the ships were also directed and any defiance was held in penalty of fine; while good performance was awarded with money to the masters and surgeons.³¹⁹ Further, it mandated that no more than 2/5th of a ship's cargo would be children. As the age of child was not defined, so children between the ages of 12 and 18 years entered the trade and the Act was somewhat responsible for an increased number of children in slave trading. The Act lastly provided that this Act shall continue in force till the first day of August, 1789 and no longer.³²⁰ The punishments were not comprehensive because punitive clause of only fine was inserted and no imprisonment was made part of the penal section. Such type of legislation was not desired by the abolitionists. The Act primarily established the notion that slave trade itself is not unjust, but the movement necessitates some pertinent rules and regulation. However, the Act proved effective to some extent of reducing mortality rate of slaves on the ships or vessels as it was designed to improve the conditions of slaves on deck.³²¹ The Society for Effecting the Abolition of the Slave Trade was not pleased with the enactment of Act 1788; rather it was adamant to its original agenda of abolition. After the period of conclusion of the Act 1788, some

³¹⁸ Under section I of the Act, it was held that it shall be unlawful for any master or any other person taking the charge or command of the British ship or vessel whatever, to have on board, at an one time, or to convey, carry, bring or transport slaves from the coast of Africa, to any parts beyond sea, in any such ship or vessel, in any greater number than in the proportion of five such slaves for every three tons of the Burthen of such ship or vessel, so far as the said ship or vessel shall not exceed two hundred and one tons; and moreover, of one such slave for every additional ton of such ship or vessel, over and above the said Burthen of two hundred and one tons, or male slaves who shall exceed four feet four inches in height, in any greater number than in the proportion of one such male slave to every one ton of the Burthen of such ship or vessel, so far as the said ship or vessel shall not exceed two hundred and one tons, and moreover, of three such male slaves for every additional five tons of such ship or vessel, over and above the said Burthen of two hundred and one tons; and every such ship or vessel shall be deemed and taken to be of such tonnage or burthen as is described and set forth in the respective Certificate of the Registry of each and every such ship or vessel. If any such master or other person as aforesaid shall act contrary hereto, shall forfeit or pay the sum of 30 pounds of lawful money of Great Britain, for each and every such slave exceeding in number the proportions herein before limited; one Moiety whereof shall go to his Majesty, his heirs or successors, and the other Moiety thereof shall go to any person (s) who shall first sue for the same.

³¹⁹ Sections III, IV, XI and XIV of the 1788 Act.

³²⁰ Section XX of the Act.

³²¹ Robin Hains and Ralph Shlomowitz. "Explaining the mortality decline in the eighteenth century British slave trade," *Economic History Review* 53 (May 2000): 2, 262-283.

amended Acts were introduced.³²² Some more Bills were also introduced in the parliament but could not get approval.³²³

The Negroes were brought to the British Colonies under an Act for Encouraging New Settlers in His Majesty's Colonies and Plantations in America, 1790. The said Act was repealed to the extent of Upper Canada (a British Colony) under article I of the Act regarding the abolition of black slavery and slave trade, when in the Second Legislative Session of Upper Canada, the local Legislative Assembly passed an Act to Prevent the Further Introduction of Slaves, and to Limit the Terms of Contracts for Servitude within this Province (also called Act against Slavery) on 9th July, 1793. The 1793 legislation has the title to be very first legislation on the abolition, making Upper Canada the very first British Colony as a part of British Empire to abolish slavery and slave trade. It banned the import of any Negro or any other person to be exposed to the state of a slave, or to a bounden involuntary service for life, into any part of the Province; nor shall any voluntary contract of service or indentures that may be entered into by any parties within this province be binding on either of them.³²⁴ It also declared that children born henceforth to female slaves would be freed upon attaining the age of 25 years.³²⁵ This was the

³²² For example, An Act to continue, for a limited Time, and amend an Act, made in the last session of Parliament, intituled, an Act to regulate, for a limited time, the shipping and carrying slaves in British Vessels from the Coast of Africa, 1789; An Act to amend and continue, for a limited time, several Acts of Parliament for regulating the shipping and carrying slaves in British Vessels from the Coast of Africa, 1790; An Act to continue, for a limited time, and to amend in the last session of Parliament, intituled, An Act to amend and continue, for a limited time, several Acts of Parliament for regulating the shipping and carrying slaves in British Vessels from the Coast of Africa, 1791; An Act to continue, for a limited, several Acts of Parliament for regulating the shipping and carrying Slaves in British Vessels from the Coast of Africa, 1792; An Act to continue, for a limited, several Acts of Parliament for regulating the shipping and carrying Slaves in British Vessels from the Coast of Africa, 1793; An Act for regulating the shipping and carrying Slaves in British Vessels from the Coast of Africa, 1797; An Act for regulating the Height between Decks of Vessels entered outwards for the purpose of carrying slaves from the Coast of Africa, 1797; An Act for better regulating the shipping and carrying Slaves in British Vessels from the Coast of Africa, 1799;

³²³ In 1797, 1798, 1799 and 1802, changes in the existing Act of 1788 were proposed but could not get votes in the House of Commons. In 1799, another proposed law or Bill was introduced to restrict the slave trade to certain parts of Africa which was defeated in the House of Lords. In 1804 and 1805, more Bills were introduced, but did not succeed. Various Bills were rejected, but the abolitionists did not lose heart and brought every another Bill after the failure of one Bill.

³²⁴ Article I of the Act.

³²⁵ *Ibid.* Article III.

beginning towards the recognition of rights of slaved people and consequently the abolition. A small British Colony ventured to raise voice against inhumane treatment of humanity by legislating Act 1793 which spread all over the world later on. This was the clear message to the remaining British Empire as well as to the world to deny the degradation of Africans and to acknowledge the human rights of every human being.

The abolitionists had different agenda as contrary to that of regulating the slave trade under the Act 1788 and desired any legislation as that of the Act 1793, initially in the entire British Empire and thereafter in the whole world. The condemnations remained continued and abolitionists succeeded in getting passed an Order in Privy Council on 15th August, 1805, whereby His Majesty pleased to declare that it should not be lawful for any slave to be landed upon any of the Coasts, or imported or brought into any of the ports, or within the limits, jurisdictions, and territories of any of the Settlements, Islands, Colonies or Plantations on the Continent of America, or in the West Indies, until further order.³²⁶ However, the said Order permitted the annual entry of limited number of slaves under special license for the purpose of supplying any waste, or keeping up the cultivation of the lands already cleared and cultivated.³²⁷ This Order was the second success towards the abolition of slave trade and strived further legislation on the issue.

4.5 Prohibition of Foreign Slave Trade

The 18th century may be truly called the Age of Enlightenment or Age of Reason or Century of Philosophy whereby various intellectual, cultural, literary and philosophical movements reigned the arena of thoughts in Europe as well as in France. The ideals like rights of liberty, progress, tolerance, fraternity, equality etc. triggered recognition which caused the revolution in France, lasted from 1789 till 1799. The French Revolution further broke out the warfare and hostile diplomacy of France with the Britain and other

³²⁶ Caroline Quarrier Spence, *Ameliorating Empire: Slavery and Protection in the British Colonies, 1783-1865*, (A Ph.D. thesis submitted in Harvard University, 2014).

³²⁷ Ibid.

European countries. The French Revolutionary Wars lasted till 1802 when the Treaty of Amiens provisionally terminated the aggressions between the French Republic and the Britain on 25th March, 1802. On May 1803, the Britain ended the 1802 Treaty and declared war against France and applied sailing blockade to starve the France of its resources. This was the right time for the British abolitionists to convince the parliamentarians about the abolition of slave trade to France because the slaves were the major tools used in the war by the France. In any warfare, the slaves played an integral part in the defense of the country in which they were slaves.

On 23rd May, 1806, the Foreign Slave Trade Act, 1806, got Royal Assent and entered into force on 1st January, 1807.³²⁸ As supposed from its name, it prohibited British subjects and ships from transporting slaves to the territories of foreign states i.e. non-British states, with further prohibition to supply any necessary equipment to foreign slave ships from British ports. The Order 1805 was made part of the Act 1806. The Act was actually passed in the scenario discussed in the preceding paragraphs to ban the importation of slaves to France so that the French army should not be stronger by the addition of more slaves. It was declared that from and after the first day of January, 1807, it shall not be lawful to transport, send, convey, export or carry any slave (s) from any part of His Majesty's dominions to any foreign dominion, failing the compliance of which shall result in forfeiture and seizure of slaves and ships along with all its equipment and responsible persons would be prosecuted.³²⁹ In case of conviction, the convict shall pay penalty of a sum of 50 pounds lawful money of Great Britain. It is worth mentioning here

³²⁸ The long title of the Act was an Act to Prevent the importation of Slaves, by any of His Majesty's Subjects into any Island, Colonies, Plantations or Territories belonging to any Foreign Sovereign, State, or Power; and also to render more effectual a certain order, made by His Majesty in Council on the Fifteen Day of August One thousand eight hundred and five, for prohibiting the Importation of Slaves (except in certain cases), into any of the Settlements, Islands, Colonies, or Plantations on the Continent of America, or in the West Indies, which have been surrendered to His Majesty's Arms during the present war; and to prevent the fitting out of Foreign Ships from British Ports.

³²⁹ Article I of the Act.

that the Act 1806 did permit to export, ship, embark or carry upon the seas, any slave (s) from any colony, plantation, island, or territory belonging to or under the colony of His Majesty, to any other aforementioned areas of His Majesty, under certain conditions.³³⁰ The Act 1806 was not comprehensive enough to suppress the slave trade in whole and the journey of abolition took its way ahead.

On 21st July, 1806, an Act to Prohibit any Ship to Clear out from any Port of Great Britain, for the Coast of Africa, for the Purpose of Taking on Board Negroes, Unless Such Ship shall have been Previously Employed in the African Trade, or contracted for, for that purpose, was passed. This legislation became part of the legal framework towards the abolition of slave trade as fresh ships or owners were banned to enter into this trade and it was limited only to previously engaged ships or owners. This legislation cordoned the further expansion of the trade of slave trafficking and banned the new intended traders.

4.6 Abolition of Slave Trade Act, 1807

The abolitionists within the parliament wanted to go through some memorable work, so a Bill for abolition of slave trade was introduced in the parliament on 2nd January, 1807 for its first reading which ultimately received Royal Assent on 25th March, 1807. After the years of activism, the very first legislation of anti-human trafficking legal regime, in the true sense, originated into reality, as the trafficking of slaves was unqualified abolished throughout the British Empire.³³¹ The Act was given the name of

³³⁰ Article XIII of the Act stated that in order to make slave trade within legal boundaries from one dominion to other dominion of His Majesty, the owner or exporter shall apply in writing to the concerned authority, mentioning therein the exact number and quality of slaves and place of destination along with the grant of special license. Upon approval, the owner or exporter shall give a Bond to His Majesty in a penal sum of fifty pounds for every slave to be carried; the conditions of which Bond shall be that the said owner or exporter shall faithfully and truly land or deliver the said slave (s) at the place to which he shall be so authorized to export or convey the same and not to any foreign port; then at the port of destination, he shall certify that the said slave (s) has been landed and left in the said port. If any unavoidable circumstances occurred during the voyage and resulted in the death (s) of the slave (s), he shall prove the same by the oaths of two credible witnesses. In case, the owner or exporter fails to land or leave the slave (s) as per the conditions of the Bond, he shall pay the equal amount of the Bond for every such slave not so landed or left.

³³¹ The very first European country to abolish slave trade officially was Denmark in 1802, even though slavery itself was still lawfully practiced in some of her colonies for another decade. (J.F. Ade Ajayi,

Abolition of Slave Trade Act, 1807. The African slave trade and all manners of dealing and trading in the sale, purchase, transfer, or barter of slaves, or of persons intended to be transferred, used, sold, dealt with as slaves, practiced or carried on, in, at, to or from any part of the Coast or Countries of Africa, shall be, and the same is hereby utterly abolished, prohibited and declared to be unlawful.³³² Any defiance by any of the British Subjects would result in penalty of fine.³³³ It was further enacted that any such type of dealing, either directly or indirectly, from Africa, or from any Island, Country, Territory, or place whatever, in the West Indies, or in any other part of America, not being in the Dominion, Possession, or Occupation of His Majesty, to any other Island, Country, Territory, or place whatever, in the like manner utterly abolished, prohibited and declared to be unlawful.³³⁴ Any ship involved in this nefarious act would be liable to be forfeited.³³⁵ The offences committed under the Act were declared as misdemeanors.³³⁶

General History of Africa: Africa in the 19th Century until the 1880s (University of California Press, 1989). ISBN 0-520-039173.)

³³² Section 1 of the Act, 1807. Three words are used as “abolished, prohibited and declared to be unlawful.” The dictionary meaning of word “abolish” is to formally put an end or annul or eliminate or destroy any ongoing practice. The dictionary meaning of word “prohibit” is to formally forbid by law or to prevent or (of a fact or situation) to make something impossible. The dictionary meaning of word “unlawful” is contrary to or forbidden by law, especially criminal law or something illegal. Although, the very three words may be used interchangeably, but the intention of legislature to use these three words after one another cannot be ignored, which connotes that the ongoing practice of slave trade is not only socially discouraged but also legally forbidden and any defiance would cause to bring criminal prosecution against the accuser. The use of word ‘abolish’ gave the message to all other contemporary nation-states who were practicing the same that the immoral trafficking of humans is against the norms of society and must be discouraged by them all, with further use of word prohibit surrendered the United Kingdom that she had formally forbidden the practice and suggested punishment, if any disobedience to the law is shown, with further use of word unlawful emphasized that this shameful act has been declared as illegal. The word abolish is very much important as compared to other two words on the reason that the said word was offering the contemporary nation-states to think over the issue and this word became the basis to place the practice of slavery and slave trade into the jus cogens norms of international law and universal condemnation, whether any state made it legally forbidden or not. If an act is only prohibited in a country’s legislation, then it is forbidden in that specific country or region, and other countries or regions are not under an obligation to show obedience to the said law. But if an act is abolished by a country, such abolition is always based on moralities and norms of the society, then every other country ought to disregard the same on the bases mentioned before. This is the very idea behind the pre-emptory norms of international law, accepted by the international body of states from which no detraction is ever allowed.

³³³ 100 pounds of lawfully money of Great Britain for each and every slave so purchased, sold, bartered, or transferred would be paid as fine, out of that, one Moiety to the use of His Majesty, His Heirs and Successors and other Moiety to the use of any person who shall inform, sue, and prosecute for the same.

³³⁴ Article I.

³³⁵ Section II of the Act states that any such ship or vessel shall become forfeited, and may and shall be seized and prosecuted.

The Act 1807 categorically made it clear that from onward, no black people shall be transported from the Coast or Countries of Africa to any of the British Empire.

4.7 Prevention of Trafficking of Slaves in Sierra Leone

At the end of the 18th century, the Sierra Leone Company was launched by the British in the West Africa for the purpose of settling black men over-there.³³⁷ This was the period when the British involvement in the slave trade was at its altitude.³³⁸ It was also necessary to keep this British Settlement away from the scourges of slave trade; hence, on 8th August, 1807, the British parliament passed a specific Bill for preventing any dealing or trafficking of the slaves within the colony of the said Sierra Leone and an Act for transferring to His Majesty, certain Possessions and Rights vested in the Sierra Leone Company, and for shortening the duration of the said company; and for preventing any dealing or trafficking in selling or buying of slaves within the Colony of Sierra Leone, 1807, was enacted, wherein it was declared that it shall not be lawful for any person (s) whatsoever, inhabiting, or being, or who shall at any time hereafter inhabit or be within the said Peninsula or colony of Sierra Leone, either directly or indirectly to deal or traffic in buying or selling, or to be aiding or assisting in the dealing or trafficking in the buying or selling of slaves, either within the said Peninsula or elsewhere.³³⁹

4.8 Need for Declaring Slave Trafficking as Felony Offence

Trafficking of slaves was abolished consequently, but slavery itself was not abolished literally. Once the Act 1807 was passed, it was being generally supposed that

³³⁶ Section XV of the Act. Misdemeanor is the lesser criminal act and lower in seriousness as compared to the felony. Misdemeanors are often punished with monetary fines.

³³⁷ In the year 1788, the British purchased a piece of land from Nembana, a tribal chief, in West Africa, for the use of settling the black men under the protection of British government who were loyal to British during the American Revolutionary War

³³⁸ After the celebrated judgment in the case of James Somerset in 1772, which declared that it was illegal for a master to forcibly remove his slave from England to sell him in the New World, all were free. All these slaves were poor; hence, the contemporary abolitionists established a residency colony for them in Sierra Leone so that they may live their remaining lives over there on their own feet. But due to insufficient planning and external tribal aggression, the colony was demolished and those people again came into destitute and their condition was as worst as they were before.

³³⁹ Section IV of the Act.

slavery would also wither away in the near future, because the mainstay of slavery was shattered, but it did not yield the desired outcomes as per intention of the Act.³⁴⁰ Due to the meager punishments in the form of fines only, no one bothered the Act 1807 seriously. On 15th June, 1810, attention of the House of Commons was called for and a resolution to prevent such daring violation of law was moved accordingly. Consequently, a Bill was brought in order to give effect the objectives stated in the resolution. The Bill received Royal Assent on 14th May, 1811 and was given the name of the Slave Trade Felony Act, 1811.³⁴¹ It was declared and enacted that the African Slave Trade being contrary to the principles of humanity, justice and sound policy has already been declared to be unlawful, but it is found that persons, not discouraged by the provisions and penalties of the said Act, still continued to deal and traded in slaves upon the Coast of Africa and away, and to cart them for sale by waters; hence, any person (s) dealing with the same shall be and is/are hereby declared to be felon (s) and shall be transported beyond seas for a term not exceeding fourteen years, or shall be confined and kept to hard labor for a term not exceeding five years, nor less than three years, at the discretion of the court before whom such offender (s) shall be tried and convicted.³⁴² The Act 1811 had

³⁴⁰ Henry Epps, *A Concise Chronicle History of African-American People Experiencing in America: From Slavery to White House* (Createspace Independent Publishing Platform, 29th June 2012). ISBN 1478157259. It was being underestimated that the slave trade would become abolished after the enactment of 1807, rather it remained continued to sail in one way or the other. British Ships impersonated themselves under the foreign color in order to avoid the capture; an English ship 'Prince William' was found to display its name as 'Marquis Romana' (a Spanish name), transporting 109 slaves in an attempt to pass as Spanish. Between 1807 and 1860, the Royal Navy West Africa Squadron captured more than 1500 slave-ships and freed 1,50,000 slaves. These emancipated slaves were brought to Sierra Leone and often put to work as apprentices or domestic servants; while captured ships were convoyed to the Vice Admiralty Court of Mixed Commission at Sierra Leone.

³⁴¹ The long name of the Act was an Act for rendering more effectual an Act made in the Forty Seventh Year of His Majesty's Reign, intituled, an Act for the Abolition of the Slave Trade.

³⁴² Section 1 of the Act 1811. The proviso of the section II states that the petty officer, servant or seaman, or any person underwriting any policy of Assurance upon any ship, "knowing that such is or shall be the purpose or one of the purposes of the said voyage, he nevertheless shall not be deemed guilty of a felony within the meaning of this Act and shall be declared to be guilty of a misdemeanor only and shall be punished by imprisonment for a term not exceeding two years." Provisos of section IV, V, VII and IX are relevant.

more punitive terms than the previous Act 1807; the offence was declared as felony which was once a misdemeanor.³⁴³

4.9 Bi-lateral Treaties to Abolish Slave Trafficking

When the British Parliament passed the Act 1807, the British government revealed the ultimate aspirations of its parliament to suppress slave trade while pressing other nation-states to end human trade and a number of bilateral treaties between the Britain and individual governments were mutually concluded to put down the Atlantic slave trade. These treaties were of much significance in the wisdom that the open sea was free for passage of vessels of every state and they could not be stopped by cruisers in times of peace except by express agreements. First of all, the Britain entered into negotiations with Portugal on the subject in the very year of 1807.³⁴⁴ In response, the Portugal government also showed its assurance to join hands for the great cause of suppression of nefarious trafficking of human beings.

On 19th February, 1810, an Anglo-Portuguese Treaty of Alliance was signed at Rio de Janeiro, proposing a specific article, wherein the Ruler of Portugal promised to participate with His Britannic Majesty, in the cause of humanity and justice, by implementing the efficient means for causing a gradual abolition of slave trade throughout its dominion, and also acknowledged that Portuguese subjects should not be allowed to carry on or transfer the slave trade on any part of the coast of Africa, not actually belonging to his dominions in which the trade has been withdrawn and abandoned by the powers and states which formally traded there.³⁴⁵ The treaty also

³⁴³ Misdemeanors are less serious type of crimes than felony. The punishment under the misdemeanors was fine only, but now the punishment was enhanced upto transportation.

³⁴⁴ Soon within one month of passing of 1807 Act, on 15th April, 1807, the British Secretary for Foreign Affairs, Mr. George Canning tutored the British Minister at Lisbon to convince the government of Portugal to endorse to the standards of abolition of slave trade and in case any reluctance is smelled smelt, such commercial operations of the Portuguese subjects should be limited to the territories in Africa and should not be expanded to the stretch of Coast, which the British Majesty has decided to give up and to leave to the undisturbed possession of its native inhabitants.

³⁴⁵ Article 10 the treaty.

authorized British government to capture any Portugal ship carrying slaves in the prohibited areas.³⁴⁶ In consequences, various Portuguese trading ships were captured by the British cruisers which caused further negotiations between the states, as the Portuguese government was uncomfortable with such acts of the British government and contended that its subjects, under Portuguese laws and the 1810 Treaty of Alliance, might lawfully carry on the slave trade.³⁴⁷ Negotiations were carried out and the Portugal showed some reservations against the acts of the Britishers.

Finally, on 22nd January, 1815, another treaty was signed by the plenipotentiaries of both the countries at Vienna. It was agreed that it shall be unlawful for the subjects of the Crown of Portugal to carry on the slave trade, or purchase, on any part of the Coast of Africa to the Northward of the Equator, upon any excuse, in any way whatever. However, it shall not extend to any ship (s) having cleared out from the ports of Brazil previous to the publication of such ratification, and provided the voyage in which such ship(s) are engaged shall not be protracted beyond 6 months after such publication as aforesaid.³⁴⁸ In the meantime, the British government was also engaged into negotiations with other countries for the abolition of slave trafficking and entered into various bilateral treaty agreements with them. Spain³⁴⁹, Sweden³⁵⁰, Denmark³⁵¹, Russia³⁵², Austria³⁵³, Prussia³⁵⁴,

³⁴⁶ Ibid.

³⁴⁷ James Bandinel, *Some Account of the Trade in Slaves from Africa as connected with Europe and America* (Longman: Brown and Co. Frank Cass, 1968). < <https://ia601407.us.archive.org/23/items/someaccountoftra00bandrich/someaccountoftra00bandrich.pdf> > (accessed on 01-08-2017).

³⁴⁸ Article 1 of the 1815 treaty.

³⁴⁹ On 7th October, 1808, the afore-said Mr. George Canning, asked the then Envoy at Madrid, the same instructions as mentioned in the foot note 299 supra and a copy of Anglo-Portuguese treaty of 1810 was also sent for information and kind perusal of the king of Spain in order to motivate him for the abolition of slave trade. Initially, 800,000 pounds were offered to the Spanish government, provided it would abolish the slave trade at the end of five years and in the meantime, to confine it to the coast of South of the Line. The offer was refused, but on 28th August, 1814, the King of Spain entered into an Article, additional to the Treaty, wherein King of Spain fully admitted the statements of His Britannic Majesty, with respect to the harsh reality of the traffic in people as slaves and he agreed to ban on his subjects from dealing in the slave trade, for the purpose of supplying any island or possessions except those concerning to Spain.

³⁵⁰ Efforts were also made by the Britain into the affairs of the Sweden on the issue and finally, on 3rd March, 1813, Anglo-Sweden alliance treaty was concluded between the states, whereby His Majesty Swedish made bound himself to forbid the introduction of slaves from Africa into Guadaloupe, and into

Holland³⁵⁵, France³⁵⁶ and United States³⁵⁷ entered into treaties with the Great Britain and either abolished slave trade within their respective jurisdictions immediately or undertook to abolish the same gradually. The Britain was so much committed towards the abolition that during that period, it was also made part of every peace treaty. In this way, the committing states became more responsive towards abolition.

4.10 Universal Abolition of Slave Trafficking

After the successful episode of abolition of slave trade at state levels, now the British decided to drive the journey on international track. The British and France had

other possessions in the West Indies; and further not to permit Swedish subjects to engage in the slave trade.

³⁵¹ On 14th January, 1814, an Anglo-Danish alliance treaty was concluded between the states, and in its 8th Article, the King of Denmark engages to co-operate with the Britain for the completion of abolishing slave trade and to prohibit all his subjects, in the most effectual manner, and by the most solemn laws, from taking any share in such trade.

³⁵² The invitation was also made to the Emperor of Russia and in response, on 21st May, 1814, the Imperial Majesty's wishes had long been in unison with those of the people of Great Britain and that he would take such steps, as that the proposal concerning the general abolition of the slave trade, may be agreed to and supported at the ensuing congress.

³⁵³ Austria supported the Britain version of abolition and promised to the same effect as by the Russia in Ibid reference.

³⁵⁴ Prussia also supported the Britain version of abolition and promised to the same effect as by the Russia in Ibid reference.

³⁵⁵ After the negotiations with Great Britain, on 15th January, 1814, the King of Netherlands issued a Decree by which the slave trade on the coast of Africa was entirely forbidden to the subjects of Netherlands, further expressed a desire that in the eventual restitution of Dutch colonies, there should be inserted an Article which should stipulate the abolition of the slave trade in those colonies forever. On 17th June, 1814, issued a decree that from now, "no ship should be cleared out from Netherlands's ports for the conveyance of Negroes from Africa, and that no inhabitants of the Dutch possessions in Guinea should be sold or exported as slave. The decree ended by a declaration that in the ensuing negotiations relative to the restitution of the Dutch colonies, the Dutch government would not object to inserting in the treaty such an article, as should continue to bind the Dutch government, to the perpetual observance of the aforesaid measures, and the effectual suppression of the slave trade."

³⁵⁶ On 13th November, 1831, a Convention was concluded and signed at Paris between the Great Britain and the King of France for mutual rights of search on board of vessels of each nation to abolish the slave trade effectively. On 28th August, 1833, an Act for carrying into effect two conventions with the King of the French for suppressing the Slave Trade was adopted by both the states wherein further appropriate measures were made more effective abolition. It is also important to mention that in order to end Napoleonic Wars, the France and Six Coalition entered into a treaty called the Treaty of Paris on 30th May 1814. The Britain was well-aware about the fact that slave trade is one of the factors for encouraging war by France because France used his slave labor in the war. So the Britain during the concluding the Paris Treaty, compelled France to include a clause in the treaty for the abolition of slave trade and slavery. At last, under Additional Article 1, French slave trade in France was abolished.

³⁵⁷ United States not only developed its own law for the abolition of slave trade (the very first law as the abolition of slave trade, 1808), but also made treaties with other countries as well. The Treaty of Ghent, signed on 24th December, 1814, is also important to note down. Actually, this treaty was as peace treaty that ended the war of 1812 between the U.S and U.K. It restored the previous relations between the parties. Under article 10, it is decided that whereas the traffic in slaves is incompatible with the idea of justice, goodness and humanity, and both the parties are anxious for its abolition, so they shall use their best endeavors to accomplish the object of ending of international slave trade.

been engaged in long term wars (commonly called Napoleonic Wars) and at last came to peace under the Definitive Treaty of Peace on 30th May, 1814.³⁵⁸ The provisions of the said Treaty also contained the abolition of Slave Trade, considering the same as repugnant to the principles of natural justice of the contemporary enlightened age. France joined Britain's endeavors to attain a universal prohibition of the slave trade.³⁵⁹ It was decided in the Treaty to send plenipotentiaries of all signatories to Vienna, within the period of two months, for the purpose of regulating, in the general Congress, the arrangements which are to complete the provisions of the present Treaty.³⁶⁰ The suppression of slave trade had reached such an elevated position on Britain's foreign policy agenda that the British, being the very first, made serious efforts to declare a general obligation to end slave trade as well. It now turned its objective from bilateral treaties to multilateral declarations. This heralded an opening idea of setting up an international organization which could solve the common issues of the nation-states.

During the 19th century, the Britain had assumed the role of champion amongst all the European States for the suppression of slave trade and slavery. Under the compliance of Article XXXII of the afore-mentioned 1814 Treaty, the countries who signed the same, met in the Congress of Vienna on 08th February, 1815 to carry effects its provisions. A Declaration of the Eight Courts (Austria, Britain, France, Portugal, Prussia, Russia, Spain and Sweden) relative to the Universal Abolition of the Slave Trade (Vienna Declaration) was signed by the plenipotentiaries of the above countries. The drive of this Declaration was to obliterate the slave trade and to require state parties to prevent slavery but the

³⁵⁸ The Treaty was signed by eight countries such as France on one side and Britain, Austria, Russia, Prussia, Spain, Sweden, and Portugal on the other side.

³⁵⁹ One of the separate Additional Articles i.e. Article I states that "with respect to a description of traffic repugnant to the principles of natural justice of the enlightened age in which we live, engages to unite all his efforts to those of his Britannic Majesty, at the approaching congress, to induce all the powers of Christendom to decree the abolition of the slave trade, so that the said trade shall cease universally, as it shall cease definitely, under any circumstances, on the part of the French government, in the course of five years; and that during the said period, no slave merchant shall import or sell slaves, except in the colonies of the state of which he is a subject."

³⁶⁰ Article XXXII of the 1814 Treaty.

Declaration did not provide for the enforcement of abolition of slave trade. In 1822, the Declaration respecting the Abolition of the Slave Trade reiterated the abolition of the slave trade. It was agreed that the commerce of slave trade is unacceptable to the principles of humanity and universal morality, while the Great Britain and France, by a separate Article of the late Treaty of Paris, had already engaged to unite their efforts at the Congress of Vienna to proclaim the universal and definitive abolition of the slave trade and this scourge has so long desolated Africa, degraded Europe, and afflicted humanity; hence, the same necessitates universal abolition. The Declaration is considered to be the very first international instrument, in the true sense, to condemn human trafficking universally.³⁶¹ It was the first salvo of its kind for the international abolitionist movement, at the state level. The said countries again assembled at Vienna on 9th June, 1815, and the General Treaty of the Final Act of the Congress of Vienna was adopted accordingly. The 1815 Declaration was made as an integral part of the said General Treaty of the Final Act under article 118³⁶² and, as such, became part of the Treaty of Paris, 1814 that formed the basis for the European order following the Napoleonic wars.³⁶³

4.11 Effectual Suppression of Slave Trafficking

Despite the general prohibition, the Britain was also engaged in legislating anti-slave trade with more broad definition and severe punishment. The offence of slave trade was further cordoned when the British parliament passed an Act for the more Effectual Suppression of the African Slave Trade on 31st March, 1824. This Act enacted that the

³⁶¹ David Weissbrodt, "Abolishing Slavery and its Contemporary Forms." (UNHCR, 2002).

³⁶² The treaties, Conventions, Declarations, Regulations and other particular Acts which are annexed to the present Act wherein the Declaration of the Powers on the Abolition of the Slave Trade, of the 8th February 1815 was one of the Declarations, lying at serial No. 15 of the article CXVIII of the Final Act. The Declaration of the powers on the abolition of the slave trade, of the 8th February, 1815, shall be considered as integral parts of the arrangements of the Congress, and shall have, throughout, the same force and validity as if they were inserted, word for word, in the general treaty.

³⁶³ Article 118, No. 15 of the Final Act of the Congress of Vienna, 9th June, 1815, 64 CTS (1815), 492. The Final Act was signed by the Eight Countries of Declaration of 1815.

person (s) committing the offence shall be considered and adjudged to be guilty of Felony, Robbery and Piracy, and death sentence would be awarded on conviction, without benefit of clergy, and loss of land, goods and chattels, as pirates, felons and robbers upon seas ought to suffer.³⁶⁴ This was an effective achievement for the abolitionists as the offence and punishment of slave trade were made severer and more effective.

The Houses of British parliament requested His Majesty to conclude treaties with foreign states for the effectual suppression of slave trade. In this regard, an Act to authorize His Majesty to carry into immediate execution, by Orders in Council, any treaties, Conventions, or Stipulations made with any Foreign Power or State for the Suppression of the Slave Trade, was passed on 17th August, 1836. On this request, His Majesty directed that such Treaties or Conventions which may have concluded or may hereafter conclude with any foreign state, shall be carried into immediate execution, if such treaties or declarations are concluded in a period when parliament is not sitting for ratification, so that the offenders may not take the benefit during the intervening period.³⁶⁵ The punishment of piracy was not consistent with the punishment of slave trade; hence, His Majesty passed an Act to amend certain Acts relating to the Crime of Piracy on 17th July, 1837. The Act declared that whosoever shall assault, with intent to murder, any person being on board of or belonging to such ship or vessel shall be guilty of Felony and being convicted thereof shall suffer Death as a Felon or at the discretion of the Court, to be transported beyond the seas for the term of the natural life of such offender, or any term not less than fifteen years, or to be imprisoned for any term not

³⁶⁴ Article I of the Act. It was further stated in article III that all the offences specified in article I shall and may be enquired of, either according to the ordinary course of law, or the provisions of an Act for pirates, or according to the provisions of an Act for the speedier trial of offences committed in distant parts upon the high seas.

³⁶⁵ Article I of the 1836 Act.

exceeding three years and every accessory shall be imprisoned for any term not exceeding two years.³⁶⁶

4.12 Watch over Slave Trafficking Ships or Vessels

In order to secure the persons employed in the detention and seizure of ships or vessels engaged in the slave trade, from any vexatious suits and actions, Her Majesty passed an Act for the Suppression of the Slave Trade on 24th August 1839. Such employees were given the authority to detain, seize, and capture any such ship or vessel, and the slaves, or even any relevant equipment of slave trade is found on the board, and to bring the same to adjudication in the High Court of Admiralty of England, or in any Vice Admiralty Court, in the same way as if such vessel and cargo were the property of the British subjects, and all such employees shall be indemnified and no any action, suit, writ or proceeding whatever shall be maintainable in any court against them.³⁶⁷ The High Court of Admiralty of England or in any Vice Admiralty Court in any colonies or dominions beyond the Seas was declared to be the Courts to take cognizance and try any such Portuguese vessels.³⁶⁸ The British Cruisers were explicitly directed to capture Portuguese Vessels engaged in the Slave Trade.³⁶⁹ The fate of any such vessel or ship, after condemnation, would be wither to be taken into Her Majesty's services after due payment made, or otherwise broken up entirely and its spare parts shall be sold out publicly.³⁷⁰ The Act 1839 was wide-ranging enough to make the scope of slave trade narrower and the British Cruisers and Courts were given much power to tackle the issue. So the scope of slave trade was brought to end.

³⁶⁶ Ibid. Article II, III & IV.

³⁶⁷ Article I, II & IV of the Act. It was made exception to the article I that if the owners or master of the vessel establish to the satisfaction of such courts that they are entitled to claim the protection of the Flag of a state other than Great Britain or Portugal, then the court shall not proceed to condemn any such vessel.

³⁶⁸ Article III of the Act.

³⁶⁹ Preamble of the Act.

³⁷⁰ Article V of the Act.

4.13 Legal Abolition of Slavery

Slave trade had been abolished completely, but the scourge of exploitative slavery was still in practice throughout the country, although Lord Mansfield's Judgment in the *Somerset case* had declared slavery unsupported by law in England. After the successful triumph over the abolition of slave trade, the abolitionists now turned their target towards the abolition of the slavery. The Anti-Slavery Society, once formed in 1823, was dedicated to abolish slavery in the British Empire.³⁷¹ On 28th August, 1833, the Abolition of Slavery Act received Royal Assent and came into force on 1st August, 1834.³⁷² The purposes of this Act were described as the abolition of slavery throughout the British Colonies; for promoting the industry of the manumitted slaves; and for compensating the persons hitherto the services of the slaves.³⁷³ Slavery was officially abolished in most of the British Empire in theoretical terms, but in practical terms, only slaves below the age of six years were made free as all slaves over the age of six years were re-designated as *apprentices*.³⁷⁴ The Act 1833 also included the right of compensation for slave owners who were losing their slave property. There were also exceptions to the Act such as it did not extend to any of the territories in the possession of the East India Company, or to the

³⁷¹ Its official name was the Society for the Mitigation and Gradual Abolition of Slavery throughout the British Dominions. Its title suggests its main objective for gradual abolition of slavery.

³⁷² The long name of the Act was an Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves

³⁷³ See preamble of the Act.

³⁷⁴ Articles I to XXII. It was declared that "the apprentices would continue serving their former masters for a period of time after the abolition of slavery, though the length of time they served depended on which of three classes of apprentice they were. The first class of apprentices was former slaves who in their state of slavery were usually employed in agriculture or in the manufacture of colonial produce or otherwise upon lands belonging to their owners. The second class of apprentices were former slaves who in their state of slavery were usually employed in agriculture, or in the manufacture of colonial produce or otherwise, upon lands not belonging to their owners. The third class of apprentices was composed of those former slaves not included within either of the two preceding classes. This third class was released from their apprenticeship on 1st August, 1838; while remaining apprentices of first and second classes were released from the same on 1st August, 1840."

Island of Ceylon (Sri Lanka), or to the Island of Saint Helena.³⁷⁵ So the slavery was legally abolished and exploitation of human beings was ended.

This was the period when the British Empire outlawed slavery and slave trade, rejecting their space in the legal ambiance. Both the scourges lost their values in the entire British Empire. Now the next step was to make slavery prohibited in the other countries as well. The British decided to undertake this responsibility on its own and came forward in the fight against slavery universally, because she had gutted out her own home from the plagues slavery and slave trade. It was proper time that the remaining contemporary world should be persuaded for the abolition in their respective jurisdictions. The earlier agreements with foreign states were for the abolition of slave trade, but from the period of 1833 onward, the British made treaty agreements not only for the abolition of slave trade, but also for abolition of slavery.

The Britain adopted the same policy of abolition of slavery which she adopted in her own country i.e. firstly the slave trade should be abolished and then the slavery would also die out in a situation when no slaves would be trafficked in their countries. In this regard, the Britain entered into further bilateral treaties with Foreign States such as French, Italy (Sardinia), Denmark, Spain, Hans Town, Sweden, Netherlands, Tuscany, Two Sicilies, Republic of Venezuela, Argentine Confederation, Republic of Haiti, Republic of Bolivia, Republic of Texas, Oriental Republic of Uruguay, Mexican Republic, Republic of Chile, Queen of Portugal, Emperor of Brazil, Republic of Equator, Sultan of Muscat, Arabian Chiefs in the Persian Gulf, Chief of Sohar in Arabia, Republic of New Granada, United States of America and Zanzibar (Tanzania).

With the enactment of the Slavery Abolition Act, 1833, the objectives of Anti-Slavery Society were achieved. Various bilateral treaties were also concluded. The

³⁷⁵ Article LXIV of the Act.

abolitionists were still enthusiastic to do some more jobs for the abolition of the slavery in other countries as well. The drive turned into the wider domain and the objective of the Universal Emancipation. The very first International Human Rights Organization namely the British and Foreign Anti-Slavery Society was formed on 17th April, 1839. The Society became instrumental in the Britain's foreign policy of supporting anti-slavery and got organized the very first World Anti-Slavery Convention in 1840 in London.³⁷⁶ It is worth notable that during the course of proceedings, the Convention unanimously agreed that the religious leaders could play a key role to abolish slavery and its related practices from the society. Although, the women's participation in the Convention was not recommended but the abolitionists did recognize that slavery was a universal sin against humanity and be remedied through global emancipation.³⁷⁷ After that period, the tree of anti-slavery movement caught roots & branches and spread in the whole world.

4.14 Successive Legislations for Abolition of Slave Trafficking

In order to make offence of slave trade more susceptible, the British Cruisers were made powerful under the Act 1839. Additionally, they were lured by passing an Act to amend an Act of the Second and Third Years of Her Majesty, for the Suppression of the Slave Trade, on 10th August, 1842. This Act declared that the proceeds of the Vessels and its goods, if condemned under the provisions of the Act 1839, shall be distributed in proportions amongst the commanders, officers and crews of British ships engaged in the seizure thereof.³⁷⁸ After this enactment, the sea patrolling was increased by the cruisers

³⁷⁶ The Convention was advertised as a "*Whole World Convention*" and delegates from nations around the world were invited where the slavery was still being practiced.

³⁷⁷ It was decided that the Convention would be limited to men only and women would not be admitted, but seven female abolitionists appeared in the Convention and they were neither welcomed with their presence nor their involvement was appreciated. The first day was devoted to debate whether they should be allowed to participate or not? The rejection of women's participation in the moral world gave them the second class status. This led to the movement of women's right to suffrage.

³⁷⁸ Articles I & II of the Act. Under article V, it was made clear that in case any dispute regarding the claim of benefit by way of share of the said proceed arises in a situation of joint capture, the same shall be resolved by the High Court of Admiralty.

and chances of offence of slave trafficking began to diminish as the cruisers exerted their full energy to capture any slave vessels.

In addition to all above struggles by the Britain, it adopted another policy by including a provision on the abolition of slave trade in treaties concluded with other countries for commercial agreements, so that chances of slave trade should be reduced to the fullest extent.³⁷⁹ The abolitionist clauses were also included in some of the agreements between Britain and various African Chiefdoms during the British colonial expansion in that continent.³⁸⁰ Almost throughout the nineteenth century, the Britain continued to stop the foreign vessels for the purpose of search and seizure on the Atlantic Ocean, notably along the West Africa Coast. In order to make itself more powerful on the Atlantic Ocean, the British Parliament passed a legislation, intituled, an Act authorizing Her Majesty to carry into immediate execution, by Orders in Privy Council, any Treaties for the Suppression of the Slave Trade, on 7th August, 1840, whereby the British Navy was authorized to search Portuguese and Brazilian ships unilaterally. The Portuguese were not pleased on the afore-mentioned enactments of 1839 and 1840; raised objections on such type of unilateral legislations, without taking the Portuguese in confidence. After long discussions, the British parliament passed an Act to repeal so much of an Act of the Second and third Years of Her Majesty, for the Suppression of the Slave Trade, as relates to Portuguese Vessels, on 12th August, 1842, whereby so much of the said Act 1839 as relate to Portuguese Vessels as repealed to the extent of capture.³⁸¹

³⁷⁹ Jenny S. Martinez. "Anti-Slavery Courts and Dawn of International Human Rights Law," 117 *the Yale Law Journal* 117 (2008): 550-641. In such treaties, the Britain often managed to establish the right of search and seizure of vessels/ ships bilaterally. For instance, the Hammerton Treaty of 1845 between Britain and Sultan of Muscat allowed the Royal Navy to search, seize and confiscate vessels belonging to the subjects of Sultan of Muscat suspected of transporting slaves. The Britain managed to write in the preamble of the Treaty that the Sultan agreed to the end of the slave trade in difference to the wishes of Her Majesty and of the British nation and in furtherance of the dictates of humanity.

³⁸⁰ For instance, agreement between the Britain and King of Fanatoro and the Chiefs of Cape Mount (West Africa), 2 January, 1846; Treaties between the Britain and the Chiefs of Sano and Moricaryah, Malaghea, Fouricane and Benira (West Africa) on May, 1845.

³⁸¹ Article I of the 1842 Act.

After the passing of Slave Trade Act, 1807, various treaties were concluded with the foreign states for more effectual suppression of slave trade as discussed in detail in the preceding paragraphs. It was now necessary to consolidate all these treaties into one Act, so that ambiguities may be removed; hence, an Act for consolidating with Amendments the Acts for carrying into effect Treaties for the more effectual Suppression of the Slave Trade, and for other purposes connected with the Slave Trade, was passed on 05th August, 1873. The short title of the Act is cited as the Slave Trade Act, 1873.³⁸² It was finally enacted that any British or foreign vessel suspected or engaged in the slave trade shall be visited, seized and detained by the cruisers and such vessel together with master and all persons, goods and effects shall be sent to courts for adjudication.³⁸³ If any vessel even equipped for traffic of slaves (although slaves may not be found on board) shall be liable to the same treatment.³⁸⁴ The High Court of Admiralty of England and every Vice Admiralty Court in Her Majesty's dominions out of the United Kingdom shall have jurisdiction to try and condemn or restore any such vessel, slave, goods and effects, but such courts shall have no jurisdiction inconsistent with any existing slave trade treaty over a foreign vessel not engaged within British Jurisdiction,³⁸⁵ but any existing slave trade treaty contains provisions for the appointment of any mixed court or commission for dealing with cases under such treaty, then the said cases would be heard by the mixed court or commission rather than by the Admiralty Courts mentioned before and such Mixed Court or Commission shall have all the powers as those of Admiralty Courts.³⁸⁶ The vessel, seized and if condemned, shall be taken into Her Majesty's services after due payment, otherwise shall be demolished and material shall be sold publicly.³⁸⁷ The slaves

³⁸² Article 1 of the 1873 Act.

³⁸³ Ibid. Article 3.

³⁸⁴ Ibid. Article 4.

³⁸⁵ Ibid. Article 5.

³⁸⁶ Ibid. Articles 7 & 8.

³⁸⁷ Ibid. Article 9.

seized, during the pending of the lis, shall not be treated as slaves and if condemned, shall be disposed of or delivered over to any person subject to regulations.³⁸⁸ After the successful decision, the bounty shall be distributed amongst the crew of cruisers in proportion.³⁸⁹

An Act for the more effectual Suppression of the Slave Trade was passed on 24 August 1843, in a continuation of Consolidated Slave Trade Act 1824. All the provisions of the said consolidated Slave Trade Act, 1824 and the present Act 1843 were deemed to extend and apply to British Subjects whether residing within the country or any foreign country and all the several acts and things prohibited by the said Acts 1824 or 1843, committed by the British Subjects, shall be punishable in accordance with the law³⁹⁰; for that purpose, all the offences may be taken cognizance of, inquired into, tried, and determined in accordance with the provisions of Offences against Persons Act, 1828.³⁹¹ It is also worth mentioning here that all persons held in Servitude as Pledges for Debt, and commonly called *Pawns*, or by whatsoever other name they may be called or known, were deemed and construed to be slaves.³⁹² In the year 1945, the British Navy captured a Brazilian slave trade ship and burnt it which caused aggression between the countries; negotiations were carried out. Finally, an Act to carry into execution a Convention between His Majesty and the Emperor of Brazil, for the Regulation and final Abolition of the African Slave Trade, 1845, (also called Aberdeen Act) was passed. The Aberdeen Act gave Royal Navy an authority of search any Brazilian ship or vessel suspected of being involved in the slave trade on the seas and to arrest slave traders intercepted. The Act of 1845 also stipulated that the arrested slave traders would be tried in the British Admiralty

³⁸⁸ Ibid. Article 10.

³⁸⁹ Ibid. Article 11.

³⁹⁰ Article I of the 1843 Act.

³⁹¹ Ibid. Article III. The long name of the Act 1828 was an Act for consolidating and amending the Statutes in England relative to Offences against the Person, 1828.

³⁹² Ibid. Article II.

Courts.³⁹³ The Act further enacted that the carrying of slave trade after the stipulated time period should be deemed and treated as *piracy*.³⁹⁴

The signatories of 1815 Declaration, except Portugal, Spain and Sweden, reaffirmed their opposition to the slave trade and entered into another declaration on the issue in the Congress of Verona on 28th November, 1822 and in its continuity, signed a treaty for the Suppression of the African Slave trade on 20th December, 1841. The said treaty was adopted in continuation of the objects and purposes to the provisions of earlier Declaration of 1815, considering the slave trade equal to piracy; preventing their subjects engaging in the slave trade; establishing a criminal jurisdictional basis and co-operating through judicial assistance.³⁹⁵ According to Lee, human trafficking has historic counterparts with the traffic in persons and exploitation of black people in the preceding eras, when the foreign slave trade was regarded not only a lawful, but an appropriate outlet of trade by the European empires.³⁹⁶ Cruisers of any of the powers could search and bring in merchant ships of another for condemnation in the court of captor. This treaty broke the monopoly of the UK over the long term issue of right to visit the ships because integration of slaving to piracy meant that the ships involved in the slave trade would have no disguise of any state and would be visited by any country with impunity by all states.³⁹⁷ This treaty recognized, for the first time, the concept of universal jurisdiction in its primitive form.

The British-France traditional rivalry always came in the way for the common object of the suppression of slave trade; both the countries remained un-satisfied on the single point. After the failures of 1831, 1833 and 1841 treaties, another ten-year treaty

³⁹³ Ibid. Article I.

³⁹⁴ Ibid. Article III.

³⁹⁵ Ibid. Articles VI, VII, X, XV and Annex-B.

³⁹⁶ Maggy Lee, *Introduction: Understanding Human Trafficking* (Cullompton: Willan Publishing, 2007).

³⁹⁷ Pirates were the common enemies of all states and all nations having an equal interest in their apprehension and punishment, hence they may be lawfully captured by any state and brought within territorial jurisdiction for trial purposes.

between both the countries was concluded on 29th May 1845; suspending the earlier said treaties; consequently agreeing mutual right to visit to suppress the slave trade.³⁹⁸ The Hammerton Treaty of 2nd October, 1845 between Britain and Sultan of Muscat allowed the British Navy to search, seize and confiscate vessels belonging to the subjects of Muscat suspected of transporting slaves, providing in the preamble that the Sultan agreed to end the slave trade in deference to the wishes of Her Majesty and of her nation and in furtherance to the dictates of the humanity.³⁹⁹ So the British navy became the chief guard over the sea routes.

The case of British Colony in India is different from the other Colonies. The Abolition of Slavery Act, 1833 was not decided to extend to the territory of India, because India had a previous local legislation as the Indian Penal Code, wherein sections 367, 370 & 371 IPC had the same meanings regarding the suppression of offences of slavery and slave trade and there was strong probability of overlapping of the said IPC provisions and British legislation; hence, in order to solve this issue, an Act for more Effectually Punishing Offences against the Laws relating to the Slave Trade was passed on 11th August, 1876. This Act made it clear that as the India had an earlier legislation with respect to slavery and slave trade, therefore, in any case of any person, being a subject of Her Majesty or of any Prince or State in India, upon the High Seas or in any part of Asia or Africa, shall commit any of the offences defined in sections 367, 370 & 371 IPC, or abets of the said offences, such person shall be dealt with in accordance with the law prevailed in India.⁴⁰⁰ So all the persons engaged in slavery and slave trade were punished by the IPC provisions.

³⁹⁸ Article 1 of the Convention for the Suppression of the traffic in Slaves.

³⁹⁹ Ibid. Article 3.

⁴⁰⁰ Section 367 IPC: "Whoever kidnaps or abducts any person, in order that such person may be subjected or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of,

4.15 Enactments for Civilizing Black People

The world had changed; the enlightenment had transformed the minds of the society; recognition of human rights had secured its place in the legal framework; and international relations were being established. The ideals were approaching in every corner of the world, except the African Continent. In order to civilizing the Black people, plenipotentiaries of 14 countries attended the Berlin Conference on 15th November, 1884 for joint policy on the African Continent.⁴⁰¹ Discussions continued, and finally General Act of Berlin Conference on West Africa, also called the General Act of the Conference Respecting the Congo, was adopted on 26th February, 1885, undertaking to suppress the slavery and slave trade in the Congo. In addition to member states of 1815 Declaration, new states also joined the Berlin Conference.⁴⁰² The Act 1885 declared that all powers bound themselves to watch over the preservation of the native tribes and to help in suppressing slavery and specially the slave trade.⁴⁰³ It further declared that the slave trade was prohibited in conformity with the principles of international law and operations which, whether by sea or land, supply slaves to trade, should similarly be considered as prohibited, the powers which do or shall exercise sovereign rights or influence in the territories forming the conventional basin of the Congo declare that these territories may not serve as a market or means of transit for the trade in slaves, of whatever race they may be.⁴⁰⁴ Article 9 of the Act bound the signatory powers to suppress the slave trade,

shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to a fine.”

Section 370 IPC: “Whoever imports, exports, removes, buys, sells, or disposes off, any person as a slave, or accepts, receives, detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to a fine.”

Section 371 IPC: “Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for term not exceeding ten years, and shall also be liable to a fine.”

⁴⁰¹ Austria, Belgium, Denmark, France, German, Italy, Netherlands, Ottoman Empire, Portugal, Russian Empire, Spain, Sweden, United Kingdom, United States.

⁴⁰² New member states included Belgium, German, Italy, Netherlands, Ottoman Empire and United States.

⁴⁰³ Article 6 of the General Act, 1885.

⁴⁰⁴ Ibid.

even by land, and the slavery itself. Each of the powers assured itself to employ all the means at its disposal for putting an end to this trade and for punishing those who engage in it.⁴⁰⁵

Five years later, an encompassing international treaty against the slave trade in Africa was signed on 2nd July, 1890 and entered into force on 31st August, 1891, intituled as the Slave Trade and Importation into Africa of Firearms, Ammunition and Spirituous Liquors, (known as General Act of Brussels), to put an end to Negro slave trade by land as well as sea, and to ameliorate the ethical and substantial conditions of existence of the native races. This was the first general treaty for suppression of African slave trade. The signatories declared that they were equally active for putting an end to the traffic in African slaves.⁴⁰⁶ They further avowed a number of operative methods of preventing the slave trade in the internal of Africa. The colonial powers, in addition to their principal task of preventing the capture of slaves and intercept the routes of slave trade, were assigned some subsidiary duties such as to serve as refuge for native population, to introduce arbitration to their disputes, to initiate them in agriculture labor and in the industrial arts to increase their welfare.⁴⁰⁷

4.16 Abolition of Black Slave Trade and Slavery in the US

Christopher Columbus was the first to bring Africans to the New World in 1492. Thereafter, the African slaves were regularly brought to the US for cheaper labor.⁴⁰⁸ So slavery was considered a legal institution in the US. In 1640, an African slave, John Punch, was sentenced by the Virginia Court for an attempt to flee from his service.⁴⁰⁹ In

⁴⁰⁵ Ibid. Article 9.

⁴⁰⁶ The parties to the Act were the Britain, France, Germany, Portugal, Congo, Italy, Spain, Netherlands, Belgium, Russia, Austria, Hungary, Sweden, Norway, Denmark, U.S, Ottoman empire, Persia.

⁴⁰⁷ Article II.

⁴⁰⁸ In 1508, Ponce de Leon enslaved the local Tainos; in 1513, the first Africans were imported to Puerto Rico; in 1526, the first African slaves were brought to the continental US; in 1565, the Spanish conqueror Don Pedro brought African slaves to Florida. Likewise, St. Augustine was the centre for slave trades in Florida and first permanent settlement in the continental US to have African slaves.

⁴⁰⁹ 9th July, 1640 of the General Court, Virginia.

1641, Massachusetts was the first British colony to sanction slave trade through legislation.⁴¹⁰ The US Constitution did not prohibit importation of slaves in clear words.⁴¹¹ The slaves were transported to the Southwest of the country for cotton plantation. The supporters of slavery considered the institution as a necessary evil.⁴¹² Like the Europe as discussed previously, the abolitionism movements also started in the US to end trans-atlantic slave trade. The North states abolished slave trade and slavery; but the South states were continuing with them. The Northwest Ordinance, 1787 was the first legislation prohibiting slave trade and slavery in the territories northwest of the Ohio River; but the territories of south of Ohio River authorized the same. It practically divided the Ohio River between the slave states and free states geographically. An American Colonization Society (ACS) was established in the 1820s for repatriation of black Americans to Africa.⁴¹³ The US Congress passed legislation intituled the Slave Trade Act, 1794 which banned constructing of ship-structures for salve trade. The latter Acts of 1800 and 1803 banned importation of slaves in the North. Thereafter, the Prohibiting Importation of Slaves Act, 1807 categorically prohibited the slave trade and slavery throughout the US.

The international demand for cotton raised but the slave labor was scarce due to the emigration of slaves from the US. This leads to the internal slave trade wherein the slaves were sold from Upper South i.e. Maryland, Virginia and Carolinas and brought to the Deep South i.e. Kentucky, Louisiana, Georgia, Alabama, Tennessee, Texas and Mississippi. So from 1815 to 1860, the internal slave trade became the main profitable

⁴¹⁰ It prohibited slavery by passing the Body of Liberties, but allowed the same, if the slaves were prisoners of war, sold or purchased as slaves elsewhere, sentenced to be slaves by the governing authority.

⁴¹¹ Article 1, section 9 prohibited Federal Government to prevent importation of slaves for 20 years.

⁴¹² Thomas Jefferson, the founding father of the US, stated in a letter in 1820 about slavery that we have the wolf by the ear, and we can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other.

⁴¹³ In 1822, a colony of Liberia was established in the West Africa with the help of the ACS where thousands of freed blacks emigrate from the US.

activity in the U.S.⁴¹⁴ Abraham Lincoln (a republican) won the presidential election in 1860 which was a threat of anti-slavery for the Southern Democrats, so the Southern forces raided a US Army installation at Fort Sumter and gained control over the Mississippi River and some parts of the West. This led to the American Civil War⁴¹⁵ and Emancipation Proclamation⁴¹⁶. The slave trade and slavery were completely banned throughout the South and Thirteenth Constitutional Amendment was ratified by the three-fourths of the states on 6th December, 1865, declaring all remaining slaves as officially free.

4.17 Peace Treaty of WW-I and Abolition of Slave Trafficking

The U.K. and U.S. had passed their respective laws for the abolition of slave trade and slavery. Thereafter, the World War-I broke out which lasted from 1914 to 1918. Almost all signatories of the General Act of Brussel were parties to the said war, either on the Allies' side or the Central Power's side. In 1919, the said Act together with the Berlin Act, 1885 was abrogated by the victorious Allies and replaced by the Convention Revising the General Act of Berlin, 26th February, 1885, and the General Act and Declaration of Brussels, 2nd July, 1890, signed at Saint German en Laye, on 10th September, 1919. The signatories undertook to endeavor to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea.⁴¹⁷ The Treaty 1919 concentrated generally on commercial fairness measures between the parties, but also clearly forbidden the slave trade and slavery in all its forms. So the new peace treaty included the issue of slavery and slave trade in it.

⁴¹⁴ Marcyliena Morgan, *language, Discourse and Power in African American Culture* (Cambridge University Press, 2002). It is estimated that internal slave trade in the US reached approximately 4 million.

⁴¹⁵ The War broke out on 12th April, 1860 and ended on 22nd June, 1865.

⁴¹⁶ It, being presidential proclamation, is also called Proclamation 95 was issued on 1st January, 1863 which transformed the federal legal character of about 4 million African-American slaves to free men in the South.

⁴¹⁷ Article 11.

4.18 Conclusion

The journey of abolition of black slave trafficking began from *Cartwright case* in 1569, then enacting the Habeas Corpus Act, 1679 and ended with the treaty of Saint Germaine en Laye in 1919. This legal period ranges from regulation of slave trade, then abolition by one British colony to general abolition by various states. The US also enacted laws for the abolition of slave trade and slavery. The Black slave trade had completely abolished in the non modern period of international law. However, the white slave trade also an issue in the non modern period of international law which was legally abolished by the concerned states, the details of which is provided in the next chapter.

Chapter 05: Non-Modern Period of International Law: White Slave Trade

5.1 Introduction

Before considering the legal history and issues surrounding the abolition of white slave trade, its factual history is also worth-mentioning. As supposed from its name, the term refers to the enslavement of White People i.e. Europeans, by the Non-Europeans. The term is mostly used as the procurement, by use of force, deceit or drugs, of a white woman or girl against her will for the purpose of prostitution.⁴¹⁸ The term is also used to the women and girls being kidnapped for the purpose of prostitution. In this kind of slave trade, unlike the black slavery, sexual exploitation is extracted from the woman folk. The issue of white slave trade arose in the Europe and US in the late 19th and early 20th century. The 19th Century was marked as the age of enlightenment and this caused the US and UK as the modern states. The prostitution was considered a working class profession therein. However, the account of white slave traffic is grounded in the issue of venereal disease.⁴¹⁹ In the mid of 19th century, the number of white women engaged in sex work grew in the colonies.⁴²⁰ The women from Western Europe and US, brought by some organized network, began to work as prostitutes.⁴²¹ The British armed forces were found to be infected with some venereal disease of sexually transmitted which caused devastation in the British troops engaged in colonial projects.⁴²² The British forces became morally and physically ashamed. This issue further turned into a hot debate of legal abolition of white slave trade, sexual slavery and prostitution consequently. Further, these organized groups procured English girls for prostitution in France and Belgium as

⁴¹⁸ Teresa Rillington Greig, "The Truth about White Slavery," *The English Review* (June 1913): 428-446.

⁴¹⁹ Jean Allain, *Slavery in International Law: Of Trafficking and Human Exploitation* (Martinus Nijhoff Publishers, 2012).

⁴²⁰ Eileen Scully, *Pre-cold War Traffic in Sexual Labor and its foes: Some Contemporary Lessons* (2001). <<https://www.ponline.org/node/233033> > (accessed on 04-08-2018).

⁴²¹ *Ibid.*

⁴²² Jean Allain. "White Slave Traffic in International Law," *Journal of Trafficking and Human Exploitation, Paris Legal Publishers* 1 (2017): 1, 1-40.

well which fact came on record after the publication of Alfred Dyer's 'the European Slave Trade in English Girls' in 1880 in London.⁴²³ The scandal revealed that girls under the age of 21 years from the UK had been procured on false documents for sexual work in France and Belgium.⁴²⁴ This migratory prostitution led much anxiety among the Europeans because the exploitation of white women alone was embarked; leaving unchallenged the victimization of non-white women. However, prostitution was not considered as illegal in that period. In 1862, a Committee was formed to inquire into the matter. On its recommendation, the British Parliament passed the first Contagious Diseases Act, 1864, which allowed police officials to arrest any woman suspected of being prostitute in certain ports and army towns.⁴²⁵ The Act 1864 did not prohibit prostitution, rather legalized the same. The Ladies National Association for the Repeal of the Contagious Disease Act was established in 1869 and succeeded in the repeal of the said legislation in 1886, but prostitution was still in practice being legal. For the implementation and enhancement of the laws for the suppression of criminal sin and public immorality, the National Vigilance Association (NVA) was formed by some British activists in August 1885.⁴²⁶ The NVA was concerned much for the suppression of prostitution.

Various international instruments and domestic laws were approved by the UK and US. The US adopted Mann Act; while the UK had to amend its criminal law for severer punishments of the offence and a Criminal Law Amendment Act, was passed on

⁴²³ Almost two years, 1880-1881, the newspapers published the issue hotly and trial of various brothel keepers ended in their sentences for incitements of minors to immoral behavior. In the Courts of Belgium, the issue was termed as the white slave trade affair. Before that a trial of women trafficking had never had so much international attention.

⁴²⁴ Jean Michael Chaumont, "The White Slave Trade Affair (1880-1881): A Scandal specific to Brussels?" *Brussels Studies*, 46 (January 2011). ISBN 2031-0293.

⁴²⁵ The arrested women were subjected to compulsory checks for venereal disease. If found to be infected, she would be confined in Lock Hospital until she recovered or her sentence finished.

⁴²⁶ The Association was formed when Alfred Dyer got published his article titled The European Slave Trade in English Girls in 1880. The Article revealed that "girls under the age of 21 years from the UK had procured false documents which had been accepted by the Brussels Police despite the discrepancy between the declared age and the age they appeared to be. This raised the issue at international level."

14th August, 1885.⁴²⁷ The Act 1885 enhanced the age of consent from 12 to 18 years; defined the penalties for sexual offences against women and minors; and strengthened the existing legislation against prostitution. On 21st-23rd June, 1899, the NVA convened the very first International Congress on the White Slave Trade. Two main points i.e. inclusion of penal measures and conclusion of international treaty were decided to follow.⁴²⁸ The alarm that white women and girls were being vended out into sexual slavery to non-white men led to develop international law on the subject. The tragedy of sex trafficking in women for the purpose of sexual exploitation began to attract attention. So the International Conference on White Slave Traffic was convened on 15th July, 1902.⁴²⁹ Under the direction of the said Conference, four Commissions related to Legislation, Administration, Drafting, and Jurisdiction & Procedural matters were formed. The Commissions submitted their respective reports in the next plenary meeting of the Conference, and a plenary question regarding the definition of the term 'white slave trade' was raised.⁴³⁰ The issue of international versus national nature of the offence also remained under discussion. However, the Legislative Commission defined the offence of white slave traffic as under: -

*"It is committed by any person who, to satisfy the passions of another, has procured, enticed, or led astray a women or girl, with immoral intent."*⁴³¹

⁴²⁷ The long name was an Act to make further provisions for the Protection of Women and Girls, the Suppression of brothels and other purposes.

⁴²⁸ It was suggested that the offenses of procuring or kidnapping a girl or woman for the purpose of prostitution, or admission to, or detention in houses or places of ill-fame, be penalized sufficiently in respective legislation of the countries. If the offence is more aggravated such accompanied by violence, threats, fraud, abuse of authority, or any other means of compulsion, then punishments should be increased; while an international agreement for the abolition of white slave trade is the need of the time, so it must be concluded.

⁴²⁹ All the participants of the Conference were from European countries except Brazil.

⁴³⁰ The Italian delegates objected on the term that the word 'white' does not apply to the generality of women of other races; while words 'slave traffic' indicates the notion of import and export, but these characteristics do not always appear in the violations. It may be violations within the state, rather than international.

⁴³¹ The terms were explained as "to procure" is to invite or lead the women or girl to become a prostitute; "to entice" is to take her away with or persuade her to follow; "to lead astray" is to remove her illegally from her surroundings. Further, the consent of child victims was made irrelevant.

After discussions at length, a Draft Final Protocol containing two proposed instruments, a Draft Convention with a draft protocol, and a Draft Agreement, were put forward at Conference 1902 for approval. The Draft Agreement became the International Agreement, 1904; while Draft Convention was kept suspended for the time being.

5.2 The International Agreement for the Suppression of the White Slave Traffic, 1904

On 18th May, 1904, the International Agreement for the Suppression of the White Slave Traffic was signed which came into force on 18th July, 1905. This Agreement principally intended to halt the trade in white women across international borders into prostitution. The white women and girls were given the protection. Under the Agreement, an authority to centralize all the information concerning the procurement of women or girls for the purpose of sex work in a foreign country was established.⁴³² It was made strategy that contracting parties were directed not to deny the entrance of intended women or girls for the purpose of prostitution so that the traffickers could be arrested with the investigations from these women and ultimately these women shall be returned to the country of origin.⁴³³ The procurement of women and girls for immoral purposes abroad was condemned but nowhere it was defined what is immoral purpose. Such women and girls would be repatriated when identified. The Agreement did not include any penalty for the offence, but did use the word '*criminal traffic*'. It seems that the Agreement was concluded just to share the information and repatriation of identified victims among the contracting states.

5.3 Obscene Literature, Prostitution and Human Trafficking

In 1476, William Craxton, an English writer, introduced the printing press into England and the books were printed subject to a system of pre-censorship by the

⁴³² Article I of the Agreement.

⁴³³ Ibid. Article III.

government as well as church through licensing of books before publishing under the Licensing Act. In 1695, the House of Commons removed the requirement of licensing which meant that the authors were now free to publish any material without prior vetting. This paved the birth of a new kind of intellectual liberty, but the writers' liability of post-publication was accounted for. This opened the debate over disseminating lascivious literature. The period from 1900-1940 is considered to be the most tightly controlled period in the history of literary expression because the literary obscenity had corrupted the minds of the young and impressionable at that time.⁴³⁴ The US and UK authorities strengthened their borders against the influx of obscene literature in the 1910s and 1920s, arguing that the obscene literature was a threat to national security as well as unity.⁴³⁵ Publication of porn literature was one of the reasons to boost up the indulgence of women and girls into the field of prostitution. It was required to put limits on what publications express. Initial steps were taken by the Britain in its domestic legal framework and enacted the Obscene Publication Act, 1857. For the first time, the sale of obscene material was declared as statutory offence. In the United States in 1873, a similar Bill was passed by the Congress titled as the Comstock Act whereby any person who knowingly mailed or received an obscene publication should be sent to jail up to ten years.⁴³⁶ Obscenity was not defined anywhere but it included anything that has the trend to bribe the thoughts of people. Thereafter, the agenda was discussed at international level and attempts were made to harmonize the policing of obscenity internationally which caused to conclude a treaty thereafter.

⁴³⁴ Rachel Potter, *Obscene Modernism: Literary Censorship and Experiment 1900-1940* (London: Oxford University Press, 2013). ISBN 978-0-19-968098-6.

⁴³⁵ Ibid. In the US, the 1842 Traffic Act authorized customs officers to confiscate obscene prints, books, pamphlets and pictures which were being transported into the United States and to instigate court proceedings to destroy them. Similar Act was passed in United Kingdom as the Customs Act of 1846 wherein the customs prohibitions were on the importation of indecent or obscene articles were put in place in a measure that was passed by the parliament without discussion.

⁴³⁶ Under the provisions of the said Act, an issue of the American Journal of Eugenics was stopped in 1907 for advertising a book called *the History of Prostitution*.

After the WW-I, the League created a monitoring Committee to investigate women's rights and sex trafficking. Relations were recognized among prostitution, trafficking and pornography or obscene publication.⁴³⁷ The obscene or immoral publications have close nexus with the trafficking of women for sexual exploitation. So it is established that the availability of porn material represents the avenue through which the demand for sex trafficking increases in demand.⁴³⁸ Obscene literature and prostitution are considered overlapping issues because reading obscene material leads to prostitution, while prostitution itself apparently instructs a desire to examine indecent things.⁴³⁹ Obscenity is a legal term of art that relates to representations of sex that are not guarded by the constitutional guarantee of free speech and expression because of its nature of corrupted sexual desire. In *Miller versus California case*, the U.S. Supreme Court defined obscenity as material that the predominantly prurient (that is appealing to impure sexual desire) according to the contemporary community standards; is patently offensive in its portrayal of sexual acts; and lacks serious literary, artistic, political, or social value when considered as a whole.⁴⁴⁰ So the impression of obscenity is restricted to the material portraying pornography. The origin of word pornography is the by-product of pornographer which is derived from the Greek word '*poruograph*' and is defined in the Oxford English Dictionary as "*the one who writes of prostitutes or obscene matters.*" In turn, obscene is defined as "*the things which is offensive to modesty or decency;*

⁴³⁷ Malka Marcovich, "Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others," <<http://www.catwinternational.org/Content/Images/Article/88/attachment.pdf>> (accessed on 05-05-2018).

⁴³⁸ David E. Guinn. "Pornography: Driving the Demand in International Sex Trafficking," *International Human Rights Law Institute, DePaul University College of Law, Working paper.* <<http://ssrn.com/author=199608>> (accessed on 03-05-2018).

⁴³⁹ Celia Marshik, *British Modernism and Censorship* (London: Cambridge University Press, 2006), 3. <http://www.beck-shop.de/fachbuch/leseprobe/9780521859660_Excerpt_001.pdf> (accessed on 05-05-2018).

⁴⁴⁰ *Miller versus California*, 413 U.S. 15 (1973).

expressing or suggesting unchaste or lustful ideas.”⁴⁴¹ The pornography industry creates demand for prostitution; hence for human trafficking because it is itself a form of prostitution and human trafficking.⁴⁴² Prostitution and obscenity are tangled apprehensions as both are capable of corrupting the vulnerable people, particularly women and children. Since human trafficking addresses prostitution, therefore, obscenity or pornography is also linked with human trafficking.

In January 1910, the German government showed its willingness to convene a conference on the suppression of obscene publication by writing a letter to French Foreign Minister, with further adding that the Conference would take account of all those states interested in the suppression of the white slave traffic.⁴⁴³ It became an opportunity to resurrect the Draft Convention 1902 supra. So the parties convened a second round of negotiations of those reservations which they had with the text of Draft Convention 1902.

5.4 The Convention for the Suppression of the White Slave Traffic, 1910

On 18th April, 1910, once again in Paris, the parties assembled in the same building, same room and same table as they had in 1902. The parties were present there for discussion on both the agendas i.e. suppression of obscene literature and Draft Convention 1902. The latter was discussed first after opening address. There was a lengthy discussion regarding the age of minor girl. However, it was decided that what is the age of minority/majority is left to the local jurisdictions of each state to decide.⁴⁴⁴ The Convention 1910 does not criminalize the prostitution of others. It criminalizes the exploitation of prostitutes where the various means of compulsion are at play. Consent

⁴⁴¹ Fredrick S. Lane III, *Obscene Profits: The Entrepreneurs of Pornography in the Cyber Age* (Routledge: New York, 2001). ISBN 0415920965.

⁴⁴² Catherine A. Mackinnon. “Pornography as Trafficking,” *University of Michigan Law School, Michigan Journal of International Law* 26 (2005): 4, 993-1012. It states that “as a form of prostitution, pornography creates demand for women and children to be supplied for sexual use to make it, many of whom are trafficked to fill that demand. Consuming pornography is an experience of purchased sex, of sexually using a woman or girl or boy as an object who has been bought.”

⁴⁴³ Jean Allain. “White Slave Traffic in International Law,” *Journal of Trafficking and Human Exploitation, Paris Legal Publishers* 1 (2017): 1, 1-40.

⁴⁴⁴ Ibid.

was decided to be made immaterial for those who are under age. On 4th May 1910, the parties eager for taking the practical measures for the suppression of the white traffic concluded a treaty intitled the Convention for the Suppression of the White Slave Traffic which came into force on 8th August, 1912. The offence was defined as under: -

“Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a women or girl under age, for immoral purposes shall be punished”; *“Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes shall also be punished.”*⁴⁴⁵

This definition is some way more comprehensive as compared to earlier definition of the Conference 1902. The words *‘in order to gratify the passions of another person’* in the definition show the commercial nature of the crime. The Convention takes account of two types of offences, i.e. the procurement of underage girls for immoral purposes even with their consent; and the use of fraud or compulsion to procure women for immoral purposes. In other words, trafficking of female children and trafficking for forced prostitution were proscribed. The Convention is broader in terms that it includes inside country trafficking, since it does not require that trafficking must be across international borders.⁴⁴⁶ Immoral purposes are not defined anywhere, but the same are meant for prostitution or sexual purposes. Consent was made immaterial in case of under-age girls. It was made obligatory for each contracting party to communicate any previous or future legislation regarding the issue with other member states, so that they may be able to pass similar legislation in their respective jurisdictions.⁴⁴⁷ Though the Convention is named as White Slave Traffic, but the contents of the Convention did not mention anywhere about

⁴⁴⁵ Article 1 & 2 of the Convention.

⁴⁴⁶ Ibid.

⁴⁴⁷ Article 4 of the Convention.

the trafficking of white women or girls, rather only the words woman and girl were used. The intention of the legislators may be to include women of all races who are exploited in prostitution. The Agreement 1904 addressed the migration side of the trafficking; while the Convention 1901 mainly concentrated on the criminalization of human trafficking. Thereafter, National Committees for the Suppression of traffic were organized in various European Countries.

5.5 Agreement for the Suppression of the Circulation of Obscene Publication, 1910

At the same date, the second agenda of suppression of obscene literature was also approved. An Agreement for the Repression of Obscene Publication, on 4th May, 1910 in Paris which, later on, was given the name of the Agreement for the Suppression of the Circulation of Obscene Publication. The Contracting States agreed to establish an authority tasked with sharing the facts and information concerning obscenity offences where the various acts constituting the offence have taken place in different countries.⁴⁴⁸ The Treaty applied to obscene writings, books, pamphlets, designs, pictures or objects. Obscenity legislation focused largely on the mental corruption that could be unleashed through the representation of sex and homosexuality, and images of disease and social breakdown were widespread. The obscenity and slave trade for the purpose of sexual work or prostitution had closed nexus. The obscene literature corrupted the minds of women and girls and pushed them into the chains of sexual slavery. Further, the rise of enlightenment period encouraged the women folk even to travel abroad without any companion or family members. This period of industrialization coupled with the dissemination and easily accessibility of obscene literature found a way out for the women and girls to enter into the arena of prostitution. Thus the early 20th century was outlined by an embattled perspective of legal censorship.

⁴⁴⁸ See generally the Convention.

5.6 US Laws against White Slave Traffic

In the same year, the US also jumped into the legal fight against the white slave trade. The progressive era of the 19th and 20th centuries changed the behavior of the US. The US previously was facing the issue of prostitution, particularly prostitution through trafficking. It was permitted to have legally protected areas of prostitution. In order to cope with the issue, first federal legislation on the subject was the Act of 3rd March, 1875. It prohibited the importation of the alien prostitutes. The next legislation was the Act of 3rd March, 1903. Another legislation was the Act of 20th February, 1907, with addition of the words 'or for any other immoral purpose'.

The last and famous legislation on the subject is the White Slave Traffic Act (also called the Mann Act) was passed as Federal Law, on 25th June, 1910 to suppress forced prostitution. The Act declared it a felony, if anyone is engaged in inter-state or foreign commerce transport of any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, whether with or without her consent.⁴⁴⁹ The phrase 'immoral purpose' was not defined in the statute, but in a later case of *Caminetti*,⁴⁵⁰ the court decided that the Mann Act is applied not only to purposes of prostitution, but also to other non-commercial consensual sexual relationships. The crossing of state lines for the purpose of even polygamy marriage was considered the violation of Mann Act.⁴⁵¹ Hence,

⁴⁴⁹ The progressive era was a period of widespread social activism across the US, from the 1890s to the 1920s. Large scale urbanization took place. The urbanization together with different inventions made it possible for even a single woman to support herself in cities. With these liberties, the amoral thoughts transformed into immoral thoughts.

⁴⁵⁰ *Caminetti versus United States*, 242 U.S. 470 (1917). When this law was passed, the US was still living segregation laws. This is what made it even easier to turn for malicious purposes, by applying the phrase "for any other immoral purposes." Hence, the Act was used as an institutional tool for racial segregation when Jack Johnson, the African-American boxer, was charged in Chicago for transporting a woman and was declared to commit "crime against nature" for engaging in sexual intercourse with a Caucasian (white) woman and lastly was convicted.

⁴⁵¹ *Cleveland versus United States* (329 U.S. 14, 1946), In this case, the individuals under their religious beliefs, brought to US the women for the purpose of polygamous marriage, but the court held that although, it may be within the religious beliefs of anyone and Mann Act is primarily intended to target commercialized white slave trade, but extending the explanation of the phrase "for any other immoral purpose" there is no space of such kind of marriage in the Mann Act; hence, the individuals were convicted for the offence. Polygamy, although religious defense may be there, was found to be an immoral act

the law was used to prosecute unlawful pre-marital, extra-marital and inter-racial relationships. It is again important to mention that the WW-I put an end to the further development of international efforts against trafficking in persons at that time.

5.7 Conclusion

The legalized profession of prostitution was made illegal by the international community by enacting various international instruments wherein the white slave traffic along with its ancillary act such as obscene literature was suppressed in the non modern period of international law. The US also passed the Mann Act to abolish the white slave trade. In the international instruments, the sexual exploitation of every woman was prohibited. The outbreak of WW-I compelled the international community to think over the establishment of a common body which could have the force to enact universal legislations for the world issues. This led to the establishment of modern period of international law wherein the League and the UN did the needful. So the following two chapters provide the modern period of international law on the subject.

contemplated by the Mann Act's prohibitions. But Justice Frank Murphy carried a dissenting opinion, asserting that the polygamy is not of the same category as prostitution and debauchery as envisaged by the Mann Act.

Modern Period of International Law: The Human Trafficking

This page is the preface of the chapters 6 and 7 of the thesis. Both the chapters have been partitioned as the modern period of international law on the subject. Like the non-modern period of international law, the modern period of international law has also been given the space under two chapters of the thesis i.e. the legal regimes under the League and UN. The development of an international conscious towards human trafficking can be seen obviously in the legal history of international action against slave trade and slavery. The earlier determinations have been referred to in the preceding two chapters; while the chapters supra are a long step forward from the constitutions of the League and the UN. From the international condemnation of black and white slave trades, we have now passed to international condemnation of trafficking in persons. The previous chapters show that the legal regime in the non-modern period of international law revolves on three contour i.e. labor slavery, sexual slavery and obscene literature. The modern period of international law is divided into five contours i.e. human rights, refugees and stateless persons, prostitution, obscene publication and forced labor. Given the connection of human trafficking with them, applicable international instruments on these topics are deliberated, followed by the provisions focusing more relevant to human trafficking. Both the bodies went through various treaties before concluding the Palermo Protocol, 2000 while taking more than two centuries to evolve the international instruments from slave trade to human trafficking. Modern period of international law also took almost eighty years to define the human trafficking in the Palermo Protocol.

Chapter 06: Modern Period of International Law: the League of Nations and Human Trafficking

6.1 Introduction

The modern international law on human trafficking did not develop in a vacuum; rather its existence can be traced back to the treaties as discussed earlier. Since the end of Black and White slave trades, nation states had recognized the fundamental rights of human beings. It was being expected to be unbelievable fact of the regeneration of enslavement of the people, but the regeneration has been documented world-wide. It became necessary to take further action for the abolition of such practices. Now the world had designated a common body for grievance of their issues, so a common strategy became the objective. The foundation of League inaugurated the era of modern international law. This was the right period when the substance of modern international law was laid down and international community joined hands to their common interests. International law was impossible without a system of multiple states, each responsive of its own sovereignty and its choice of relations with other states. So this was the period where nomadic tribes had evolved into civilized societies and thereby into states.

After the end of WW-I, an inter-governmental Organization namely the League of Nations was founded on January 1920 whose primary undertaking was to maintain world peace and mutual co-operation of states. Various treaties including those of human trafficking, forced labor, slavery etc. came into existence and member states showed great concern in their complete abolishment. The League took the task for the betterment of the world community and various steps in different areas were taken for the accomplishment of this purpose. A specialized agency namely International Labor Organization (ILO) was established whose primary task was to deal with the labor issues.

As discussed in the preceding paragraphs that the international community had intention to get rid of the slave trade, for which steps had already been taken in the non-modern period of international law. The equality before the law was the catchphrase in the non-modern period of international law; therefore, the plea for abolishing traffic of black and white slaves was submitted on the premises of justice and humanity. In the 20th century, the world had advanced enough that the people were recognizing their valuable rights which a state was under an obligation to provide to them. Social contract between people and country developed which caused to turn the above-mentioned catchphrase from the principles of justice and humanity to the principle of social justice. In the early decades of 20th century, various countries of the world were involved in the WW-I. There was an intense need for a common body to solve the issues of the nations.

Initially, the League being very first international body of its kind was introduced to maintain world peace after the end of WW-I. Though the Covenant of the League enunciated primarily the international co-operation to achieve international peace and security and to discourage future war-like actions, but contemporary ongoing social questions including the issue of slave trade, labor issues particularly forced labor, women and children rights etc. were of so vital nature that the Covenant has to include them into its obligations as well. The League undeniably sensed the fact that the common and long-lasting peace can only be succeeded if it is based on 'social justice. This task, though secondary one, became its most long-lasting legacy in succeeding period. The Covenant recommended the member states to sustain reasonable and humanitarian environments of labor for men, women and children. The protection of women and children against international traffic was also the subject of the Covenant, together with general supervision over the execution of agreements with regard to the trafficking in women and

children.⁴⁵² The 19th century's scourges of labor as well as sexual exploitations were decided to be abolished with stronger legislation while defining them in the wider scope. The replacement of terminologies from "*Black Slave Trade and White Slave Trade*" to "*Trafficking in Persons*" was warmly welcomed by the member states as it detached the trafficking of ethnic descriptions to all races. The League was pleased to solve the social problems and, in the first place, stepped into establishing a specialized agency as ILO to deal with labor issues, particularly the forced labor; and introduced International Labor Standards (ILS). The preamble of the ILO categorically related peace with social justice, and labor exploitation could lead to demise of such peace. The ILO was given the task to cope with the labor exploitation so that universal and ever-lasting peace based upon social justice could be achieved. While handing over the assignment of all conceivable aspects of labor rights to ILO, the League turned to address the second type of exploitation i.e. sexual traffic which had already been treated as illegal and any involvement in it has been out-lawed by the earlier international treaties. Not only women but children were also the particular victims of such exploitation. Previous International Conventions of 1904 and 1910 became the focus of concern for abolition of sexual traffic. The international efforts were co-ordinated to end the practice. The League convened an International Conference in the year 1921 on White Slave Trade as a continuation of already ongoing dialogues on the issue. The Conference unequivocally decided to pass a multi-lateral treaty for the rights of women and children, supplementary to the White Slave Traffic Conventions.

6.2 International Convention for the Suppression of the Traffic in Women and Children, 1921

Resultantly, the very first treaty to address trafficking under the auspices of the League namely the International Convention for the Suppression of the Traffic in Women

⁴⁵² Article 23 (c) of the Covenant states that the members of the League will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs.

and Children, was officially adopted on 30th September 1921 which entered into force on 15th June 1922.⁴⁵³ The Convention addressed the issue of commercial sexual exploitation and trafficking of women and children. The Convention enhanced the scope of prosecution of persons who were engaged in committing offences against under-age persons within the meaning of article 1 of the Convention 1910, by including the traffic in children of both sexes instead of girls only.⁴⁵⁴ Thus it stretched the scope of protection by making out the trafficking of boys. Even the attempt to commit offences specified in Articles 1 and 2 of the Convention 1910 was declared as punishable.⁴⁵⁵ For the first time in official records, the age of majority was decided as 21 years internationally.⁴⁵⁶ The Convention 1921 was the first serious step towards the fight against sexual exploitative trafficking of women as well as children; the first treaty recognizing the rights of child by using the word children in its title; and the first treaty of the League wherein the word '*trafficking*' was explicitly used instead of slave trade. The Convention placed this vulnerable section of society at high pedestal and it became another attempt towards the women and children rights. The League was much anxious to secure more completely the suppression of the traffic in women and children as already described in the White Slave Traffic Conventions of 1904 and 1910 in the previous chapter. The member states of the Convention 1921 agreed to take all measures to discover, prosecute and secure punishments to the commission of the offences of procuring, enticing and leading away the female gender of any age, even with consent, for the purpose of prostitution. It recommended that the governments require railways and shipping companies to display

⁴⁵³ In accordance with Paragraph 4 of the Schedule to the Indian Independence Order, 1947, Pakistan considers itself a party to this Convention by the fact that India became a party to this before 15 August, 1947. After independence from British rule in India in 1947, Pakistan also became its party.

⁴⁵⁴ Article 2 of the 1921 Convention.

⁴⁵⁵ Ibid. Article 3.

⁴⁵⁶ It was 20 years in Paragraph B of the Final protocol of the Convention of 1910. The words 'twenty completed years of age' were replaced by the words 'twenty-one completed years of age' in the Article 5 of 1921 Convention. Although, already in 1921 Conference, a delegate of the British imperial government asked to exempt Eastern Countries and tropical Colonies from the Convention's age standards. Climate conditions, social and religious customs were cited as justifications for this differential treatment.

notices, warning women and girls, of the dangers of traffic including indications of where they could obtain accommodation and assistance.⁴⁵⁷ Steps were also taken regarding the licensing and supervision of employment agencies and offices to ensure the protection of women and children seeking employment in another country.⁴⁵⁸ Administrative and legislative measures in connection with the immigrants and emigrants were required to check the traffic in women and children by the parties.⁴⁵⁹ The Convention 1921 together with the Conventions 1904 and 1910 is regarded as an integral part of customary international law, because it is now a generally accepted principle of international law that trafficking has to be prevented and eradicated by means of all available techniques. The above-said three instruments have also an important function in the association of the principles of human rights law governing women and children.

6.3 International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publication, 1923

As discussed in the previous chapter, the obscene literature and pornography have nexus with prostitution, the League while taking the legal action against sex trafficking deemed it necessary to turn into a formal International Convention to the previously International Agreement, 1910.⁴⁶⁰ In order to supplement the afore-mentioned Agreement, an anti- pornography treaty, intituled, the International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publication, was concluded on 12th September, 1923 which entered into force on 7th August, 1924. By the said Convention, the state parties agreed to criminalize the trade, distribution, public exhibition, possession, advertisement, importation or exportation of any obscene

⁴⁵⁷ Article 8 of the 1921 Convention.

⁴⁵⁸ Article 6 of the 1921 Convention; see also UNHCR, *Refugee Protection and Human Trafficking: Selected Legal Reference materials*, (December 2008).

⁴⁵⁹ Article 7 of *ibid*.

⁴⁶⁰ Usually, a Convention is different, under the international law, from the Agreement in the sense that a Convention is a formal agreement between states and is usually an instrument negotiated under an international organization; while an Agreement may not have all such qualifications.

drawings, writings, paintings, cinematograph films, pictures, prints, emblems, photographs, posters or any other obscene objects.⁴⁶¹ However, the term obscene publication was defined neither in the previous nor in the present treaty.

6.4 Slavery Convention, 1926

Following the International Conference 1921, an advisory Committee with regard to traffic in women and children was established in order to supervise the execution of international agreements. Not only slave trade but slavery itself was the subject of abolition. Slavery became a matter of international concern by the condemnation of slave trade in the Treaty of Vienna, 1815. The abolitionist movements began as an effort to stop the transatlantic slave trade in the colonies of Europe and US.⁴⁶² The question of slavery was raised in the Third Assembly of the League with special reference to Abyssinia (present day Ethiopia). Therefore, a Temporary Slavery Commission of authorities was constituted by the League on 12th June, 1924.⁴⁶³ The Commission was accountable for the global research and evaluation of the existence of slavery and slave trade. In its final report submitted in 1925, the Commission concluded that there are many evils in connection with slavery and slave trade in existence which require international condemnation.⁴⁶⁴ The Commission proposed new International Convention on slavery which must deal not only with slavery but also the forced labor analogous to slavery. The Commission proposed a comprehensive international legislation on the issue upon which the League approved the Convention to Suppress the Slave Trade and Slavery, commonly known as the Slavery Convention on 25th September, 1926 which entered into force on 9th March 1927. It is interesting to mention here that the words “*slavery*” and “*slave trade*”

⁴⁶¹ Article 1 of the 1923 Convention.

⁴⁶² Dottridge and Weissbrodt, *Abolishing Slavery and its contemporary forms* (German Yearbook of international law, 1999).

⁴⁶³ The Commission comprised a representative from ILO, colonial governors and Haitian representative.

⁴⁶⁴ For example, more insidious forms of slavery such as so called adoption, debt slavery, and concubinage as well as forced labor are unfortunately prevalent in a very large part of the world and to a very great extent.

were not defined anywhere earlier since the adoption of the Convention 1926. They are defined as under: -

“(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;” and

“(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and , in general, every act of trade or transport in slaves.”⁴⁶⁵

The Convention proved as a milestone in the pursuit to eliminate slavery in that it was the first instrument to define slavery internationally. This definition of slavery is still acknowledged in the existing international legal regime. Despite having previously distinct legislations, this was the first legislation of its kind where both the terms were defined and included in a single treaty. The Convention submitted to High Contracting Parties to make every effort to prevent and suppress slavery, slave trade and all its forms and severe penalties were suggested to be imposed.⁴⁶⁶ Compulsory or forced labor, for the first time in international instruments, was considered as a practice giving rise to conditions analogous to slavery and was strongly discouraged.⁴⁶⁷ The Convention 1926 recognized that forced labor is one of the elements through which slavery can be extracted easily. The utilization of forced labor in such a manner that it changes into conditions analogous to slavery is not specifically criminalized, but the state parties undertake to adopt all necessary measures to prevent forced labor as well. The inclusion of this Article made the mandates of ILO more challenging as forced labor was declared as directly related to slavery like practices. The Convention provides for all the state parties to give to one another every possible assistance with the object of securing the

⁴⁶⁵ Article 1 of the 1926 Convention.

⁴⁶⁶ Ibid. Article 6.

⁴⁶⁷ Ibid. Article 5, but with some exceptions were also there.

abolition of slavery and slave trade. Thus a clear obligation is laid down on the parties to co-operate and assist each other in the abolition.

Although the Convention was passed, but the same was not free of lacunas. Despite recognized definitions and guidelines for the parties, there was absence of any governing body responsible for the assessment and supervision of contemporary slavery. Further, the mechanism for the prevention and suppression of contemporary slavery at international level was not discussed. The Convention requires all state parties to give one another every possible assistance with the object of securing the abolition of slavery and the slave trade.⁴⁶⁸ Thus the Convention lays down an obligation on state parties to co-operate and assist one another in the efforts for abolishing slavery and slave trade.

6.5 Forced Labor Convention, 1930

The Convention 1926 categorically links slavery with forced labor. Simultaneously, the ILO was responsible for labor assignments; hence, the ILO was dynamic in the abolition of forced labor, consequently the abolition of slavery to some extent.⁴⁶⁹ In continuation of the issue of forced labor as discussed in the Convention 1926, the ILO adopted its own Convention No. 29, intitled, the Forced Labor Convention, 1930 which entered into force on 01st May, 1932.⁴⁷⁰ For the first time, the word “forced labor” was defined 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.”⁴⁷¹

The Convention 1930 prohibits forced labor as a form of economic exploitation and is therefore relevant to human trafficking. When the definitions of slavery and forced labor are placed in juxtaposition, it is made clear that both the terms have some, but not

⁴⁶⁸ Section 4 of the Slavery Convention, 1926.

⁴⁶⁹ Co21- Inspection of Emigrants Convention, 1926 was adopted which was later on shelved.

⁴⁷⁰ The long title is the Convention concerning Forced or Compulsory Labor, 1930 (No. 29).

⁴⁷¹ Article 2 of the 1930 Convention.

all, elements common. The slavery is a condition of a person over whom another person exercises his right of ownership and such use of power is always under the threat of any penalty, either express or implied, because no human being ever agrees to breathe like a slave voluntarily. This is what the definition of forced labor refers to. The labor is obtained from the person involuntarily. Forced labor was one of the factors breeding slavery and consequently trafficking in persons. The issue of forced labor, therefore, came up with the issue of human trafficking side by side throughout the legal history of abolition. The Convention 1930 constrained member states to ban the practice of forced labor at all.⁴⁷² The definition of slavery had been expanded to include forced labor. Pakistan has ratified this Convention on 23rd December, 1957.

6.6 International Convention for the Suppression of the Traffic in Women of Full Age, 1933

The League was considerably uncompromising towards the issue of sex trafficking. The Standing Advisory Committee on the traffic in women and children, at its ninth Session in 1930, recommended the formation of sub-committee to study the laws and regulations tending to more effectual punishment of souteneurs or pimps, and specially the nature of the penalties that should be imposed for that purpose and the same was approved accordingly, subsequently with the appointment of a Sub-Committee.⁴⁷³ The said sub-committee, in its report to Advisory Committee, recommended for the designing of an additional protocol to the Convention 1921 and concurrently submitted a

⁴⁷² The Convention excepts from the term "forced or compulsory labor" the following acts: -

- a. Any work or service exacted for work of a purely military character;
- b. Any work or service which forms part of the normal civic obligations;
- c. Any work or service exacted from any person as a consequence of conviction in a court of law;
- d. Any work or service exacted in cases of emergency;
- e. Minor communal services of a kind which can be considered as normal civic obligations incumbent upon the members of the community.

⁴⁷³ Official Journal of the League of Nations, 11 (1930): 508; Audiovisual Library of International Law. <<http://legal.un.org/avl/ha/uncstpepo/uncstpepo.html>> (accessed on 29-08-2018).

Preliminary Draft Additional Protocol.⁴⁷⁴ The Advisory Committee, upon receiving observations on this draft by the member states, referred the matter to another legal sub-committee which followed some suggestions.⁴⁷⁵ Various social issues relevant to human trafficking were going on side by side. Women and children were the subjects of leading attention amongst the global community.

The League was much desirous to procure more effectively the suppression of the traffic in women and children, therefore, following on the recommendations contained in the Report to the Council of the League by the Traffic in Women and Children Committee on the works of its 12th Session, having decided to achieve another international agreement, supplementary to all three previous Agreements.⁴⁷⁶ In April 1933, first draft of the Convention drawn up by the Traffic in Women and Children Committee was submitted; the same was amended by the 5th Committee of the Assembly and Diplomatic Conference concerning the Suppression of Traffic in Women of Full Age was convened for the purpose of discussion over the second draft.⁴⁷⁷ In three consecutive meetings chaired by M. Limburg (Netherlands) starting from 9th - 11th, October, 1933, International Convention for the Suppression of the Traffic in Women of Full Age was agreed upon, which entered into force on 24th August, 1934. This Convention was adopted with purpose of supplementing the previous three instruments on the trafficking by assuring more comprehensively the suppression of trafficking in women and children. Article 1 of the Convention 1933 straightaway started with the penalizing of those who procured, enticed or led away or even attempted for the same, a women or girl of full age

⁴⁷⁴ League of Nations, Advisory Committee on Traffic in Women and Children, Report of the Sub-Committee of the Traffic in Women and Children Committee, "Penalties to be Inflicted on Persons Living on the Immoral Earnings of Women", C.T.F.E./C.J./2)

⁴⁷⁵ C.T.F.E. 547 (I) and C.T.F.E. 584.

⁴⁷⁶ The international Agreement for the Suppression of the White Slave Traffic, 1904; the Convention for the Suppression of the White Slave Traffic, 1910; and the International Convention for the Suppression of the Traffic in Women and Children, 1921.

⁴⁷⁷ The League of Nations, *Records of the Diplomatic Conference concerning the Suppression of Traffic in Women of Full Age, 1933*, Official No. C-649. M. 310. 1933. IV. < http://biblio-archiv.unog.ch/Dateien/CouncilMSD/C-649-M-310-1933-IV_EN.pdf> (accessed on 24.04.2017).

for immoral purposes to be carried out by crossing the international borders. The Convention is unique in its nature and went a step further from the previous treaties on the subject. It penalizes the commercial sexual exploitation of a woman and girl of full age even with her consent. Consent is made immaterial even to women of full age. Rijken opines that coercion is not an element of the offence and that consent as a defense to such trafficking is ruled out.⁴⁷⁸ So the exploitation evolved as a necessary element for the offence of trafficking. Adoption of the present Convention in the existence of already three international agreements on the subject; extension to include attempted offences and sanction to include into the term country the colonies and protectorates of the parties concerned as well as the territories under them revealed the excessive apprehension of the League with respect to the concern of traffic in women and children. The Convention committed to contracting parties to punish such offences proportionate with their gravity.⁴⁷⁹ Exchange of information about the accused was decided to be communicated amongst the high contracting parties.⁴⁸⁰ This Convention was a milestone towards the right track of abolition of human trafficking.

6.7 Advisory Committee on Social Questions

In the year 1936-37, the afore-mentioned Standing Advisory Committee with regard to traffic in women and children was internally re-organized and merged into a larger Advisory Committee on Social Questions.⁴⁸¹ In September 1937, this newly Advisory Committee, through the assistance of a sub-committee, submitted a revised draft of Convention for the Suppression of the Exploitation of the Prostitution of Others.

⁴⁷⁸ Conny Rijken, *Trafficking in Persons: Prosecution from a European Perspective* (The Hague: Asser Press, 2003).

⁴⁷⁹ Article 2 of the 1933 Convention.

⁴⁸⁰ Article 3 of *ibid.*

⁴⁸¹ It included representatives of nine countries as well as five representatives of voluntary organizations i.e. the International Bureau for the Suppression of Traffic in women and children, International Women's Organizations, the International Catholic Association for the protection of Girls, the Jewish Association for the protection of Girls and Women, and a Protestant Organization.

The League, in its 11th plenary meeting held on 29th September, 1938 recommended a conference for the conclusion of the Convention in the year 1940, but regrettably the outbreak of World War-II disturbed further expansion into the workings of the League.

The WW-II lasted for the period 1939-1945 and the League could not convene any conference for the purpose of legislating any international treaty, as all the major countries of the world were participating in the War. At the end of the WW-II, the League was replaced by the UN on 24th October, 1945.

6.8 Conclusion

During the period of the League, successful developments in the international law on the subject were made, such as the international law evolved in the manners that the word trafficking was used in the international law for the first time; trafficking in children of both sexes was addressed; even attempts of trafficking were made penalized; age of majority was declared as 21 years; abolition of slavery and slave trade were addressed in a single treaty; ILO made its first treaty on forced labor which is considered analogous to slavery; consent of even women of full age was made immaterial. Since the League was abolished and the UN took its place; hence further international law on the subject developed by the UN which the subject matter of the next chapter.

Chapter 07: Modern Period of International Law: The United

Nations and Human Trafficking

7.1 Introduction

The true development of modern international law can be properly attributed to the period soon after the establishment of the UN. It started a more comprehensive approach towards the protection of human rights and suppression of human trafficking along with all its related acts. Slavery had gradually evolved from acceptable institution to international crime. It had acquired the status of jus cogens norm and non-derogable right.⁴⁸²

7.2 Codification of Modern International Law on Slave Trafficking

Soon after its establishment, first concern of the UN was to codify the international law in order to fulfill the obligations of its Charter. On 21st November, 1947, the General Assembly approved for the creation of an International Law Commission (ILC), in resolution No. 174. At its inaugural Session, the ILC surveyed the international law with a vision to select subjects for codification.⁴⁸³ A list of 25 topics was prepared for codification, but only three topics were given priority to be codified first i.e. statelessness, consular intercourse and immunities, and the regime of the high seas.⁴⁸⁴ Out of these three topics, the last one was given priority for rapid codification. Slave trade was one of the issues of high seas. The ILC's Articles on the Law of the Sea is read as: -

“Every state shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its colors, and to prevent the unlawful use of its flag for

⁴⁸² Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Martinus Nijhoff Publishers, 2013).

⁴⁸³ H.F. Van Panhuys and others, *International Organization and Integration: A Collection of the Texts of Documents relating to the United Nations, its related Agencies and Regional International Organizations, with Annotations* (Springer: 1968).

⁴⁸⁴ Ibid.

that purpose. Any slave who takes refuge on board any ship, whatever its color, shall ipso facto be free."⁴⁸⁵

7.3 International Instruments Pertaining to (Sexual) Slavery and its Related Acts

The working of UN was distributed to six principal organs, out of which is the Economic and Social Council (ECOSOC). It is the principal platform for discussions over sustainable development related issues. The UN was eager to accomplish the discontinued assignments of the League; hence, the ECOSOC, in its 4th Session, adopted resolution 43 (IV) on 29th March, 1947 wherein the resumption of the study of the Draft Convention for the Suppression of the Exploitation of the Prostitution of Others together with the approval from the member states, keeping in view the contemporary situations, was instructed to the UN Secretary General (UNGA). Considering the possibility of merger of the Draft Convention 1937 with the already four existing related instruments i.e. the International Agreement for Suppression of White Slave Traffic, 1904; the International Convention for the Suppression of White Slave Traffic, 1910; the International Convention for the Suppression of Traffic in Women and Children, 1921; and the International Convention for the Suppression of Traffic in Women of Full Age, 1933, was also discussed.⁴⁸⁶ The US played leading role in convening the two conferences of UN to discuss the existing international law on the trafficking and slave trade and important issues were discussed over there. The first meeting was held on 12th November, 1947 and second one on 4th May, 1949. In consequences of dissolution of the League, by resolution No. 126 (II) adopted on 20th October, 1947, the UNGA, in sequence to continued performance, agreed to undertake the powers and functions formerly exercised by the League under the International Convention for the Suppression of the Traffic in Women and Children, 1921; the International Convention for the Suppression of the

⁴⁸⁵ Article 37.

⁴⁸⁶ Resolution No. 83 (V) of 14th August, 1947.

Circulation of and traffic in Obscene Publications, 1923; and the International Convention for the Suppression of the Traffic in Women of full age, 1933. Further, the said resolution also agreed to transfer the functions already exercised by the French Government in virtue of the International Agreement for the Suppression of the White Slave Traffic, 1904 and the International Convention for the Suppression of the White Slave Traffic, 1910, to the UN and the same were approved accordingly.⁴⁸⁷ The UN was also anxious towards the abolition of social issues, following the mandates of the League.

7.4 Amendments and Consolidation of the Previous Treaties

In the year 1947, the UN jumped into the matter in hand taking into consideration the fact that women and children being vulnerable sections of society should be given priority towards their betterment. In this regard, the Protocol amending the International Convention for the Suppression of the Traffic in Women and Children, 1921 and the International Convention for the Suppression of the Traffic in Women of full age, 1933 was approved in resolution No. 126 (II) of 20th October, 1947 and entered into force on 12th November, 1947. The parties undertake to attribute legal force and effect to, and duly apply the amendments to these instruments provided in the annex.⁴⁸⁸ These necessary amendments were made in order to bring the instruments up-to-date. In addition to this, the UN approved the Protocol amending the International Agreement for the Suppression of the White Slave Traffic, 1904 and the International Convention for the Suppression of the White Slave Traffic, 1910, by Resolution No. 256 (III) of 3rd December, 1948⁴⁸⁹

⁴⁸⁷ The French government was exercising certain functions under article 7 and 9 of the International Agreement for the Suppression of the White Slave Traffic, 1904; under articles 4, 8, 10 & 11 of the International Convention for the Suppression of the White Slave Traffic, 1910; and under articles 1, 4, 5 & 7 of the Agreement for the Suppression of the Circulation of Obscene Publications, 1923.

⁴⁸⁸ Article 1 of the Protocol. In the annex, it is provided that in 1921 Convention, articles 9, 10, 12 and 13 were amended and article 14 was deleted; while in 1933 Convention, articles 4, 6, 7 and 9 were amended and first three paragraphs and fifth paragraph of article 10 were deleted and fourth paragraph was amended.

⁴⁸⁹ Transfer to the United Nations of functions exercised by the French Government under the International Agreement of May 1904 and the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, and the Agreement of 4 May 1910 for the Suppression of the Circulation of Obscene Publications.

which entered into force on 4th May, 1949. The preamble of the Protocol 1949 categorically mentions the offer to transfer the functions with which the French Government was invested under the White Slave Traffic of 1904 & 1910 to the UN⁴⁹⁰ and the same were approved to transfer accordingly.

7.5 Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others, 1950

Till the period of 1950, four preceding instruments had developed on the issue of trafficking wherein focus on law enforcement and co-operation among states emerged. When we put a close eye on these treaties, it is clear that they are restricted to trafficking of women and children for the purpose of prostitution and sexual exploitation only, so the UN decided to consolidate and replace these four treaties by adopting another Convention. Continuing with the previous dialogues over the resolution No. 83 (V) of 14th August, 1947, the ECOSOC, at its seventh Session, requested the UN Secretary General to formulate a fresh and all-inclusive draft convention integrating all the related instruments as desired.⁴⁹¹ On 23rd December, 1948, the Secretary General in response submitted a draft of "Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others," following a Draft Committee and a Style Committee for additional make-up. The proposed draft was submitted before the General Assembly together with the accounts of the proceedings of the ECOSOC for further necessary consideration. The 3rd Committee of the General Assembly raised some observations which were clarified.⁴⁹² Consequently, on 28th November, 1949, the 3rd

⁴⁹⁰ The French government was exercising certain functions under article 7 and 9 of the International Agreement for the Suppression of the White Slave Traffic, 1904; under articles 4, 8, 10 & 11 of the International Convention for the Suppression of the White Slave Traffic, 1910 and under articles 1, 4, 5 & 7 of the Agreement for the Suppression of the Circulation of Obscene Publications. The word French government was replaced by UN. See the Annexure of the protocol.

⁴⁹¹ Resolution No. 155 E (VII) of 13th August, 1948.

⁴⁹² At its fourth session in 1949, the General Assembly referred the draft convention to its Third Committee (A/989). After consideration of the draft convention, the Third Committee decided to ask the Sixth Committee of the General Assembly to give consideration to articles 8, 9, 10, 12, 13, 25, 26, 28, 29, 30, 31

Committee recommended the amended Draft Convention for approval of General Assembly. On 2nd December, 1949 through resolution No. 317 (IV) in 264th plenary meeting, the Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others, was approved accordingly.⁴⁹³ The treaty was open for signature on 21st March, 1950 and entered into force on 25th July, 1951. It is agreed as under: -

*“The parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) procures, entices or leads away, for purposes of prostitution another person, even with the consent of that person; (2) exploits the prostitution of another, even with the consent of that person.”*⁴⁹⁴

Like preceding instruments, this Convention relates trafficking with prostitution by criminalizing the trafficking for the purpose of prostitution only. This Convention, for the first time, used the word ‘prostitution’ instead of immoral purpose as the same were being used in the previous instruments which laid down certain suppressive measures against the traffickers and certain protective measures for the victims, but did not emphasize on the concern of prostitution. The prostitution is in the background of sexual trafficking of women and children. Lee opines that such conceptualization of trafficking as exclusively linked to sexual exploitation meant that other forms of exploitation tend to

and 32 of the draft convention, and to make recommendations on the text to be adopted for these articles. It also requested that the Sixth Committee consider the legal effects of deleting the clause “subject to the requirements of domestic law” in all articles of the draft convention, and to transmit any comments the Sixth Committee deemed necessary on any other legal problem arising from the draft convention (A/C.3/522, A/C.3/523, A/C.3/525 and A/C.3/526).

At its fourth Session in 1949, the Sixth Committee examined these questions and then established a sub-committee to scrutinize the questions of the Third Committee (A/C.6/L.88). All the net results of these meetings were forwarded to the Third Committee in a Memorandum from the Chairman of the Sixth Committee to the Chairman of the Third Committee on questions referred to the Sixth Committee on 25 November 1949 (A/C.6/L.102).

In 1949 at the same session, the Third Committee evaluated the text suggested by the Sixth Committee and amended the draft convention accordingly. On 28 November, the Third Committee adopted the draft convention and recommended it for approval by the General Assembly (Report of the Third Committee of the General Assembly, 30 November 1949).

⁴⁹³ Pakistan became the party of this treaty on 12 November, 1947.

⁴⁹⁴ Article 1 of the Convention.

be ignored in anti-trafficking initiatives even though there were growing indications that suggest international trafficking for labor exploitation is also rampant.⁴⁹⁵

The previous four trafficking instruments described the protections only to women and children of both sexes, but this Convention is the first to extend protection to adult males as well, by incorporating the words 'traffic in persons' in its title. The Convention consolidated earlier instruments and embodied abolitionist policy as a basis for any program of action against the human trafficking and exploitation of the prostitution of others. The parties agreed to punish any person who, to gratify the passions of another, procures, entices or leads away, for purposes of prostitution, any other person, even with the consent of that person; exploits the prostitution of another person, even with the consent of that person.⁴⁹⁶ The punishments were extended to brothel- keepers, house owners, persons who attempt to commit all such offences, and person intentionally participating in such acts.⁴⁹⁷ The Convention actually made policy to inflict penalties on the persons who were living on the immoral earnings of the persons. Women in prostitution were not measured as offenders to be penalized, rather as victims to be protected. Two considerable advancements in the evolution of the offence of human trafficking till the conclusion of this Convention can be seen. Firstly, the trafficking of adult women into voluntary prostitution was declared illegal. Secondly, criminalization of the recruitment and transportation of trafficked persons which is referred as procurement, enticing, or leading away in article 1 was extended to include the exploitation of the prostitution of others, thus prohibiting the keeping, managing or financing of the brothels as well. Further, the state parties agreed to adopt measures for the protection of migrants, in particular women and children, both at the place of arrival and departure and while en

⁴⁹⁵ Maggy Lee, 396.

⁴⁹⁶ Article 1 of 1950 Convention.

⁴⁹⁷ Ibid. Articles 2, 3 and 4.

route.⁴⁹⁸ From the conclusion of this Convention, it was made clear that migration is also a relevant issue of human trafficking, so the UN decided to put some concern on the migrants and refugees status.

Pakistan signed this Convention on 21st March, 1950 and ratified the same on 11th July, 1952. This Convention remained the only international instrument on human trafficking for the next 50 years till the adoption of the Palermo Protocol, 2000. However, Pakistan did not ratify the Palermo Protocol yet; hence, Pakistan is obligated to adopt the provisions of this Convention.

7.6 Servitude and Slavery like Practices

Till the period of 1956, slavery, slave trade, forced labor, and prostitution had legally been abolished, but there were still some practices which could fall within the definition of slavery, but were not legally prohibited. In this period, human rights had emerged and international instruments for human rights had developed which have been discussed in the proceeding paragraphs. The UN, reiterated in its Charter and the guidelines of Universal Declaration of Human Rights (UDHR), was committed to abolish the slavery and its similar practices. In this regard, it requested the ECOSOC to consider the slavery and its possible contents. An Ad Hoc Committee on Slavery was formed which surveyed the fields of slavery and other related resembling practices. The UK presented a Draft Supplementary Convention on slavery and servitude as 'a food for debate'. The ECOSOC forwarded the same to Ad Hoc Committee for further consideration. After long discussions, the term 'servitude' was substituted and 'institutions and practices similar to slavery' were added.

⁴⁹⁸ Ibid. Article 17.

7.6.1 The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1950

The UN convened a conference on 30th April, 1956 by resolution No. 608 (XXI), approved the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, on 7th September, 1956 which entered into force on 30th April, 1957. For the first time in international instruments, the scope of slavery was extended and the practices similar to slavery were addressed. The four servitudes, labeled as institutions or practices similar to slavery, are defined as under: -

Debt Bondage: *“The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”⁴⁹⁹;*

Serfdom: *“The condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status”⁵⁰⁰;*

Servile or Forced Marriage: *“Any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or a woman on the death of her husband is liable to be inherited by another person”⁵⁰¹;*

Child Servile: *“Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor”⁵⁰²*

⁴⁹⁹ Article 1 (a) of 1956 Convention.

⁵⁰⁰ Ibid. Article 1 (b).

⁵⁰¹ Ibid. Article 1 (c).

⁵⁰² Ibid. Article 1 (d).

The above four practices are declared as servile status. They, for the first time in international law, were discussed and condemned. Servitude itself is not defined anywhere in international law, rather it is a combination of some practices which are defined by the Convention 1956. Debt bondage, also called peonage, is the practice of pawning a person, as opposed to property, for the discharge of a debt; or even more precisely, a pledge of service for the repayment of a loan.⁵⁰³ In the absence of property, a person's labor remains the only physical surety that can be offered for a debt. Measures were taken to abolish forced and child marriage.⁵⁰⁴ Slave trafficking was again reiterated as criminal offence.⁵⁰⁵ Section-II of the Convention was dedicated for slave trade in the following words: -

"1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States and persons convicted thereof shall be liable to very severe penalties.

2. (a) The state parties shall take effective measures to prevent ships and aircrafts to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose. (b) The state shall take the effective measures to ensure that their ports, airfields and coasts are not used for the conveyance of slaves.

3. The state parties shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combating the slave trade and shall inform each other of every case of ~~ah~~ slave trade, and of every attempt to commit this criminal offence, which comes to their notice."⁵⁰⁶

When we put the definitions of slave trade from Convention 1926 and Supplementary Convention 1956 in juxtaposition, two differences are apparent. The terms 'by whatever means of conveyance' in the latter definition suggest the notion that the slave trade might not only take place on sea, but also on land or by air. Second difference

⁵⁰³ M.L. Bush, *Servitude in Modern Times* (Polity Press in association with Blackwell Publishers Ltd., 2000), 39.

⁵⁰⁴ Article 2 of 1956 Convention.

⁵⁰⁵ Ibid. Section IV, Article 7(b).

⁵⁰⁶ Ibid. Article 13.

is very much important. It widened the scope of the Convention 1956. In the Convention 1926, the word 'slave' is used; while in Convention 1956 the word 'person' is used. It means that it is not necessary that the person was already a slave. It is also provided that "Any slave who takes refuge on board any ship, whatever its color, shall ipso facto be free."⁵⁰⁷ It creates specific obligations, of which the criminalization of dependency on slavery or attempt, accessory, conspiracy to enslave or to participate in the slave trade; with such criminalization for institutions or practices similar to slavery are required to take place progressively and as soon as possible.⁵⁰⁸ According to Bassiouni, this Convention, unlike the Slavery Convention 1926, clearly criminalizes slavery as the act of enslaving another person shall be a criminal offence under the laws of the state parties to this Convention and persons convicted thereof shall be liable to punishment.⁵⁰⁹ The Convention proved a milestone in the new avenues of the area of human trafficking and its related acts. Pakistan is a party to the 1956 Convention; signed and ratified the same on 07th September 1956 and 20th March 1958 respectively.

7.7 International Instruments Pertaining to Forced Labor

International instruments on forced labor are included in the international legal regime on human trafficking so as to make a link between forced labor and human trafficking for the purpose of forced labor. Shortly the establishment of UN, the ILO became its first associated specialized agency. Committed to its objectives, the ILO began to make key contributions to the world of work and social justice, beside the background of exploitation of workers and their families. To abolish the labor exploitation, the ILO enacted several agreements in the areas of regulation of hours of work, prevention of unemployment, adequate living wages, workers and their families' rights, child labor and many other related issues of workplace. Without effective labor inspectorate, proper

⁵⁰⁷ Ibid. Article 4.

⁵⁰⁸ Jean Allain, *The Law and Slavery: Prohibiting Human Slavery* (Martunus Nijhoff, 2015).

⁵⁰⁹ Article 6 (1) of the Convention.

implementation of labor legislation was not possible. In this regard, Labor Inspection Convention No. 81 and Labor Inspectorates (Non-Metropolitan Territories) Convention No. 85 of 1947 were the first steps towards the maintenance of a system of labor inspection. These Conventions require member states to maintain a system of labor inspection for workplaces in industries as well as in commerce, so that any violation of provisions of the Convention may be avoided. Forced labor and child labor were also the subjects of these Conventions.

7.7.1 Abolition of Forced Labor Convention, 1957

Forced labor was leading to human trafficking and the area of forced labor was within the domain of ILO which had already passed an international treaty on forced labor in 1930. The said treaty was not comprehensive enough to eliminate forced labor completely; hence, the Abolition of Forced Labor Convention No. 105 was adopted on 25th June, 1957 by the General Conference of the ILO at its fortieth session which entered into force on 17th January, 1959. The Convention was supplementary to previous forced labor and slavery related Conventions providing for the outright abolition of serfdom and debt bondage and was enacted under the guidelines enunciated by the UN Charter and UDHR. The contracting states undertook to suppress and not to make use of any form of forced or compulsory labor in certain means.⁵¹⁰ This Convention made no changes to the definition of forced labor provided in Convention No. 29.

The Committee of Experts has clarified that these two conventions are complementary with each other. Anyhow, the Convention No. 105 is more recent instrument; it builds on the foundation laid down by Convention No. 29 to prohibit forced or compulsory labor in specific instances. The Convention No. 29, on the other hand, lays

⁵¹⁰ Article 1 explains such means as: (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) As a method of mobilizing and using labor for purposes of economic development; (c) As a means of labor discipline; (d) As a punishment for having participated in strikes; (e) As a means of racial, social, national or religious discrimination.

down a general prohibition on forced or compulsory labor admitting only a few exceptions.⁵¹¹ The Convention 1957 disallows certain forms of forced labor which were still allowed under the Convention 1930.⁵¹² The Convention underpins the prohibition of forced labor by specifying certain forms of forced labor that must be absolutely abolished such as political coercion, punishment for political views, economic development, labor discipline, participation in strikes, any kind of discrimination.⁵¹³ However, it is noteworthy that human trafficking has a firm emphasis on economic exploitation, thus the Convention No. 29 seems to be more applicable to human trafficking than the Convention No.105. Pakistan has ratified this Convention on 15th February, 1960.

7.8 International Instruments Pertaining to Human Rights Relevant to Human Trafficking

Though this thesis does not principally scan the human rights issues in the human trafficking, but it is a fact that various human rights are violated in human trafficking cases. Keeping the best interests of the victim in the forefront of criminal justice responses not only supports the victims' human rights, but also serves the interests of the criminal justice system in achieving prosecutions.⁵¹⁴ So it is necessary to show some concern to the discussion within human rights perspective. Academically, the rights are either moral or legal. The rights place limits on actions of others by offering a measure of protection to the individuals; hence, certain actions are forbidden which violate the rights of others. In case of any such violation, the individuals deserve to seek redress. The acknowledgment of these rights can be understood in terms of three generations of rights, based on the French trichotomy, among Liberty, Equality and Fraternity. The first

⁵¹¹ ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A)* (International Labor Conference, 85th Session, Geneva, 1998), para. 105; ILO, *Forced Labor and Human Trafficking: Casebook of Court Decisions: A Training Manual for Judges, Prosecutors and Legal Practitioners*, (Special Action Program to Combat Forced Labor, 2009).

⁵¹² Such as punishment for strikes and as a punishment for holding certain political views.

⁵¹³ Article 1 of the Convention No. 105.

⁵¹⁴ UN GIFT 2008: 36.

generation rights, often called blue rights, were recognized as civil and political rights which mainly focus the issue of liberty; economic, social and cultural rights, often called red rights, are the second generation rights, having a concern of equality; and the third generation of rights, often called green rights, is most important, modern and concerned with an extensive collection of subjects, including the rights to development, a healthy life and environment, self-determination and peace.⁵¹⁵ In this age of globalization, human rights are recognized. But even then, people are being exploited as money generating commodities referring the situation as human trafficking. Most of the international law on human rights is contained in the International Bill of Human Rights.

7.8.1 International Bill of Human Rights

Despite the legal abolition of slavery and its related practices through criminal justice response, a parallel movement was also taking place in which these terms were being incorporated into international human rights law, both in UN treaties such as International Bill of Human Rights and also in regional treaties such as European, American, African and Arab Human Rights instruments. Since the end of slavery and slave trade, the international community had recognized the fundamental rights of the human beings and was committed to protect the same. But this fact was obvious that such recognition and protection would not be achieved in case of resurrection of the slavery like acts. On 15th February, 1946, the UN established 'Nuclear Committee' of Commission on Human Rights. The ECOSOC established the Permanent Commission on Human Rights on 21st June, 1946 which further established a Special Drafting Committee of UDHR. In May 1948, first draft was prepared and amendments were proposed after long discussions.⁵¹⁶ Consequently, on 10th December, 1948, the UDHR was adopted. The

⁵¹⁵ Karel Vasak, *The International Dimensions of Human Rights* (Praeger: Greenwood Press, 1982).

⁵¹⁶ Once the committee finished its work in May 1948, the draft was further discussed by the Third Committee of the before being put to vote in December 1948. During these discussions many amendments and propositions were made by UN Member States.

word 'universal' in the title denotes that it would be acceptable to all the nations of the world without distinction of any kind of religion, language, sex, color, political race or other opinion, national or social origin, property, birth or other status. As discussed in the UN Charter that the pursuit of Human Rights is the major cause for establishing the UN and it obliges all member states to promote universal respect for, and observance of human rights, so human rights area was made part in every legislation thereafter. The international bill of human rights contains the following instruments: -

7.8.1.1 Universal Declaration of Human Rights, 1948

The year 1948 will be remembered as the human rights year in true sense because the creation of landmark document such as UDHR paved the way in the establishment of a society where the dignity of man and faith in the fundamental human rights was declared to be at the topmost. It is advisory in nature. The construction of UDHR blends the anti-human trafficking legal regime with the flavor of human rights; while before that date, the issue was being treated as criminal justice response only. It categorically professes in its preamble that any disregard for human rights results in war-like situations and world peace can only be achieved through recognizing the inherent dignity and of the equal and inalienable rights of all members of human family. The very first article states that all human beings are born free and equal in dignity and rights. Slavery and all its related acts are prohibited and right to life is acknowledged.⁵¹⁷ The Declaration specifically provides the prohibition as under: -

*"No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."*⁵¹⁸

All the provisions contained in the UDHR are aspirations to which every civilized society must adopt in their scope. These universally accepted guiding golden principles

⁵¹⁷ Article 3 and 4 of the Declaration.

⁵¹⁸ Article 4 of the Declaration.

must be adhered by the entire world in their dealings. It set out, for the first time, universal protection of fundamental human rights and became part of customary international law. The UDHR is a document embodying the basic rights for all human-beings, but the same is not legally binding document on state parties.⁵¹⁹ In 1950, the UN General Assembly declared that the enjoyments of civil and political freedom and of economic, social and cultural rights are interconnected and interdependent.⁵²⁰ Pakistan has ratified the UDHR on 10th December, 1948.

7.8.1.2 International Covenant on Civil and Political Rights, 1966

To codify the rights contained in the UDHR, two treaties are created i.e. international Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). The task was given to Human Rights Commission. It prepared the draft of ICCPR at its 9th and 10th Sessions in 1953 and 1954 respectively. The ICCPR recognizes that all the human rights are derived from the inherent dignity of the human person. The relevant provisions of ICCPR are as under: -

*"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. No one shall be required to perform forced or compulsory labor."*⁵²¹

The ICCPR establishes a Human Rights Committee (HRC) whose members are often called the experts.⁵²² The HRC is given the task to monitor and supervise the application of the ICCPR obligations by the member states which undertake to submit the

⁵¹⁹ Howard Tolley Jr. "Decision Making at the United Nations Commission on Human Rights, 1979-82," *Human Rights Quarterly* 5 (1983): 1. It states that a Declaration by the UN takes the form of a resolution, like a congressional resolution, and the same has no legal force of its own. Covenants, Conventions and treaties are agreements by which nation states undertake legally binding obligations.

⁵²⁰ United Nations' Fact Sheet No. 2 (Rev. 1), the International Bill of Human Rights. < <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> > (accessed on 06-05-2018).

⁵²¹ Article 8 of the ICCPR. The clause 3 provides certain exceptions of forced labor such as (i) any work or service normally required under lawful detention of a person; (ii) any service of a military character and 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 civic obligations.

⁵²² Ibid. Article 28. The Experts are not the representatives of their respective governments; rather they perform services in their personal capacity.

annual reports to it on the measures they have adopted so far to give effect to the rights acknowledged therein.⁵²³ However, most of the rights enshrined in the ICCPR are already guaranteed in the Constitution of Pakistan in its chapter of Fundamental Rights. Pakistan has ratified the ICCPR in June, 2010.

7.8.1.3 International Covenant on Economic, Social and Cultural Rights, 1966

Like ICCPR, the ICESCR also recognizes the inherent dignity of human person. It commits state parties to work towards the granting of various rights to individuals including the labor rights and adequate living standards. The relevant provision is as under: -

“The state parties recognize the right of every one to the enjoyment of just and favorable conditions of work which ensure, in particular: (a) remuneration which provides all workers, as a minimum, with: (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) safe and healthy working conditions; (c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”⁵²⁴

Like HRC supra, the ICESCR establishes a Committee on the Economic, Social and Cultural Rights (CESCR) that monitors the application of ICESCR by the member states.⁵²⁵ Pakistan has signed the ICESCR on 3rd November, 2004 and ratified the same on 17th April, 2008. The UN had long been dynamic in the arena of protection of human

⁵²³ Ibid. Article 40.

⁵²⁴ Article 7 of ICESCR.

⁵²⁵ The CESCR is established on 28th May, 1985 under the ECOSOC Resolution 1985/17 to monitor the functions of ECOSOC in Part IV of the ICESCR. Like HRC, the experts serve in their personal capacity and not as government representatives.

rights and held the World Conference on Human Rights, on 14th to 25th June, 1993 in Vienna. The Conference made extensive debates over various forms of human rights including women's rights, indigenous peoples' rights, minority rights etc. In its last Session, the Vienna Declaration and Program of Action was adopted by consensus. Building on the principles of International Bill of Human Rights, the Declaration acknowledged the promotion and protection of human rights as a matter of priority for the international community. It was further recognized that the fountain of all human rights is the dignity of human person and all other rights emerge from it. Women and children, particularly girl-children, were given special emphasis with respect to their human rights.⁵²⁶ They as discussed as under: -

7.9 International Instruments Pertaining to Children Rights

The children are the victims of many evils including the prostitution, slavery, human trafficking etc. The international law for their protection contains the following instruments.

7.9.1 The Hague Convention on the Civil Aspects of International Child Abduction, 1980

The term '*international child abduction*' generally includes the child kidnapping, snatching and stealing. It refers to illegal removal of children from their home by an acquaintance to a foreign country. The Hague Convention on the Civil Aspects of international Child Abduction is a treaty advanced by the Hague Conference on Private International Law which was signed on 25th October, 1980. The cross-border child trafficking and exploitation of children had become major problem, so this Convention was adopted. This Convention is not only applied on abduction of children by parents in

⁵²⁶ Articles 18 and 36 to 53 of the Declaration.

case of dispute of inter-state parents, but also by third parties.⁵²⁷ Some abductions are related with definite forms of cross-border migration for work or any other reason.⁵²⁸ So is concluded that this Convention also functions where the cross-border abductions are carried out by the persons unknown to the family for the purpose of work etc. Such children may be engaged in exploitative labor as well. So this Convention is relevant to human trafficking legal regime. The Convention provides the return of such children through the Central Authority appointed by the state parties. Pakistan's cabinet acceded to this Convention on 22nd December, 2016. It became the contracting state to this Convention on 1st March, 2017.

7.9.2 Minimum Age Convention, 1973

The child labor is another concern for international legal regime of human trafficking. With a view to achieve complete abolition of child labor, the ILO Convention No. 138 concerning Minimum Age for Admission to Employment Convention (Minimum Age Convention), 1973 is an attempt to eliminate the same. The child work is prohibited on account that "each member state shall follow a national policy intended to guarantee the effective abolition of child labor and to raise the minimum age for employment or work consistent with his physical and mental development."⁵²⁹ The minimum age for admission to any type of employment or work which is likely to be hazardous to health, safety or morals shall not be less than eighteen years.⁵³⁰ However, national laws may permit a child for other work from the age of sixteen years. It further provides that the provisions shall be applicable as minimum to the manufacturing, mining, transport,

⁵²⁷ William Duncan. "Transcript: Globalization of The Hague Children's Convention with Emphasis on the Child Abduction Convention," *Oklahoma Law Review* 63 (2011): 4.

⁵²⁸ Ibid. The author writes in his article that in a recent case, a number of Kenyan children had been abducted from Kenya by the child traffickers for exploitative labor and sex work. They were eventually discovered retaining forcefully by them in London. The Kenyan authorities used diplomatic and consular channels to recover these children.

⁵²⁹ Article 1 of the 1973 Convention.

⁵³⁰ Ibid. Article 3 (1).

plantation, gas and water, electricity, sanitary services, construction, storage and communication and other agricultural undertakings mainly producing for commercial purposes.⁵³¹ Any kind of light work may be exacted from children of thirteen to fifteen years of age.⁵³² The obligations to eradicate child labor are relevant in child trafficking where they are economically exploited. Pakistan has ratified this Convention on 06th July, 2006.

7.9.3 The Convention on the Rights of the Child, 1989

In order to protect the children from the clutches of these menaces, the UN General Assembly adopted the Convention on the Rights of the Child (CRC) on 20th November, 1989 which entered into force on 2nd December, 1990, recognizing the fact that childhood is entitled to exceptional attention and safeguard by reason of his bodily and intellectual naivety. What is important for the purpose of the present thesis is that the Convention specifically prohibits the traffic in children as under: -

*“The state parties shall take all appropriate national, bilateral and multi-lateral measures to prevent abduction of, the sale of or traffic in children for any purpose or in any form.”*⁵³³

The Convention requires the state parties to take all appropriate measures to protect children from all forms of exploitations including sexual abuse.⁵³⁴ Specific provisions of child labor and sexual trafficking with respect to protections from economic exploitation and sexual exploitation respectively are also included in the following terms:

Child Labor: *“The government should protect children from work that is dangerous or might harm their health or education. While the Convention protects children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age. If children help out in a family farm or business, the tasks they do be safe and*

⁵³¹ Ibid. Article 5 (3).

⁵³² Ibid. Article 7(1).

⁵³³ Article 35 of the CRC.

⁵³⁴ Ibid. Articles 19, 36 and 39.

suited to their level of development and comply with national labor laws. Children's work should not jeopardize any of their rights, including the right to education, or the right to relaxation and play."⁵³⁵

Sexual Exploitation: "Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography."⁵³⁶

Abduction, Sale and Trafficking: "The government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography."⁵³⁷

Other forms of Exploitation: "Children should be protected from any activity that takes advantage of them or could harm their welfare and development."⁵³⁸

As far as the child trafficking for the purpose of illegal adoption are concerned, the Convention covers relevant provisions such as extended safeguards pertaining to adoption, particularly inter-country adoptions.⁵³⁹ The Convention places the child below the age of 18 years unless the age of majority is earlier in any national legislation.⁵⁴⁰ The state parties agreed to protect the child from all forms of sexual exploitation and sexual abuse.⁵⁴¹ Further, the state parties agreed to take all appropriate measures to prevent the abduction of, the sale of or traffic for any purpose or in any form.⁵⁴² It is the very first international treaty to address the children's rights exclusively and comprehensively, together with the most extensively ratified human rights treaty in the world.⁵⁴³ Pakistan

⁵³⁵ Article 32 of the CRC.

⁵³⁶ Ibid. Article 34.

⁵³⁷ Ibid. Article 35.

⁵³⁸ Ibid. Article 36.

⁵³⁹ Ibid. Article 21.

⁵⁴⁰ Ibid. Article 1.

⁵⁴¹ Ibid. Article 34. It further stipulates that for the achievement of purposes, the state parties shall 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 performances and materials.

⁵⁴² Ibid. Article 35.

⁵⁴³ Osifunke Ekundayo. "Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC)'s Provisions? Examining the Similarities and the Differences between the ACRWC and the CRC," *International Journal of Humanities and Social Sciences* 5 (July 2015): 7 (1).

has signed the CRC on 20th September, 1990 and ratified the same on 12th November, 1990.

7.9.4 Declarations of World Congresses against the Commercial Sexual Exploitation of Children

Commercial sexual exploitation of children (CSEC) involves prostitution of children and child pornography. The children are subject to forced labor, slavery and human trafficking. In 1996, the world community held the First Declaration of the World Congress against Commercial Sexual Exploitation of Children in Stockholm and defined CSEC as under: -

“Sexual abuse by the adult and remuneration in cash or kind to the child or a third person (s); the child is treated as a sexual object and as a commercial object.”⁵⁴⁴

The ILO defines CSEC as the use of children in sexual activities remunerated in cash or in kind; trafficking of children for sex trade; child sex tourism; the production, promotion and distribution of pornography involving children; and the use of children in sex shows.⁵⁴⁵ The CSEC uses the word commercial which includes child sex tourism and other forms of transactional sex where a child is engaged in sexual activities by his own family members to have key needs fulfilled such as food, shelter or access to education.⁵⁴⁶ In this regard, the CSEC is sometimes close to survival sex. Children who are trafficked are generally trafficked for the purpose of CSEC, so child trafficking and CSEC are at times overlapping each other. The TVPA’s definition of severe forms of trafficking in persons also includes the commercial sex act performed by a minor.⁵⁴⁷ The ILO’s Convention No. 182 refers to the use, procuring or offering a child for prostitution or

⁵⁴⁴ Stephen Clift and Simon Carter, *Tourism and Sex: Culture, Commerce and Coercion* (Pinter, 2000). ISBN 1-85567-636-2.

⁵⁴⁵ Commercial Sexual Exploitation of Children and Adolescents: the ILO’s Response,” International Program on the Elimination of Child Labor (IPEC).

⁵⁴⁶ Google’s main article “Sexual Commercial Exploitation of Children.”

⁵⁴⁷ Article 8 (A) of the TVPA, 2000.

pornographic purposes as a worst form of child labor.⁵⁴⁸ These children are trafficked for immoral purposes not only across borders but also within the country. The Second World Congress on the Commercial Sexual Exploitation against the Children and Adolescents was adopted on 2001 in Yokohama. The third World Congress on the Commercial Sexual Exploitation against the Children and Adolescents was adopted on 2008 in Rio de Janeiro. The World Congresses are significant occasions that attract international attention to the important subject of sexual exploitation of children and adolescents.

7.9.5 The Worst Forms of Child Labor Convention, 1999

As discussed above, children are the most vulnerable victims of human trafficking and slavery. The children are in worst conditions once trafficked. The ILO regulated the child labor and adopted the Worst Forms of Child Labor Convention (Convention No. 182), on 1st June, 1999.⁵⁴⁹ To begin with, the Convention stipulates that the prohibition and elimination of worst forms of child labor shall be taken as a matter of urgency.⁵⁵⁰ Child is defined as a person under the age of eighteen years.⁵⁵¹ The term worst forms of child labor is defined as under: -

“(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child or prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”⁵⁵²

⁵⁴⁸ Article 3 of the Co 182.

⁵⁴⁹ The long name is the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

⁵⁵⁰ Article 1 of the Convention.

⁵⁵¹ Ibid. Article 2.

⁵⁵² Ibid. Article 3.

As per above definition, forced labor, trafficking and prostitution of children meet the requirements of worst forms of child labor. Pakistan became member state to this Convention on 11th October, 2001.

7.9.6 First Optional Protocol to the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

The United Nations Commission on Human Rights (UNCHR) had a long history of concern with the child rights.⁵⁵³ The Working Group on Slavery established in 1974 used to hold annual meetings. It also considered the severe forms of exploitation of children including prostitution and trafficking. In 1990, the UNCHR appointed a Special Rapporteur on the sale of children, child prostitution and pornography. In 1992, the Commission adopted the Program of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography prepared by the Working Group. In 1994, the Commission adopted a resolution on the need for effective international measures to prevent and eradicate the sale of children, child prostitution and child pornography. The resolution brought back the Vienna Declaration and Program of Action 1993 that called for effective measures against various child issues. The works of UNICEF and ILO on child exploitation were noted down. The Commission warranted a draft optional protocol to the CRC concerning elimination of sexual exploitation and trafficking of children. The First World Congress against Commercial Sexual Exploitation of Children and the NGOs community put their active indulgence in this regard. Ultimately, a draft was finalized because of the serious global concern with child exploitation that led to the adoption of the first optional protocol.

The CRC is supplemented by two Optional Protocols. The UN adopted the First Optional Protocol to the Rights of the Child on the Sale of Children, Child Prostitution

⁵⁵³ Until 2006, UNHRs Commission was the principal human rights forum when it was replaced by the Human Rights Council by UN General Assembly Resolution A/RES/60/251 of 15 March 2006.

7.11 Regional Conventions on the basis of Human Rights

The recognition of Human Rights had gained much importance since the introduction of international bill of human rights. Various international instruments were enacted on the basis of human rights. Some regional instruments were also adopted which are being discussed below: -

7.11.1 European Convention on Human Rights

After the end of WW-II, from 7th-11th May, 1948, the Hague Congress was held in the Congress of Europe to discuss various issues including forming a European Convention of Human Rights (ECHR) and fundamental freedoms at the Council of Europe. The idea of proposed rights to be protected was taken from the UDHR. The Convention entered into force on 03rd September, 1953. It is divided into five sections which further consist of articles. The most relevant article of the Convention with the instant research thesis is the article 4 of Section-I which categorically prohibits slavery, servitude and forced or compulsory labor. Other relevant protections such as right to life, right to liberty, right to marry etc. are also addressed. The Council of Europe desired to go a step further from the aspirations of UDHR; hence, in addition of the Convention, a special human rights court called the European Court of Human Rights was also established in order for practical implementation of the Convention.

In *L.E. versus Greece*,⁵⁶¹ the Court held that article 4 imposes three positive responsibilities on the states. Firstly, it is obligatory on the states to adopt an effective and regulatory framework proposing protection to the real and possible victims of trafficking; secondly, protective operational measures must be adopted by the states; and thirdly, effective investigations must be conducted by the states. In *Chowdury and others versus*

⁵⁶¹ Application No. 71545/12, 21st January, 2016. Brief facts of the case are that the applicant is a Nigerian national residing in Athens where she was transported in 2004 on the pretext of job. On arrival, her passport and other travelling documents were confiscated and she was forced to prostitution. She alleged that the Greece had failed to adhere to the positive obligations towards her as a victim of prostitution and human trafficking under article 4.

Greece,⁵⁶² the Court held that forced labor establishes one form of exploitation incorporated by the definition of human trafficking because the workers were in a state of vulnerability for undocumented status. Such treatment did not fall within the definition of slavery under article 4 of the ECHR. The Patras criminal court had frustrated the definition of slavery with human trafficking. The facts evidently exhibited the forced labor and human trafficking as defined in article 3 (a) of the Palermo Protocol and article 4 (2) of the ECHR and Greece had violated the article 4 of the ECHR. In *S.M. Versus Croatia*,⁵⁶³ the Court observed that this is the first case on which it had to consider whether article 4 of ECHR was applicable to the sexual trafficking and exploitation of women for the purpose of prostitution? It was held that not only human trafficking itself but also exploitation of women for the purpose of prostitution fell within the scope of article 4 of the ECHR.

7.11.2 Inter-American Convention on Human Rights

Various countries of the world were concerned about the protection of human rights and became part not only of the international instruments, but also enacted regional

⁵⁶² Application No. 21884/15, 30th March, 2017. Brief facts of the case are that in 2012-13, around 50 Bangladeshi men with undocumented status were workers in a strawberry farm in Manolada in Greece. The employer took edge of their want of immigration papers and permission to work. They worked long hours a day for seven days a week under the supervision of armed guards, but were never paid the settled wages. Their living conditions were highly unhygienic. So they went on strike. The employer replaced them with new workers. The workers again went in the field to demand their wages because they feared that if they left jobs, they would never receive pay owing and would also be at risk of detention centre or deportation. But they still continued their protest. The guards shot down many workers, injuring about 42 of them. During the investigation, the Patras Criminal Court acquitted the four defendants on the charge of labor trafficking on the ground that the objective element of the offence had not been established in the case, with further observation that the workers were quite cognizant of the living conditions, amount of salary etc. During their leisure time, they could move anywhere without any restraint in the area. There had been no evidence that their vulnerability had been exploited. The acquittals were challenged. Before the ECHR, the applicants stated that they were subjected to human trafficking and forced labor. Further, the Greece has badly failed to adhere to the positive obligations under article 4 to protect them against the maltreatment, to conduct an effective investigation, and to prosecute the offenders.

⁵⁶³ Application No. 60561/14, 19th July, 2018. Brief facts of the case are that the applicant registered a complaint against T.M, alleging therein that he had physically and psychologically forced her into prostitution since several months. Her movement had been under his control and upon refusal for sexual services to his clients, she had been subjected to physically torture. She was given the status of victim of sexual trafficking. The accused was acquitted from the charge of sexual trafficking due to lack of sufficient evidence produced by the prosecution such as the authorities had failed to investigate the important witnesses, including the applicant's clients etc.

instruments which were the part of international legal regime. The Inter-American Convention of Human Rights (IACHR) (also known as Pact of San Jose) is an example of the same which was adopted by many countries of the Western Hemisphere on 22nd November, 1969, offering better guarantees for the protection of human rights in the area. The adoption of the Convention was based on the premise of social justice, reiterating the ideals of the International Bill of Human Rights. The American signatory states agreed to ensure, inter alia, the right to juridical personality,⁵⁶⁴ the right to life,⁵⁶⁵ the right to humane treatment,⁵⁶⁶ freedom from slavery and forced labor.⁵⁶⁷ An Inter-American Court of Human Rights was established having jurisdiction to entertain all cases as to the interpretation and application of the provisions of this Convention.⁵⁶⁸ The addition of right to juridical personality in the ICCPR and then in this Convention was a novelty in the arena of human rights.

In *Trabajadores de la hacienda Brasil Verse versus Brasil*,⁵⁶⁹ the Court has proceeded for first condemnation for labor slavery and human trafficking under the IACHR. The workers had been subjected to human trafficking, debt bondage, forced labor and slavery. The Court viewed that states should adopt wide-spread measures in

⁵⁶⁴ Chapter 2, Article 3 states that every person has the right to recognition as a person before the law. This right is also recognized by the ICCPR under article 16. Juridical personality deals with the right to be recognized as person before the law, which is always destroyed in cases of slavery. The right to recognition of personality before the law represents a parameter to determine whether a person is entitled to any given rights and whether such person can enforce such rights. The failure to acknowledge or recognize the capability of a person to exercise and enjoy rights and obligations places the person in vulnerable position in relation to state or third parties. In cases of statelessness, the right to juridical personality is always at risk, which breeds the problems of forced labor and slavery.

⁵⁶⁵ Article 4 of the Convention. Every person has the right to have his life respected.

⁵⁶⁶ Ibid. Article 5. Every person has the right to have his physical, mental, and moral integrity respected.

⁵⁶⁷ Ibid. Article 6. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. 2. No one shall be required to perform forced or compulsory labor.

⁵⁶⁸ See Section 1, Article 52 and Section 2, Article 61 respectively of the Chapter VIII.

⁵⁶⁹ IACHR Court decision of 20th October, 2016. Brief facts of the case are that some people were recruited as workers through a contractor against the offers of handsome salaries, transportation, lodging and meals in the Hacienda Barsil Verde. Reaching the workplace, the workers were treated like animals. Their travelling documents were confiscated and were forced to sign blank contracts. Working hours were long, living condition was miserable, wages were low, medical facilities were nothing and meal was of poor quality. In spite of all this, they had been subjected to physical tortured under threats, dire consequences and armed surveillance. Two workers managed to escape the workplace through jungle area and complained about the situation of rest of the workers. Upon investigation, the abuses were verified.

cases of slavery, human trafficking, servitude and forced labor. A significant legal framework is necessary that should be applied effectively and prevention policies should allow an efficient response to complaints. It further observed that where the states are aware of the act which establishes human trafficking, slavery, servitude or forced labor on account of the terms provided under article 6 of the IACHR, they must commence *ex officio* investigation in order to ascertain the corresponding individual responsibilities. This ruling marked the historical event because it is the first time that the prohibition of slave labor is made applicable in a case on the continent, taking into account a responsibility of a state to resist human trafficking, slavery and forced labor.

7.11.3 African Charter on Human and Peoples' Rights

The far reaching protections of human rights also cover the African Continent which was once the center of slave trade and slavery throughout the human history. African countries gathered under the aegis of the Organization of African Unity to draft a continent-wide-ranging human rights instrument. Like the European and American Conventions on Human Rights, the Africans also adopted a regional treaty for the protection of human rights within the region, intitled, the African Charter on Human and Peoples' Rights, on 27th June, 1981. Four basic objectives i.e. freedom, equality, justice and dignity were considered essential for the achievement of the legitimate aspirations of the African peoples.⁵⁷⁰ The Charter stipulated the right to respect of the dignity inherent in a human being and all forms of exploitation and degradation particularly slavery, slave trade and inhumane treatment shall be prohibited.⁵⁷¹ Impressed with the UN Convention of the Rights of the Child, 1990, the African Continent also adopted the African Charter on the Rights and Welfare of the Child, in 1990. The state parties while considering the system of adoption as a source of trafficking of children agreed to take all appropriate

⁵⁷⁰ Preamble of the Charter.

⁵⁷¹ Ibid. Article 5.

measures to ensure that the inter-country adoption does not result in trafficking or improper financial gain for those who try to adopt a child.⁵⁷² Further, to take measures to prevent the abduction, sale or traffic in children for any purpose or in any form.⁵⁷³

7.11.4 Cairo Declaration of Human Rights

The UDHR, having primary objective of creating a framework for a universal code based on mutual understanding of world-wide applicability, was under criticism by many Muslim countries on the allegation that the said document only reflexes to take into account the culture of Western countries while ignoring the cultural and religious contexts of non-western countries.⁵⁷⁴ The cultural relativism came in the way of UDHR recognizing it the universal document which confused the universal human rights issue. As a response, the Muslim world under the unity of Organization of Islamic Cooperation (OIC) adopted the Cairo Declaration on Human Rights in Islam (CDHRI) on 5th August, 1990 which provided an overview on the Islamic perspective of human rights and affirmed Islamic Shariah as its sole source. It starts with the recognition of equality of men in terms of basic human dignity without any discrimination of race, color, language, sex, religious beliefs, political affiliation, social status or other considerations,⁵⁷⁵ coupled with giving equal rights to women in human dignity.⁵⁷⁶ Enslavement, humiliation and exploitation of any human being are totally prohibited.⁵⁷⁷

⁵⁷² Ibid. Article 24 (d).

⁵⁷³ Ibid. Article 29.

⁵⁷⁴ David G. Littman. "Human Rights and Human Wrongs," *National Review* (January 19, 2003), retrieved May 30, 2012. Iran had showed its reservation on the UDHR previously in 1981 at the 36th Session of the UN General Assembly by saying that the UDHR was a secular interpretation of the Jeudo-Christian tradition and the same could not be implemented by the Muslims; if a choice had to be made between its stipulations and the divine law of the country, Iran would always like to choose Islamic law.

⁵⁷⁵ Article 1 of the Declaration.

⁵⁷⁶ Ibid. Article 6.

⁵⁷⁷ Ibid. Article 11. The article in clause (b) strictly prohibits the colonialism of all types being one of the vilest forms of enslavement.

7.11.5 Arab Charter of Human Rights, 1994

Like other regional treaties, the League of Arab States also decided to draft a charter on human rights in the year 1960. The Arab Commission on Human Rights prepared a draft and the same was adopted as Arab Charter on Human Rights on 15th September, 1994. Forced labor was prohibited with some exception.⁵⁷⁸

7.12 International Instruments Pertaining to Pornography or Obscene Publications

It is discussed in the previous chapter that obscene publications, prostitution and human trafficking have close nexus, so anti-pornography legal regime has also an important role in the anti-human trafficking legal regime. Previously, Agreement for Obscene Publication, 1910 was turned into the Convention of 1923 as discussed earlier. The UN General Assembly under resolution 126 (II) sanctioned an amendment in the Convention 1923. On 20th October, 1947, a Protocol to amend the Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, concluded at Geneva on 12th September, 1923, was approved on 12th November, 1947. The parties undertake to attribute legal force and effect to, and duly apply the amendments to this instrument provided in the annex.⁵⁷⁹ These necessary amendments were made in order to bring the instrument up to date.

7.12.1 Protocol Amending the Agreement for the Suppression of the Circulation of Obscene Publication, 1949

The UN paved another step by approving the Protocol amending the Agreement for the Suppression of the Circulation of Obscene Publication, 1949. It was an amended anti-pornography treaty that was initially negotiated and concluded in 1910 as discussed in the previous chapter. The main purpose of this Protocol was to assume the functions to

⁵⁷⁸ Article 31 states that free choice is guaranteed and forced labor is prohibited. Compelling a person to perform work under the terms of a court judgment shall not be deemed to constitute forced labor.

⁵⁷⁹ Article 1 of the Protocol. In the annex, it is provided that articles 8, 9, 10, 12, 14, 15 and 16 were amended; while article 13 was deleted.

UN already exercised by the French Government. At the same time, the ILO was also active with respect to its objectives. In order to suppress even single piece of forced labor, the originally drafted Convention concerning Wages, Hours of Work on Board Ship and Manning was revised by ILO in 1949. Pakistan has signed this treaty on 13th May, 1949 and accepted the same on 04th May, 1951.

7.13 International Instruments Pertaining to Migration

Black's Law Dictionary defines migration as *the movement from one country or region to another*. Migrant is the person who moves from one region to another. Black's law Dictionary defines *refugee is a person who flees or is expelled from a country, especially because of persecution, and seeks haven in another country*. Migrants and refugees are persons who are seeking new homes in other countries. A mark of demarcation is drawn between them as of choice. Migrant himself chooses to move; while refugee is forced to leave. Migration is a generic term; while refugee is the species. However, in both cases, movement to other region or country is essential. These people are most vulnerable in the destination country due to their uncertain status. They are exposed to sexual abuses and forced labor at the hands of traffickers and opportunists. Women and child refugees and migrants are believed to fall victims of trafficking and sexual exploitation.

Migration issues such as irregular migration involving undocumented entry and stay in a foreign country are often linked to human trafficking. In view of that, treaties concerning migration may be made applicable to protect trafficked persons. The UN was concern about the status of migrants and refugees as they were the very victims of forced labor, human trafficking and slavery like conditions throughout the globe. It scandalized the notion that sexual exploitation and forced labor were the offshoots of migration and refugee issues. At the end of WW-II, approximately three million displaced people from

Soviet Union to Western Europe were forced to labor in Germany and occupied territories and forced labor was on unprecedented scale.⁵⁸⁰ Indeed, the massive movement of migrants and refugees became the most worrying situation causing vulnerable children, women and men to be easily exploited by the traffickers. Migrants seek job opportunities in other countries and labor matters were being dealt with exclusively by the ILO; hence, ILO Convention No. 86 and 97, Migration for Employment Recommendation, 1949 and Migration for Employment Convention, 1949, respectively are relevant. Migrant for employment means: -

“A person who migrates from one country to another with a view to being employed otherwise than on his own account.”⁵⁸¹

The following international instruments relate with the subject.

7.13.1 Convention Relating to the Status of Refugees, 1951

Grounded in the article 14 of the UDHR, which recognized the right of persons seeking asylum from persecution in other states, the UN adopted the Convention relating to the Status of Refugees on 28th July, 1951 which entered into force on 22nd April, 1954. The Convention defines refugee as under: -

“A person who is unable or unwilling to return to his country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”⁵⁸²

The Convention, being post WW-II instrument, was initially restricted in scope to those persons escaping events happening before 1st January, 1951 and within Europe. The Convention specifically discussed the right to life, liberty, security and freedom from discrimination.

⁵⁸⁰ These displaced persons were called Ostarbeiter or Eastern Workers (a title given to foreign slave workers by Nazi Germans to perform forced labor during WW-II)

⁵⁸¹Article 1 of the Recommendation.

⁵⁸²Article 1 of the Convention.

7.13.2 The Convention Relating to the Status of Stateless Persons, 1954

The Convention 1951 on the Status of Refugees did not prove satisfactory and world has to see another aspect to the vulnerability of persons who are called stateless persons. The world was facing the problems of some persons who were falling in the category of refugees. Although some stateless persons are refugees and some refugees are stateless persons. A difference is sometimes made between de-jure and de-facto stateless. These stateless persons were highly vulnerable to forced labor, prostitution, human trafficking and slavery like conditions. The lack of secured livelihood opportunities can force women to have recourse to prostitution or to engage in survival sex.⁵⁸³ Their position was worse than those of refugees. The UN did not leave this area un-noticed in the fight against human trafficking and its related acts. In continuation to the previous commitments made under the Charter of UN Charter and the UDHR, the UN, in addition to the 1951 Refugees Convention, approved the Convention relating to the Status of Stateless Persons, on 28th September 1954 which entered into force on 6th June 1960. The Convention defines the term stateless person as a person who is not considered as a national by any state under the operation of its law.⁵⁸⁴ It, however, excludes some categories of persons to whom this Convention is not extended.⁵⁸⁵ Like migrants, statelessness persons are also vulnerable to human trafficking.

7.13.3 Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990

The UN was convinced of the need to bring about the international protection of the rights of all migrants and their families because migration affects a large number of

⁵⁸³ UN Commission on Human Rights, Addendum to the Report of the Representative of the Secretary General on Internally Displaced Persons on Profiles in Displacement: Follow up Mission to Colombia, 11 January, 2000. < <http://www.unhcr.org/refworld/docid/45377aaf20.html> > (accessed on 17-09-2017).

⁵⁸⁴ Article 1 of the Convention.

⁵⁸⁵Ibid. Article 2 says that this Convention shall not apply (i) to persons who are receiving protection or assistance from organ of UN; (ii) to persons who are recognized by the competent authorities of the country; (iii) to persons who have committed crime against peace, a war crime, crime against humanity, serious political crime or committed acts contrary to principles of UN.

states due to vulnerable situation of migrants who are mostly the victims of trafficking. The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families was adopted on 18th December, 1990 which entered into force on 1st July, 2003. The Convention aims at preventing the exploitation of migrant workers through a set of standards to describe the treatment, welfare and human rights of both documented and undocumented migrants.⁵⁸⁶ Some forms of exploitation relevant to this study are prohibited as under: -

“No migrant worker or member of his family shall be held in slavery or servitude; no migrant worker or member of his family shall be required to perform forced or compulsory labor.”⁵⁸⁷

Pakistan neither ratified nor signed the Convention. Accordingly, the obligations emanating from the Convention do not directly apply to Pakistan being non-party to the Convention. However, the prohibitions are otherwise relevant through other treaties or jus cogen norms of international law.

7.14 International Criminal Court and Human Trafficking

International law was much developed in the 20th century, but there was still criticism that in the absence of any international tribunal, the international law is of no significance. The UN General Assembly convened a diplomatic conference in Rome in June 1998 in order to finalize and adopt a convention for the establishment of an international criminal court. The conference adopted the Rome Statute of the International Criminal Court establishing the International Criminal Court (ICC) on 17th July, 1998 which entered into force on 1st July, 2002. The Rome Statute established four core international crimes i.e. genocide, crime against humanity, war crimes and crime of

⁵⁸⁶ Preamble and article 7 of the Convention.

⁵⁸⁷ Ibid. Article 11.

aggression.⁵⁸⁸ Out of these four, crime against humanity as defined by the Statute is relevant to the discussion of this thesis which means an act of enslavement; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; sexual slavery; enforced prostitution or any other form of sexual violence of comparable gravity; other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health, when committed as part of a widespread or systematic attack directed against any civilian population.⁵⁸⁹ Enslavement is defined as under: -

“The exercise of any or all powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”⁵⁹⁰

This definition of enslavement is similar to the definition of slavery in Slavery Convention, 1926, but additionally, includes human trafficking when ownership is exercised over the trafficked person. It is maintained by some authors that human trafficking may be prosecuted under the crime of enslavement in the International Criminal Court. From the definition above, the enslavement, sexual slavery and enforced prostitution are categorized as international crimes. As enslavement is the exercising power to the right of ownership over a person even in the course of trafficking of such person; hence, the human trafficking may be also a crime under the international law of Rome Statute. However, the hallmarks of such crimes lie in their mass-scale and systematic nature. In addition to this, this definition of enslavement is something confusing to the previous 1950 Traffic in Persons Convention in that no exercise of ownership powers over the trafficked persons is required by the Convention. It excludes other persons such as recruiters, transporters, agents etc. of human trafficking because

⁵⁸⁸ Article 5 of the Statute.

⁵⁸⁹ Ibid. Article 7.

⁵⁹⁰ Ibid. Article 7 (2)(c).

they do not exercise ownership powers over the trafficked persons. Pakistan is one of 120 states in 1998 which voted in favor of adopting the final text of the Rome Statute seeking to establish the independent International Criminal Court; however, it has not signed and ratified the ICC treaty so far.

7.15 International Instruments Pertaining to Human Trafficking

Human trafficking involves violations of other laws as discussed in the preceding chapters. Over the last two hundred years, a legal regime for abolition of human exploitation in the forms of slave trade, slavery, forced labor, debt bondage, serfdom and servile marriage evolved. Trafficking in women and children for the purpose of prostitution was major concern being incompatible with the dignity and honor of human beings and infringement of fundamental human rights. So women and children rights were recognized through various treaties. Human migration was also an important factor for human trafficking for which treaties on migrants and their families' protection were also concluded. ILO played its role for the protection of labor rights and elimination of labor violations. The issue of human exploitation in its various forms also is looked into human rights perspective. All the above measures were taken in order to combat the human trafficking, but there was no dedicated international law on the subject. The SAARC countries introduced their regional law on the subject previously which will be discussed in the proceeding paragraphs. So it was need of the time to introduce specific legislation. The specific legal regime is discussed as under: -

7.15.1 SAARC Convention on Human Trafficking

The SAARC countries are points of sending, receiving and transit of trafficked women and children, so the provisions of relevant international legal instruments including the Convention 1949, Convention 1979, UDHR and Convention 1989, were

decided to strengthen in the region.⁵⁹¹ In this regard, SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution was passed on 1st May, 1997. Some important definitions are as under: -

“Child means a person who has not attained the age of 18 years; prostitution means the sexual exploitation or abuse of person for commercial purposes; trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking; traffickers mean the persons, agencies or institutions engaged in any form of trafficking; persons subjected to trafficking means women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means.”⁵⁹²

Human trafficking is made punishable offence; even an attempt or abetment to commit the offence is made punishable.⁵⁹³ Aggravating circumstances are described as under:

“(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 in 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 other places to which children or students visit for educational, sports, social and cultural activities; (g) Previous conviction, particularly for similar offences, whether in a member state or in any other country.”⁵⁹⁴

The measures for prevention of crime, protection of victims and prosecution of offender are also discussed under the Convention.

⁵⁹¹ SAARC countries is the association of seven countries such as Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka in the South Asia region of the world. Their objective is to promote the welfare of the people of the region and to improve their quality of life.

⁵⁹² Article 1 of the SAARC Convention.

⁵⁹³ Ibid. Article III.

⁵⁹⁴ Ibid. Article IV.

7.15.2 Transnational Organized Crimes

The start of 21st century can be rightly marked as the century of suppression of transnational organized crimes which paved a new era in the international co-operation. The world was already facing organized crimes within various state borders such as countries were facing trafficking in persons, drugs and arms etc. The world's viewpoint changed when organizations of one country committed crimes whose effects were felt in other countries as well. The organized crimes became more diversified, enhancing criminal networks more widely. The character changed from organized crimes to transnational organized crimes.⁵⁹⁵ The globalization truly muddled the issue. The transnational organized crime became a defining issue of the 21st century's policy makers. It increased in scale and extent, becoming a complex world-wide threat. Transnational crime groups thrive because these crime groups are main beneficiaries of globalization. They take benefit of enlarged travel, trade, rapid money movements, telecommunications and computer links.⁵⁹⁶ Human trafficking is a transnational crime with national implications. So the new era of human trafficking manifests the combating of human trafficking in the perspective of organized crime.

7.15.3 Trafficking Victims Protection Act, 2000

Though the US law against human trafficking is not an international law, so is the mandate neither of this chapter nor this thesis, but to discuss this law in this chapter is

⁵⁹⁵ Organized crime is the classification of groupings of highly centralized enterprises run by criminals who intend to engage in illegal activities, most commonly for money and profit. These groups are disciplined enough to be considered as organized. They commit the offence in such an organized manner, while transnational crimes are those crimes that have actual effect across national borders. These crimes are intrastate but upset the fundamental morals of international community. Cross border interference is an essential part of the criminal activity. They take place in one country and their consequences significantly affect another country and all transit countries are also involved. From the definitions of both the terms, it is clear that transnational organized crimes are those organized crimes which are coordinated across national borders, involving groups or networks of individuals in more than one country to plan and execute illegal business projects. (Yuriy A. Voronin. "Measures to Control Transnational Organized Crime. < <https://www.ncjrs.gov/pdffiles1/nij/grants/184773.pdf> > (accessed on 06-08-2018).

⁵⁹⁶ Louise Shelley. "Transnational Organized Crime: An Imminent Threat to the Nation State?" *Journal of International Affairs* 48 (1995): 2, 463-489.

relevant in terms that the US has assumed the role of international watch-guard on human trafficking and releases its Trafficking in Persons Report annually with regard to minimum standards set out in its legislation on human trafficking. To combat human trafficking, especially into the sex trade, slavery and involuntary servitude, the Victims of Trafficking and Violence Protection Act was passed as a law on 28th October, 2000. This Act is structured into three divisions⁵⁹⁷; Division-A, the Trafficking Victims Protections Act (TVPA), is relevant to the discussion of this thesis. The purposes of this division are to combat human trafficking (prevention); to ensure just and effective punishment of traffickers (prosecution); and to protect their victims (protection). The Act protects for undocumented immigrants who are the victims of severe forms of trafficking and violence.⁵⁹⁸ Severe forms of trafficking, sex trafficking and forced labor are defined as under:-

Severe forms of trafficking: *“Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”*⁵⁹⁹

Sex trafficking: *“The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”*⁶⁰⁰

Forced labor: *“Whoever knowingly provides or obtains the labor or services of a person __ (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or*

⁵⁹⁷ Division A _ Trafficking Victims Protection Act of 2000; Division B _ Violence against Women Act of 2000; and Division C _ Miscellaneous Provisions. The Violence against Women Act was previously a separate federal law which was enacted in 1994. It was made part of the Act of 2000 (Division B).

⁵⁹⁸ Alison Siskin and Liana Sun Wyler. “Trafficking in Persons: US Policy and issues for Congress,” *Congressional Research Service* (February 19, 2003).

⁵⁹⁹ Section 103 (8) of TVPA.

⁶⁰⁰ *Ibid.*

another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process."⁶⁰¹

The Act was successively renewed in 2003, 2006 and 2008 and is now renamed as Trafficking Victims Protections Reauthorization Act, 2008. The Model State Anti-Trafficking Criminal Statute of the United States of America (US Model Law) is also advanced by the US Department of State as an instrument for formulating modern anti-trafficking legislation in the country. It proposes that prolonged terms of imprisonment ranging from five years to life imprisonment be imposed for various trafficking crimes.

7.15.4 Convention against Transnational Organized Crime, 2000

The UN, being the international body having wide-ranging mandate and international constituency, raised to provide the most appropriate forum for promoting a common global action to combat transnational organized crime and adopted the Convention against Transnational Organized Crime, on 15th November, 2000 in order to fight against the cross border crimes which entered into force on 29th September, 2003. The Convention affords the measures to combat transnational crimes in general, while three specific crimes such as trafficking in fire-arms, trafficking in persons and smuggling of migrants are dealt with its three different supplementary protocols. The latter two protocols are relevant to this thesis. Two pre-requisites are necessary under the Convention i.e. the offence must be transnational in nature, and involvement of organized criminal group. The offence is declared to be transnational in nature in its scope if it is committed in more than one state, with further explanation that it is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another state; committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; committed in one state but has

⁶⁰¹ Section 112 of TVPA.

substantial effects in another state.⁶⁰² The countries which did not ratify the Palermo Protocol but ratified this Convention may use it as a standard to combat human trafficking because the Palermo Protocol is a part of Palermo Convention.⁶⁰³ The scope of application of the Convention discussed above also supports this point. The Convention provides for criminalization of participation in an organized criminal group; criminalization of the laundering of proceeds of the crime; criminalization of corruption; liability of legal persons; disposal of confiscated proceeds of crime or property; mutual legal assistance; joint investigations; special investigative techniques; protection of witnesses; protection of victims; measures to enhance co-operation with law enforcement authorities; law enforcement co-operation; collection, exchange, and analysis of information on the nature of organized crime; training and technical assistance to relevant personnel etc.; and prevention of the offence. Pakistan became party to the Palermo Convention on 13th January, 2010.

7.15.5 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

The 20th century saw an enormous growth in an organized human trafficking and many criminals switched to this area of transnational crime because of high profits and low risks.⁶⁰⁴ The human trafficking became growing transnational phenomenon. The trafficking problem had existed for centuries; the black slave trade and white slave trade were the concerns previously. The 19th century's transatlantic slave trade offence had now evolved into transnational organized crime of human trafficking into 21st century. It took more than two centuries to evolve the definition of human trafficking. The offence of

⁶⁰² Ibid. Article 3.

⁶⁰³ Laura L. Shoaps. "Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act," *Lewis and Clarks Law Review* 17 (2013): 3, 931-972.

⁶⁰⁴ Maggy Lee, 396.

human trafficking has all the elements of transnational organized crime; hence, the UN adopted a treaty of human trafficking supplementary to the transnational organized crime.

The decision to address human trafficking within the framework of transnational organized crime is highly substantial. The traffickers are rationale actors and used to traffic the victims in an organized manner ignoring the national borders; hence there was need to legislate for the offence in the category of organized crimes taking place not only within the country but also across the borders. After years of negotiations among member states, the UN adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the Convention against Transnational Organized Crime, on 15th November, 2000, which entered into force on 25th December, 2003. The Protocol defines human trafficking as under: -

“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 of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the 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.”⁶⁰⁵

If a victim is under the age of 18 years, the use of the means described above is not necessary in order to call such conduct of human trafficking. The Protocol established the very first international definition of human trafficking. In order to complete the offence, three divergent components must converge accordingly i.e. the act, the means and the purposes.⁶⁰⁶ The most important in the definition is the third component i.e. the

⁶⁰⁵ Article 3 (a) of the Protocol.

⁶⁰⁶ The acts include the recruitment, transportation, transfer, harboring or receipt of persons; the means include 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 payments or benefits to achieve the consent of a person having control over another person; the purposes include exploitation. Exploitation

Exploitation. The term exploitation includes in the definition is both as labor exploitation and sexual exploitation. It is a limitation of the freedom of choice, movement, and independence of a person who finds himself in a vulnerable position, and violates one's personal, physical, or moral integrity.⁶⁰⁷ It is the last and final international law on the subject till now. The Protocol contains all those specific acts which are described in earlier international legal instruments.⁶⁰⁸ It includes prostitution, forced labor, slavery, slavery like practices, serfdom, servitude, debt bondage, forced marriage etc. which were separately dealt with in different earlier treaties. It is important to mention that the Protocol does not seek to suppress human exploitation per se, as it deals with the crime of human trafficking for the purpose of exploitation. The crime is the recruitment, transportation, transfer, harbor or receipt of person, and not the actual enslavement of a person. So the Protocol describes various types of human exploitation which have already been described in the international instruments and brings them together for the first time.

Although the Palermo Protocol is the landmark treaty on the subject of human trafficking but the international framework is evolved to conclude the Protocol as far back as 1815 which ended in the current framework on human trafficking. So the Protocol can be seen as a part of a sequence of instruments that deal with human trafficking and related activities, in particular slavery which reflect the simple fact that both human trafficking

shall include, at a minimum, the 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.

⁶⁰⁷ Conny Rijken, 478.

⁶⁰⁸ The Convention on the Elimination of All Forms of Discrimination against Women requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. The exploitation of the prostitution of others is also the subject of the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). Forced labor or services are the subject of the International Labor Organization's (ILO) Forced Labor Convention (Convention No. 29 of 1930), which defines forced or compulsory labor, and also by the ILO Abolition of Forced Labor Convention (Convention No. 105 of 1957). The Slavery Convention (1926) defines slavery, and its Supplementary Convention helpfully describes 'practices similar to slavery', including debt bondage, and institutions and practices that discriminate against women in the context of marriage.

and its legal responses have been evolving for a very long time.⁶⁰⁹ That is why the savings clause of the Protocol provides that it does not affect pre-existing rights and obligations in terms of existing international law including international humanitarian law and international human rights law.⁶¹⁰ UNODC's Legislative Guides recommends domestic legislators to appraise customary international law and other relevant instruments in developing national legislation.⁶¹¹ Keeping in view all the discussion, it is concluded that the Palermo Protocol is the only international treaty on the subject of human trafficking; however, it is supplementary to the Palermo Convention wherein basic rules are contained. The Protocol is not a stand-alone instrument but along-side other international legal instruments that offer stronger protection to the victims of trafficking based on rights that are derived from the inherent dignity of the human person. The member states are under obligations to draft their national legislations in accordance with the rules laid down in these instruments. So to examine only the Palermo Protocol as to identify minimum standards for national anti-human trafficking legal response will be too narrow approach and all the relevant instruments would be considered by the drafters.

It is trans-national in nature, so it does not build an international regime, rather a trans-national one requiring each state party to act within its jurisdiction. It requires states to criminalize the conduct established by the definition i.e. participating, acting as accomplice, organizing or directing other persons to commit human trafficking as well as the offence of attempt to commit.⁶¹² In a nutshell, the Palermo Protocol is an international treaty concluded after centuries' efforts to abolish slave trade to human trafficking. The definition evolved from 18th century's black slave trade to 21st century's trafficking in persons. Although Pakistan has not ratified the Palermo Protocol but is still under an

⁶⁰⁹ UNODC 2004:339-340.

⁶¹⁰ Article 41 (1) of Protocol.

⁶¹¹ UNODC Guides provides a list of instruments to be considered by drafters of national anti-human trafficking legislation.

⁶¹² Article 5 of Protocol.

obligation to comply with all its standards because of the ratification of the Palermo Convention which is the parent treaty of the Palermo Protocol. The relationship between both the laws is explained as under: -

*“The Protocol supplements the Convention against Transnational Organized Crime. It shall be interpreted together with the Convention. (2) The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided therein. (3) The offences established in accordance with article 5 of this Protocol shall be regarded as offences in accordance with the Convention.”*⁶¹³

7.16 Post- Palermo Protocol’s Measures

Special Action Program to Combat Forced Labor (SAP-FL) was established in 2001, as part of measures to promote the core labor standards embodied in a 1998 Declaration on Fundamental Principles and Rights at Work. The European Union countries decided to add powers to the member states in different areas including criminal co-operation within its competence. The EU is comprised of three pillars, out of which one is the Police and Judicial Co-operation in Criminal Matters.⁶¹⁴ The human trafficking being a crime falls within the domain of third pillar. Under the Treaty of Amsterdam, 1997, the member states decided to delegate certain powers from national governments to the European Parliament in various areas including legislation on criminal law. A number of Framework Decisions on different issues were created accordingly having the force of law. Two of the Framework Decisions deal with the issues of human trafficking and sexual exploitation of children and child pornography.⁶¹⁵ In the legislation of former issue, the member states were directed to ensure the punishment of offences concerning human trafficking for the purposes of labor exploitation or sexual exploitation,⁶¹⁶ together

⁶¹³Article 1 of the Palermo Protocol.

⁶¹⁴ This is the third pillar of EU which brought together the cooperation in the fight against crime. It was originally named as Justice and Home Affairs.

⁶¹⁵ Council Framework Decisions 2002/629/JHA of 19 July 2002, and 2004/68/JHA of 22 December, 2003 respectively.

⁶¹⁶ Article 1 of the Framework Decisions.

with the elements of organized crime.⁶¹⁷ In the legislation of latter issue, the age of child was reaffirmed as 18 years; the member states were directed to ensure the punishment of offences concerning exploitation of children and child pornography, together with the elements of organized crime.⁶¹⁸ Minimum international standards for combating human trafficking are drawn from international instruments relevant to human trafficking, particularly from the most prominent international instrument, the Palermo Convention. The purpose of setting these standards is to proceed for a more effective national response for contending human trafficking. These standards are binding on the ratifying states. Other than these binding obligations, some other principles, recommendations, guidelines and practices for combating human trafficking are also acknowledged in non-binding but commanding characters. Three model laws were introduced as a guideline for combating human trafficking through national legislation. Firstly, the Recommended Principles of Guidelines on Human Rights and Human Trafficking (HCHR Principles and Guidelines), 2002 were introduced with a comprehensive commentary published in 2010. It contains the principles and guidelines from a human rights perspective. Secondly, the Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and Protocol thereto (UNODC Legislative Guides), 2004. Thirdly, the United Nations Office on Drugs and Crime Model Law against Trafficking in Persons (UNODC Model Law), 2009.

7.17 Conclusion

The advent of the UN marked the true development of international law on the subject wherein the Palermo Protocol was enacted as a special legislation to combat human trafficking internationally. A number of treaties relevant to ancillary acts of human trafficking are also enacted. Part-II of the thesis is the answer to the fourth

⁶¹⁷ Article 2 states that each member state shall take necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is also punishable.

⁶¹⁸ Article 1, 2 and 4 of the Framework Decisions.

research question by providing therein that the international legal regime on the subject evolved from black and white slave trades to the contemporary human trafficking through a number of international instruments which were initially unilateral, then bilateral, multilateral and finally universal. Pakistan became member party to most of the treaties and committed to abolish the offence of human trafficking by complying with the international standards lying therein. In this regard, Pakistan enacted its own laws trying the same to be in line with international standards. The next part of the thesis provides the national legal regime on the subject and then critically evaluates the same in order to find out the answer of the main research question.

PART-III

NATIONAL LEGAL RESPONSE TO COMBAT HUMAN TRAFFICKING AND ITS EVALUATION

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Chapter 08: National Legal Response on Human Trafficking

8.1 Introduction

In the Part-II, international legal regime on the offence of human trafficking has been addressed. Now the focus shifts to combat it through Pakistani legal response. This area of criminal law is not understood by all the stake holders in letter and spirit. Attempt to standardize this area invariably involves the true understanding of the phenomenon vis a vis prosecution, protection and prevention; hence, the offence of human trafficking is always viewed as a criminal justice issue. But in addition to criminal law, regulatory systems may also be used to address the economic and social aspects of human trafficking.⁶¹⁹ In this respect, our national law has attempted to provide economic regulation such as minimum wages law, fixation and payment of wages law etc. intending to provide a legal framework for wages that is enforceable. Assuming such *modus operandi* has the likelihood of making it more challenging to exploit workers. Anyhow, such economic regulations are not the subject of discourse of the present thesis because this study is being conducted to contemplate the human trafficking through criminal justice response only.

In the previous part, various international and regional instruments relevant to human trafficking were deliberated, including some specific international legislation on the subject. These instruments lay down an obligation on the state parties to comply the same in their respective domestic legislation. The state parties by ratifying these instruments accept to be certain to advance domestic legislation to respond to human trafficking.⁶²⁰ Therefore, a national legal framework aligned with the standards laid down in relevant international instruments must be adopted to combat human trafficking.

⁶¹⁹ Human Trafficking: Issues beyond criminalization, Pontificiae Academiae Scientiarum Socialium Acta 20, the proceedings of the 20th Plenary Session, 17-21 (April 2015).

⁶²⁰ Gallagher and Holmes, "Vienna Convention on the Law of Treaties." <http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> (accessed on 20-08-2017).

Human trafficking incorporates a broadly definite series of activities under the common names of slavery, servitude, prostitution, forced or compulsory labor etc. The exploitation of victim is the essential component of the definition of human trafficking. It may involve deception, coercion, abuse of power or abuse of someone's vulnerability.⁶²¹ Attempts to prevent human trafficking always require the operation of criminal law and this involves a diversity of legislative responses which are provided as under: -

8.2 Constitutional Provisions Pertaining to Human Trafficking

Constitution is a set of fundamental principles according to which a state is administered. The constitution has supremacy over all other statutory laws and any legislation against the spirit of constitution is null and void. Before discussing the detailed anti-human trafficking legal regime, the relevant constitutional safeguards must be addressed. Apart from international obligations to combat human trafficking, the Constitution of Pakistan also provides obligations relevant to human trafficking. Given that the Constitution of Pakistan is the chief law of the country, any law enacted inconsistent with it is void. The chapters of fundamental rights and principles of policy in the Constitution enshrine the rights of all people in the country and therefore put unequivocal obligations on the government to value, protect, advance and satisfy these rights. Most of the rights provided therein apply to the rights of the trafficked persons. The rights of trafficked persons are dishonored at length during the trafficking phenomenon. These infringed rights usually include the right to life and dignity, freedom of movement, protection from slavery and its related acts etc.

Pakistan's Constitutional history has gone through various stages. After the independence from British rule in 1947, Pakistan was governed under the Government of India Act, 1935. On 23rd March, 1956, the very first constitution was adopted. The

⁶²¹ Maggy Lee, 396.

Constitution 1956 provides that all citizens are equal before law and no person shall be deprived of life and liberty save in accordance with law⁶²²; every person shall have a right to form associations or unions⁶²³; no person shall be held in slavery and all forms of forced labor are prohibited.⁶²⁴ The Constitutional provisions were clear to discourage any act or law which would defeat the fundamental rights of its citizens. Regretfully, the Constitution 1956 was abrogated by the then president Iskandar Mirza. On 1st March, 1962, the second Constitution was promulgated. The Constitution 1962 provided almost the same fundamental rights as of the Constitution 1956, particularly reiterating the protections against forced labor and slavery.⁶²⁵ The Principles of Policy were also made part of the Constitution 1962 wherein, inter alia, special care to promote the economic interests of the people of backward classes; just and humane conditions of work; employment of women and children unsuited to their age and sex; opportunity to work and earn adequate livelihood and to enjoy reasonable rest and leisure; and prohibition of prostitution were the aspirations for social justice.⁶²⁶ The second Constitution met the same fate as of the Constitution 1956 and was abrogated by the then president, Ayyub Khan, on 26th March, 1969.

On 14th August, 1973, the third Constitution was adopted. The Constitution 1973 has much comprehensive provisions relating to the human trafficking. Elimination of exploitation is made part of the constitution by providing that it is incumbent upon the state to ensure the elimination of all forms of exploitation of the people.⁶²⁷ The provision envisions the intent that the decisive objective of the state is the well-being and happiness of the its people and development of the community as a whole. Man has always been

⁶²² Part 2, fundamental rights, articles 5 of the 1956 Constitution.

⁶²³ Ibid. Article 10.

⁶²⁴ Ibid. Article 16.

⁶²⁵ Ibid. Article 11 states that no law should permit forced labor in any form; while article 15 states that no law should permit or facilitate, in any way, the introduction of slavery in any form into Pakistan.

⁶²⁶ Chapter 2, Principles of Policy, article 8 of the Constitution.

⁶²⁷ Ibid. Article 3.

exploiting his fellow beings in such a way that lower classes of people have ever been compressed by the upper classes. However, the state is under constitutional obligation to protect the rights of the people. Enjoyment of protection of law and treatment in accordance with law are inalienable rights of every citizen.⁶²⁸ The right to life and liberty were guaranteed.⁶²⁹ The scope of article 9 is enlarged to each and every aspect of human life. The term 'life' is of very wide import and includes all those rights which are necessary for living a quality life befitting human dignity, as such the term life cannot be limited to mere vegetative or animal life.⁶³⁰ Therefore, the right to life also includes the right to livelihood. Exploitation is prohibited in the following words: -

*"The state shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work."*⁶³¹

Under article 3 above, a person should not be compulsorily bound for the work and there should not be any exploitation whatsoever. Human trafficking and related acts are prohibited as under: -

"Slavery, forced labor etc. prohibited: (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form. (2) All forms of forced labor and traffic in human beings are prohibited. (3) No child below the

⁶²⁸ Ibid. Article 4. It further states that (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not require him to do.

⁶²⁹ Ibid. Article 9.

⁶³⁰ *Imdad Hussain versus Province of Sindh*, PLD 2007 Karachi 116; *Syed Mansoor Ali Shah versus Government of Punjab*, PLD 2007 Lahore 403; *Abdul Rehman versus Allah Ditta*, 2003 CLC 1353. The term life has not been defined in the constitution but it could not be restricted only to vegetative or animal life or mere existence from conception to death. It means something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. The deprivation of not only of life but of whatever God has given to everyone with life for its growth and enjoyment is prohibited as it covers all facets of human existence. It includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity legally or constitutionally.

⁶³¹ Article 3 of the 1973 Constitution.

age of fourteen years shall be engaged in any factory or mine or any other hazardous employment."⁶³²

This article is comprehensive enough to include all the issues of human trafficking. The provisions of article 11 are analogous to the provisions of article 4 of the UDHR. It is for the first time in the Constitution 1973 the provision regarding dignity of man is included.⁶³³ This guarantee is not subject to law but an unqualified guarantee. The Constitution further gives the freedom of movement⁶³⁴; freedom of association⁶³⁵; and equality of citizens⁶³⁶. The state is made responsible to promote social justice and eradicate social evils wherein it is incumbent upon the state to make provisions for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex; to prevent prostitution, printing, publishing, circulating and display of obscene literature and advertisements.⁶³⁷ The state is enjoined to check these acts as a part of agenda for the advancement of social justice and elimination of social evils.

The local governments are given wide powers to co-operate in this regard. The Punjab Local Government Act, 2013 states the general powers of local government as under: -

*"Notwithstanding any specific provision of this Ordinance, every local government, Village Council and Neighborhood Council shall perform their functions conferred by or under this Ordinance, and in performance of their respective functions shall exercise such powers and follow such procedures as are enumerated in the Eighth Schedule."*⁶³⁸

⁶³² Ibid. Article 11.

⁶³³ Ibid. Article 14. It is held in *Suo Motu Constitution Petition No. 9 of 1991*, 1994 SCMR 1028 that this guarantee is not subject to law but is an unqualified guarantee. The right to live is not confined to mere living but it means meaningful life which can be enjoyed with dignity.

⁶³⁴ Ibid. Article 15.

⁶³⁵ Ibid. Article 17.

⁶³⁶ Ibid. Article 25.

⁶³⁷ Ibid. Article 37, Chapter 2, Principles of Policy.

⁶³⁸ Section 148 of the Punjab Local Government Act, 2013, Act XVIII of 2013.

The Eighth Schedule states the social welfare of the public and provides that the concerned local government may adopt such measures as may be specified by Government for the prevention of beggary, prostitution, juvenile delinquency and other social evils; and adopt such measures as may be prescribed for the promotion of the welfare of backward classes, women and children.⁶³⁹ The same principles are also provided in Local Government Acts of other provinces. Undoubtedly, the national legislation must be corresponding to the constitutional provisions and the international obligations. The legislator has to enact such law which is in line with the constitutional obligations and ratified international conventions. The other laws relevant to human trafficking are discussed as under: -

8.3 Criminal Laws Pertaining to Human Trafficking

8.3.1 PPC

Undeniably, the PPC is of particular importance in combating human trafficking. Various relevant provisions are embodied in it for combating human trafficking, prostitution, forced labor and other similar acts. Chapter XVI-A of PPC is very much relevant in this regard. The provisions of this chapter are either directly applicable on human trafficking or they are the part of human trafficking phenomenon. The relevant provisions of the chapter supra are provided in the Appendix One of the thesis.

8.4 Laws Pertaining to Sexual Exploitation

Prostitution is strictly prohibited in Pakistan. Various specific provisions in PPC for its punishments are provided, but even then the menace remained prevalent. Girls and women are particularly the victims. They are brought to brothel houses from different areas and exploited sexually. The pimps earn money by involving them into commercial sexual activities. They are sold and purchased through various people, called the

⁶³⁹ Entry No. 91 of the Eighth Schedule.

traffickers. Like international law, Pakistan also enacted a special legislation to curb the prostitution, in addition to the provisions of PPC mentioned above.

8.4.1 The Punjab Suppression of Prostitution Ordinance, 1961

The Ordinance was enacted on 7th January, 1961.⁶⁴⁰ After the partition of West Pakistan and East Pakistan, it was adopted by Punjab and KPK provinces.⁶⁴¹ The Province of Baluchistan also adopted the same through Baluchistan Suppression of Prostitution (Amendment) Ordinance, 2001 in pursuance of article 4 of the Provincial Constitution (Amendment) Order, 1999. All the offences are made cognizable and triable by the Magistrate of first class.⁶⁴² The Ordinance describes that traffickers may be women and when convicted, they are exempted from whipping punishment and not the rest of the punishments. The Ordinance is comprehensive in nature and is a good step towards the suppression of human trafficking in province of Punjab. The relevant provisions of the Ordinance are provided in the Appendix One.

8.4.2 Sindh Children Act, 1955

Before the partition of India, the Bombay Children Act, 1924 was in field. After independence, the Sindh Provincial Assembly enacted the Sindh Children Act on 11th July, 1955 rendering the former Act repealed. The Act provides measures for the care and protection of destitute and neglected children. If the child has parents or guardian and there is likelihood of his being exposed to exploitation like situations, then the court, upon the report made to him, may call upon such parents or guardian to produce the child in

⁶⁴⁰ The Ordinance was promulgated by the Governor of West Pakistan on 29 September, 1960 and was published in the West Pakistan Official Gazette on 7 January 1961. Its official name was West Pakistan Suppression of Prostitution Ordinance, 1961. This was the period when East and Pakistan was under the same authority. After the war of 1971, East Pakistan became Bangladesh. Its name was substituted by the Punjab Laws (Adaptation) Order, 1974 from West Pakistan to Punjab.

⁶⁴¹ The word '*Punjab*' was substituted by '*West Pakistan*' vide Punjab Laws (Adoption) Order, 1974 (Pb. A.O. 1 of 1974); while the words '*North-West Frontier Province*' were substituted for '*Province of West Pakistan*' vide NWFP Adaptation of Laws Order, 1970, and then were further substituted as '*Khyber Pakhtunkhwa*' for '*NWFP*' vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁶⁴² Sections 13, 14 and 15 of the Ordinance.

order to show cause why the said child should not be removed from his/her care.⁶⁴³ The court has ample powers to protect the children from being indulged into sexual exploitation; even allowing a child to reside in or go to a brothel is punishable offence with maximum imprisonment of two years or fine or both.⁶⁴⁴ The court has further powers to direct the parents or guardian to enter into a recognizance to exercise due care and supervision in respect of a minor girl who is likely to expose to the risk of seduction or prostitution. The Act further provides for protection of minor girls from seduction and prostitution; seducing or outraging of modesty or indulging in immoral behavior with a minor girl is declared as punishable offence. The Act is comprehensive enough to protect the children from labor exploitation. All the offences mentioned above are declared as cognizable.⁶⁴⁵ The Act protects the children from labor as well as sexual exploitation and condemns the parents or guardian as well, if they are negligent enough to expose their own children to indulge in exploitation practices. The relevant provisions of the Acts are provided in the Appendix One.

8.4.3 Sindh Child Protection Authority Act, 2011

To ensure the rights of the children in need of special protection measures, the Sindh Child Protection Authority Act was passed by the Sindh Provincial Assembly on 16th May, 2011. It is consistent with the UNCRC. In the definitional clause, '*child in need of special protection measures*' includes a child who is a victim of sexual abuse, exploitative labor, human trafficking, without primary care givers, infected with venereal diseases.⁶⁴⁶ The Authority established is composed of members from Provincial Assembly, advocates, government officials, NGOs, entrusted with the task of drafting its rules of business regarding the child rights in the province. The Act is accommodated to

⁶⁴³ Ibid. Section 43.

⁶⁴⁴ Ibid. Section 55.

⁶⁴⁵ Ibid. Section 63.

⁶⁴⁶ Section 2 (c) of the 2011 Act.

make necessary efforts to ensure the rights of children in need of special protection measures; supervise the functions of all such institutions established for the special protection measures of the children; set minimum standards for all such institutions and ensure their compliance; review the relevant laws so as to bring them in conformity with the international standards; investigate into any matter of child abuse and prosecute offenders.⁶⁴⁷ The Act is passed for the welfare of the children and includes the measures of prevention of any child related offence, protection of child and prosecution of offenders.

8.4.4 The Punjab Destitute and Neglected Children Act, 2004

In order to consolidate the laws for all the matters of neglected children, the Punjab Destitute and Neglected Children Act, 2004 is an effort by the Punjab province which is promulgated on 21st June, 2004. In July 2004, it was declared as an autonomous organization of Punjab government under the administrative control of Home Department. The Act calls for the establishment of a Bureau to be known as the Child Protection and Welfare Bureau which shall have a Board of Governor comprised of members from Provincial Assembly and other government officials.⁶⁴⁸ The Bureau became effective after being officially inaugurated on 24th February, 2005. To carry out the functions of the Act, the Board is given wide powers such as establishment, management, control, look after and regulation of affairs of child protection institutions; prosecution of offenders; appointment and authorization of employees; and any other act which is ancillary and incidental to the above functions.⁶⁴⁹ The Act entails the government to establish Child Protection Courts that have the powers and functions assigned under the provisions of this Act or the rules, such as to order for a child to be produced in the court; grant custody to suitable person or institution; issue search

⁶⁴⁷ Ibid. Section 10.

⁶⁴⁸ Sections 5 and 6 of the 2004 Act.

⁶⁴⁹ Ibid. Section 9.

warrants for a child; and order parents to provide for maintenance of their children in custody.⁶⁵⁰ The employment of child for begging; inciting a child for rag picking; and exposure to seduction are made punishable offences. The Act defines child abuses as human rights violations. The objectives of the Act are to protect the children from the professionally operative groups of child beggary; to prevent child abuse including commercially sexual exploitation of children; and to cause prosecution of the offenders. All the offences under this Act are cognizable and non-bailable.⁶⁵¹ This Act reflects the provisions of previous Acts of Sindh Child Act, 1955. On 28th September, 2017, Second Amendment to the 2004 Act is passed by the Punjab Assembly requiring registration of organizations providing accommodation to the said children. In case of failure within 120 days, punitive action would be taken against the same under section 34 of the Act. The relevant provisions of the Act are provided in the Appendix One.

8.4.5 Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010

Like other provinces, the KPK government also decided to protect the children from the hazards of various menaces and enacted the Khyber Pakhtunkhwa Child Protection and Welfare Act, on 21st September, 2010 for children at risk in the province. The enactment of this Act was a long-standing demand of the civil society especially NGOs working on the children rights. As supposed from its name, the objectives of the legislation are two folds i.e. protection and welfare of children. For the first time in the country's legal documents, the terms such as child pornography, child trafficking and sexual abuse are defined. The Act requires the government to establish a Commission to be known as the Khyber Pakhtunkhwa Child Protection and Welfare Commission for the

⁶⁵⁰ Parts VI and VII. Sections 22 and 33. It is also provided that the court shall finally decide a case within one month from the date of production of a child before it. The provisions of the Code of Criminal Procedure, 1898 and the Qanun-e-Shahadat Order, 1984 are not applied to the proceedings before the Court, unless otherwise expressly provided by this Act or the rules. No appeal or revision against the order of the court shall lie.

⁶⁵¹ Ibid. Section 42. The words '*non bailable*' are inserted under the Punjab Destitute and Neglected Children (Amendment) Act, 2017 (Act XIV of 2017).

province which shall be composed of members from Provincial Assembly and other government officials.⁶⁵² The Commission enjoys wide powers and functions including to act as a focal point for effective supervision and co-ordination of child matters at provincial and local levels; to implement relevant policies; to review all relevant laws; to provide technical assistance to various relevant departments; to monitor implementation and violation of relevant laws; and to do all such acts and things as are ancillary and incidental to any other functions assigned.⁶⁵³ The Act further entails the government to declare Child Protection Courts out of the existing Courts of Sessions which have the powers and functions to issue order of handing over the custody of a child at risk to any suitable person or institution.⁶⁵⁴ The Act makes harmful practices; child marriage; dealing in organs of child; employing child for begging; child pornography; seduction; child trafficking; and sexual abuse as punishable offences. All the offences under the Act are cognizable, non-bailable and non-compoundable.⁶⁵⁵ The existing law dealing with child marriage is contained in the Child Marriage Restraint Act, 1929 which is discussed in detail in the coming headings of this chapter. In the definition of child trafficking, the offence is made as '*into or out of Pakistan*', but in the penal section, punishment is only prescribed for offence committed within Pakistan because words '*within Pakistan*' are written. This means that the legislator itself is not sure about the understanding of the term. It seems to be copied and pasted from the PACHTO. The relevant provisions of the Act are provided in the Appendix One.

8.4.6 The Baluchistan Child Protection Act, 2016

To provide protection to the children from violence, harm, abuse, maltreatment and exploitation, the Baluchistan Child Welfare and Protection Bill No. 10 of 2015 was

⁶⁵² Ibid. Sections 3 and 4.

⁶⁵³ Ibid. Section 4.

⁶⁵⁴ Ibid. Part V. Sections 15 and 16.

⁶⁵⁵ Ibid. Section 54.

moved in the Provincial Assembly which got approval and the Baluchistan Child Protection Act was passed on 7th November, 2016. Child abuse, child exploitation and sexual abuse and exploitation are defined. The Act starts with the belief that every child has the inherent right to life.⁶⁵⁶ It requires the government to establish a Commission to be called as Child Protection Commission which is composed of members from Provincial Assembly and other government officials, the main functions of which are to co-ordinate and monitor the issue relating to child protection, abuse, violence and exploitation.⁶⁵⁷ The Act provides protection to the children from various forms of exploitations but does not provide any penal action against the perpetrator. The relevant provisions of the Act are provided in the Appendix One.

8.4.7 Child Marriage Restraint Act, 1929

The need for legislating for abolition of child marriage dates back to 1889 when an 11 years old Bengali girl namely Phulmoni Dasi died after being brutally raped by her husband.⁶⁵⁸ The trial of this case served as catalyst for legislating the Age of Consent Act, on 19th March, 1891 by British Rule. This Act sanctioned the age of consent for sexual intercourse for all girls, married or un-married, from 10 to 12 years in all jurisdictions. Any sexual consummation below the legal minimum resulted as offence of rape. The actual purpose of this Act was to prevent the celebration of child marriages. The child was defined in the said act as a person who, if a male, is under 14 years of age, and if a female, is under 12 years of age. The British rulers were seriously willing to enforce this legislation but child marriages continued unrelieved. So there arose a need for specific legislation on the issue. The move was driven by Muhammad Ali Jinnah (the founder of Pakistan, the Quaid-e-Azam) while he was a member of the British India Legislative

⁶⁵⁶ Section 3 of the 2016 Act.

⁶⁵⁷ Ibid. Sections 7, 8 and 9.

⁶⁵⁸ Peter Van Der Veer, *Imperial Encounters: Religion and Modernity in India and Britain* (Princeton University Press, 2001). ISBN 0-691-07477-1.

Assembly. In order to suppress the menace, the Child Marriage Restraint Act, was passed on 1st October, 1929 restraining solemnizing of child marriages which was applied to whole of the India. It was adopted by Pakistan after getting independence and extends to the whole of Pakistan, applicable to both Muslims and Non-Muslims citizens, regardless of whether they are resident of Pakistan or elsewhere.

The practice of early marriage is pervasive in all provinces of Pakistan, particularly in the Sindh province, which excessively distresses the girl child. Child marriage is connected with tradition, culture and customary practices which involve the settlement of debts or exchange of daughters sanctioned by council of elders called Jirga or Panchayat.⁶⁵⁹ Child marriage is a marriage to which either of the contracting parties is a child.⁶⁶⁰ The Act prescribes for penal actions for marrying a child and solemnizing a child marriage.⁶⁶¹ In 2013, Sindh Assembly adopted the Sindh Child Marriage Restraint Act and increased the minimum age of marriage for both parties up to eighteen years and making any marriage below the said age as punishable offence. The Punjab Child Marriage Restraint (Amendment) Act, 2015, sections 4 and 5 of 1929 Act are amended as under: -

“In section 4, the punishment is amended as simple imprisonment which may extend to six months and fine of fifty thousand rupees”; in section 5, the punishment is amended as six months and fine fifty thousand rupees.”

Such marriages are also covered by section 310-A of PPC. In addition to afore-said legislations, the Bombay Prevention of Prostitution Act, 1923; the Punjab Suppression of Immoral Traffic Act, 1935; the North-West Frontier Province Anti-Prostitution and Suppression of Brothels Act, 1937; and the Sindh Prevention of

⁶⁵⁹ SPARC report on child marriage. < <http://www.sparcpk.org/2015/Other-Publications/CM.pdf> > (accessed on 12-05-2018).

⁶⁶⁰ Ibid. Section 2 (b).

⁶⁶¹ Ibid. Sections 4 and 5.

Prostitution Act, 1951 were earlier applicable legislations, but the same stand repealed by the 1961 Punjab Ordinance.⁶⁶²

8.5 Islamic Criminal Law

Islamic criminal law also addresses the offence of human trafficking and its related acts. It is the criminal law in accordance with the Shari'ah which covers Hudood offences. Hudood is the plural term of hadd which means the punishment prescribed by the Allah Almighty in the Holy Quran.⁶⁶³ Hudood offences can neither be altered nor can be pardoned by the victim or state. Out of hudood offences, Zina is an offence which covers the discussion of present research. The Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is one of the five Hudood Ordinances of 1979 as a part of islamisation process introduced by the then Military Ruler, General Zia ul Haq. It was enacted on 10th February, 1979 applicable to the whole of Pakistan. The offence of Zina falls within category of sex work or prostitution in Pakistan. It defines zina as "*a man and a woman willfully having sexual intercourse without being married to each other; penetration is sufficient to constitute the offence.*"⁶⁶⁴ It was passed to modify the existing laws in conformity with the injunctions of Islam set out in the Holy Quran and Sunnah. Seduced intercourse or forced marriage; kidnapping or abducting for unnatural lust; selling and buying persons for purposes of prostitution; and enticing, taking away or detaining any woman for illicit intercourse with any person are made punishable offences. Even an attempt for these offences is made punishable for a term which may extend to one-half of the longest term provided for that offence or with whipping or with fine or with any two or all the punishments.⁶⁶⁵ Various sections of Pakistan Penal Code are made applicable

⁶⁶² Rakesh Shukla. "Sex-Work and Laws in South Asia: A Monograph," *Centre for Advocacy on Stigma and Marginalization (CASAM)*, (April 2010).

⁶⁶³ Section 2 (b).

⁶⁶⁴ Section 4 of the Ordinance.

⁶⁶⁵ Ibid. Section 18.

mutatis mutandis in respect of offences under this Ordinance. The relevant provisions of the Ordinance are provided in the Appendix One.

8.6 Laws Pertaining to Labor Exploitation

Labor exploitation is one of the kinds of human trafficking. The person of victim is exploited by extracting labor from him which is not commensurate to his hard-work. Any labor which is taken without consent; excessive in working hours without additional wages; and without or nominal wages for full labor is called exploitative labor. Consent is immaterial. When any person is brought to any field for such exploitative labor, it is called labor trafficking. Such type of exploitation is mostly the subject of informal economy of Pakistan, although formal economy is also not the exception to this menace.⁶⁶⁶

8.6.1 Children (Pledging of Labor) Act, 1933

This legislation was enacted on 24th February, 1933. It is a labor legislation which is inherited by Pakistan from British-India. It is the very first labor legislation of its kind which prohibits the making of agreements to pledge the labor of children, and the employment of children whose labor has been pledged. After independence, it was adopted and extended to the whole of Pakistan.⁶⁶⁷ The penalty for employing a child whose labor has been pledged is made punishable offence. The 1933 Act does not fully protect the children against the abuse of child labor because the penalties are too meager and do not serve as deterrence to prevent child labor. So this Act was further amended in 2017 through an Act called the Children (Pledging of Labor) (Amendment) Act, 2017. It is made extended only to the extent of Islamabad Capital Territory. The punishment for section 6 supra is amended as the imprisonment for a term which shall not be less than six months but which may extend to one year, or with fine which may extend to one hundred

⁶⁶⁶ Rana Ejaz Khan and others. "Economic Exploitation of Working Women in Formal Sector: A Case Study of Private Teachers (Bahawalpur-Pakistan)," *World Applied Sciences Journal* 20 (2012): 3, 481-486.

⁶⁶⁷ Substituted by the Central Laws (Statute Reforms) Ordinance, 1960.

thousand rupees or with both.⁶⁶⁸ The repeat offender is punished with imprisonment of either description for a term which shall not be less than six months but may extend to two years or with fine of one hundred thousand rupees or with both.⁶⁶⁹ The relevant provisions of the Act are provided in the Appendix One.

8.6.2 Minimum Wage Ordinance, 1961

Fixation of minimum salaries of the workers is a step towards the elimination of their exploitation that may minimize the chances of human trafficking. To regulate their minimum rates of wages employed in certain industrial undertakings and matters ancillary thereto, the Minimum Wages Ordinance was promulgated on 28th September, 1961. The Act was initially extended to the Province of Punjab, but later on it is made applicable to the whole of Pakistan.⁶⁷⁰ The provincial Assembly of Sindh enacted the Sindh Minimum Wages Act on 12th April, 2015. The West Pakistan Minimum Wages for unskilled Workers Ordinance, 1969 is other legislation in the legal regime of labor exploitation. It extends to the whole of Pakistan. The Provincial Assembly of Punjab adopted the Punjab Minimum Wages for Unskilled Workers (Amendment) Act, 2013.

8.6.3 Fixation and Payment of Wages

The payment of wages is regulated by Payment of Wages Act, 1936, Coal Mines (Fixation of Rate of Wages) Ordinance, 1960, Minimum Wages ordinance, 1961, and Minimum Wages for Unskilled Workers Ordinance, 1969. The Provincial governments constitute Minimum Wages Board to decide wage rates.⁶⁷¹ The parliament specifies the minimum wages for unskilled workers under the Ordinance 1969, from time to time.⁶⁷² Mines Welfare Board fixes the minimum wages for mines workers.

⁶⁶⁸ Ibid. Section 4.

⁶⁶⁹ Ibid. Section 5.

⁶⁷⁰ The Minimum Wages (Amendment) Act, 2012 (Act XL of 2012).

⁶⁷¹ Section 3 of Minimum Wages ordinance, 1961.

⁶⁷² As per Federal Budget 2017-2018, the current minimum wage rate for an unskilled worker is Rs. 14,000/- to 15,000/-.

8.6.4 Fixation of Working Hours

Working hours are regulated by the Factories Act 1934, Mines Act 1923, Shops and Establishment Ordinance 1969, and Road Transport ordinance 1961. Factories Act provides the maximum 48 hours and 50 hours in a week for non-seasonal and seasonal factories respectively. If the work is of continuous nature, then working hours may be extended to 56 hours. However, daily hours may not be more than 9 hours and 10 hours a day in cases non-seasonal and seasonal respectively.⁶⁷³ Other laws above also limit the working hours up to 48 hours in a week.⁶⁷⁴

8.6.5 Bonded Labor System

Pakistan's most persistent human trafficking problem is said to be that of bonded labor, particularly in Punjab and Sindh provinces.⁶⁷⁵ Bonded labor is at once the earliest and most contemporary face of human enslavement. The bonded labor has close linkage with human trafficking, although they are not the same in international law or in practice. Both the terms have a common element in them which is the forced labor or exploitative labor, due to which the discourse of human trafficking also includes bonded labor in it. Without discussing the issue of bonded labor, the topic of human trafficking would be incomplete. More specifically, every situation of labor exploitation may include human trafficking. The evolution of human trafficking from black slave trade is an example of human trafficking in the context of labor exploitation as discussed in detail in preceding chapters. In this research, therefore, human trafficking in the context of labor exploitation is discussed in detail.

The colonial and feudal system occasioned in the concept of a ranked pattern of society forming a superior class and inferior class. This prejudiced social framework led

⁶⁷³ Section 34 of the Act.

⁶⁷⁴ Section 22-B&C of Mines Act; section 4 of Shops and Establishments Ordinance.

⁶⁷⁵ Dr. Andreas Schloenhardt and others, "Trafficking in Persons in Pakistan: A review of National Laws and Treaty Compliance", *UNODC Report* (October 2011).

to the emergence of the bonded labor system__ a system exploiting the working class by giving them small amount of money in advance so that they be bound for longer period of working for the landlord. It is also explained as one specific forms of forced labor in which a person is forced to sell labor to pay his debt and paying the debt, his whole family may be engaged in the work-place. Since inception, the bonded labor system has been combined with the elements of exploitation and patronage.⁶⁷⁶ Bonded labor may be either direct or indirect.⁶⁷⁷ The period of 60s (the then president, Ayyub Khan regime 1958-1969) can be rightly marked in a serious way when there was a sharp increase in brick-kiln labor, due to the reasons that the construction industry flourished because of the increased economic growth and displacement of agricultural labor as a result of the trends towards mechanization of farming in the contemporary period.⁶⁷⁸ This was the period when human trafficking for the purpose of labor exploitation went at its ultimate in the country.

In the late 80s and early 90s, the proper legislation on bonded labor appeared on the legal pages. On 30th July, 1988, a telegram was received by the Hon'ble Supreme Court of Pakistan during the summer vacations from the brick-kiln bonded laborers. The telegram was marked to Justice Afzal Zullah, who was a member of the Bench sitting at Lahore registry. They pleaded for their protection and liberty through the Court. They were abducted by their owners and now were being treated like animals with no mercy on them by their owners. What the telegram brought to light was one of the most horrific cases of bonded labor in the modern day Pakistan. The Supreme Court freed 21 bonded laborers including women and children held in virtual slavery and forced to work at brick-

⁶⁷⁶ Nivedita Singh. "Problem of Bonded Labor in India: A Human Rights Perspective." < https://www.academia.edu/28810901/PROBLEM_OF_BONDED_LABOUR_IN_INDIA_A_HUMAN_RIGHTS_PERSPECTIVE_PROBLEM_OF_BONDED_LABOUR_IN_INDIA_A_HUMAN_RIGHT_PERSPECTIVE_FULL_ESSAY > (accessed on 07-08-2018).

⁶⁷⁷ Ibid.

⁶⁷⁸ Human Rights Commission of Pakistan, (July 2011).

kiln in inhumane conditions. Darshan Masih case opened a new era of discussion which is integral to the human trafficking discourse. Special legislation, Bonded Labor System (Abolition) Act, 1992 (BLSAA) was enacted on the recommendation of the Supreme Court. Bonded Labor System (Abolition) Rules, 1995 were also framed. From this, the evolution of special legislation on the human trafficking started. The purpose of this chapter is to provide a comprehensive understanding of local anti-human trafficking legal regime since the discovery of Darshan Masih case.⁶⁷⁹ The Act has a very broad remit and is composed of 21 distinct provisions. It can rightly be said an extension of articles 3 and 11 of the Constitution, 1973. The Act in its preamble enjoins that the same is being enacted to prevent the economic and physical exploitation of the labor class in the country. The Act acknowledges the rights of laborers who are indulged in debt bondage by the landlords, intending to free them, cancelling their debts, establishing rehabilitative measures and punishing the offenders through imprisonment and fine. Peshgi system was completely abolished. The Act makes it punishable in case of any violation of its provisions. The offences are the supplement of existing criminal law. Originally, the Act is intended to create a new regime to address human trafficking through bonded labor. The term exploitation is not defined anywhere in the Act.

Various judicial verdicts have been pronounced in interpreting the provisions of labor laws and securing the interests of the laborers. The judiciary has played an active role in the efforts directing at eradicating the menace of bonded labor that has been widespread in Pakistan since its very inception. The first judicial verdict on the topic is Darshan Masih case as discussed in detail supra. It was the first case of public interest litigation for the enforcement of fundamental rights wherein the Supreme Court offered a comprehensive reasoning for exercising its powers under article 184 of the Constitution.

⁶⁷⁹ *Constitutional case No. 1 of 1988*, PLD 1990 SC 513.

The Court was serious to prevent the bonded labor practices, so the reports were called for from the Advocate General and other concerns.⁶⁸⁰ After the submission of the requisite reports, the case was finally decided on 15th March, 1989 in the terms that the laborers are legally bound to return all such outstanding past advanced money (peshgi) to the brick-kiln owners, however, in the case of any denial by the laborers, the owners may recover the same by adopting legal means; a maximum of Rs.5000/- per household special emergency loan granted to the laborer shall be treated as donation and the same shall not be recoverable from them; future peshgi system is to be discontinued because it is described as a cruel method of enslaving the laborers for the rest of their lives; jamadari system is to be abolished; payment of wages shall have to be made on daily/weekly/fortnightly/monthly basis as agreed between the laborers and owners; and women-folk and children shall not be compelled to be employed at the work-place. Upon the reports and decision of the Court, the Bonded Labor System (Abolition) Act, 1992 was passed. But the Act was challenged before the Federal Shari'at Court seeking the declaration that the same was contrary to the injunctions of Islam.⁶⁸¹ The FSC in *Shabbir Hussain Kazmi etc. case*,⁶⁸² held that the provisions of the Act are not in contradiction with the Islamic Injunctions. Further, the Court held that a brick-kiln squarely falls within the purview of the definition of factory vide section 2 (1) of the Factories Act, 1934; while the Industrial Relations Ordinance, 1969 and West Pakistan (Standing Orders) Ordinance, 1968, are also attracted to such establishment.

⁶⁸⁰ The said reports were submitted by Mr. Khalil-ur-Rahman Ramdey, the Advocate General, Mr. Abdus Sattar Najam Advocate on behalf of Lahore High Court Bar Association, Mr. Ihsanullah Khan as president of workers' union, Mr. Shoaib Khan Nizai as president of Brick Kilns Owners' Association, Director of Labor Welfare, Mr. Rafiq Ahmed Bajwa Advocate, Miss Asma Jahangir Advocate, and Deputy Superintendent of Police, Pattoki.

⁶⁸¹ The brick-kiln owners assailed the definitions of bonded labor, bonded debt and bonded labor system. They also urged that section 5, 6, 7, 8 and 11 are also in violation of the Islamic injunctions.

⁶⁸² *Shabbir Hussain Kazmi etc. versus Government of Pakistan etc*, 2006 PLC (CS) 49. Shari'at Petition No. 8/L of 1993.

In *Human Rights Commission of Pakistan etc. case*,⁶⁸³ the SC reversed the decision of the Sind High Court and held that the Act of 1992 is a piece of welfare legislation enacted for the welfare of a disadvantaged section of the society aimed at curbing certain abominable practices. All contracts whereby a person agrees to render services without wages or for nominal wages, forfeits the freedom of employment or movement, or forfeits the right to appropriate or sell, at market value, any of his property or product of his labor must be held to be void. To this extent, the statute basically gives effect to the mandate of the Constitution. In *Boota Masih case*,⁶⁸⁴ the Lahore High Court held that there must be suppression to exploitative labor from children and women at the brick-kilns and the laborers working against their wills and detained there illegally must be set free. In *Muhammad Siddique case*,⁶⁸⁵ the Court held that it is an illegal practice to employ women and children at brick-kiln against the debt secured by the head of the family. They are made to work under forced conditions in negation of the fundamental rights guaranteed by the Constitution. They are made the victims of forced labor. This practice amounts to slavery and human trafficking. In appropriate case, such acts may even constitute offences under section 371 and 374 of PPC. The owners cannot plead justification for getting forced labor from them on the ground that the head of the family had obtained advance amount for future work. In *Human Rights Case No. 5091 of 2006*,⁶⁸⁶ the Court observed that the laws against the bonded labor are not adequate and the same must be more severe to cater the menace, otherwise it would become difficult for law enforcement agencies as well as courts to affect recovery of detained persons and

⁶⁸³ *Human Rights Commission of Pakistan etc. versus Government of Pakistan etc.*, PLD 2009 Supreme Court 507. Civil Appeals No. 1139 to 1141 arising out of Civil Petitions No. 343-K, 344-K and 376-K of 2002, decided on 29th December, 2008.

⁶⁸⁴ *Boota Masih versus Mian Javed and Others*, 1996 MLD 222 (Lahore).

⁶⁸⁵ *Muhammad Siddique versus Mansha and others*, PLD 1997 Lahore 428.

⁶⁸⁶ *Human Rights Case No. 5091/2006*, PLD 2007 Supreme Court 232.

to punish the offenders adequately. The Supreme Court recommended that the legislator should review the provisions of law.

The principle of fair wages to laborers at brick-kilns is also enunciated in an Indian cases *Pudr versus UOI* (also called *Asiad Case*) and *Bandhua Mukti Morcha versus UOI*, the Supreme Court held that giving wages below the limit set forth by the Minimum Wage Act would amount to forced labor, thus bonded labor is included within the scope and definition of forced labor.⁶⁸⁷ In another case titled *Dharambir versus State of U.P.*, the Supreme Court held that the prisoners are also entitled to fair wages while doing works in prisons and any free labor extracted from them is contrary to the fundamental rights enunciated under the Constitution.⁶⁸⁸

From the discussion above, it is made clear that the bonded laborers are also entitled for fair wages fixed by the government under the statute of Minimum Wages Act and forced labor is not accepted under any law of the country. After the devolution of powers under 18th amendment, the labor matters are within the jurisdiction of provinces, therefore, the bonded labor system (abolition) act was adopted by the provinces such Punjab Bonded Labor System (Abolition) (Amendment) Act, 2012; Sindh Bonded Labor System (Abolition) Act, 2015; KPK Bonded Labor System (Abolition) Act, 2015.

8.6.6 The Employment of Children Act, 1991

The Employment of Children Act was promulgated on 6th April, 1991. In order to give effect to the mandate given and to perform the functions visualized in article 43 of the UNCRC, a National Committee on the Rights of Child was constituted.⁶⁸⁹ Adolescent is defined as “a person who has completed his fourteenth but has not completed his

⁶⁸⁷ AIR 1982 Supreme Court 1473; AIR 1984 Supreme Court 802.

⁶⁸⁸ AIR 1979 Supreme Court 1595.

⁶⁸⁹ Section 5 of the Act.

eighteenth years; child means a person who has not completed his fourteenth year of age."⁶⁹⁰ Factory and establishment are defined as: -

*"Establishment: a shop, commercial establishment, workshop, factory, farm, residential hotel or restaurant."*⁶⁹¹ *"Factory: Any premises, including the precincts thereof, whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power but does not include a mine, subject to the operation of the Mines Act, 1923."*⁶⁹²

Working hours and period of work are regularized. Employment of children is prohibited.⁶⁹³ In case of any defiance, penalties are imposed. The provinces adopted the 1991 Act through the Employment of Children (Amendment) Act, on 2nd May, 2011.⁶⁹⁴ The promulgation of Punjab Restriction on Employment of Children Act, 2016 is another step towards the prohibition of employment of children. The Sindh Prohibition of Employment of Children Bill, 2017 is introduced which imposes harsh penalties on employing a child under the age of fourteen years. The perpetrators may face six months' imprisonment and a fine of Rs. 50,000/-. The penalties became tougher in case the children are forced to prostitution, pornography and slavery.

8.7 18th Amendment and Labor

Under 18th Constitutional amendment of 2010, the subject of labor is devolved to the provinces with the deletion on the concurrent legislative list; as a result of which the federal labor laws are made applicable on provinces under Article 270-AA (6) of the Constitution until replaced, amended, adopted or repealed by provinces. Pakistan follows a system of non-self-executing treaties, meaning thereby any international ratified treaty

⁶⁹⁰ Section 2 (i) (iii) of the 1991 Act.

⁶⁹¹ Ibid. Section 2 (v).

⁶⁹² Ibid. Section 2 (vi).

⁶⁹³ Ibid. Section 3.

⁶⁹⁴ Act X of 2011.

can be implemented only when a statute is enacted writing the country's obligations into a law.⁶⁹⁵

After the 18th amendment, the respective provinces re-validated the bonded law. The Bonded Labor System (Abolition) Act, 1992 is still practicable in Islamabad Capital Territory and province of Baluchistan; Khyber Pakhtunkhwah adopted the same in 2015. The Punjab province also adopted the Punjab Prohibition of Child Labor at Brick-Kilns Act, promulgated on 2nd September, 2016. Environment at brick-kiln is hazardous for children. Child is a person who has not attained the age of fourteen years.⁶⁹⁶ The Act makes it necessary any prior written agreement of employment between the employer and employee, having all the particulars such as amount of advance, if any, amount of wage, payback schedule etc.⁶⁹⁷ Any involvement of child labor at brick-kiln is prohibited.⁶⁹⁸ In case of any defiance to the afore-mentioned provisions, the offender shall be liable to punishment with maximum simple imprisonment of six months which shall not be less than seven days, and maximum fine of five hundred thousand rupees which shall not be less than fifty thousand rupees.⁶⁹⁹ The Punjab Restriction on Employment Act is another law passed on 29th October, 2016. Under the Act, Child is a person who has not attained the age of fifteen years; while adolescent is a person who has attained the age of fifteen years but not the age of eighteen years.⁷⁰⁰ The definition of establishment is important one as it means: -

“Any industry, commercial or agricultural establishment, factory, mine, workshop, business, trade, undertaking, and place where any economic activity including molding and any manufacturing process is carried on; and, includes charitable and

⁶⁹⁵ Iftikhar Ahmed. “Labor and Employment Law: A Profile on Pakistan.” <
https://wageindicator.org/documents/Labour_and_Employment_Law-A_Profile_on_Pakistan.pdf >
(accessed on 07-08-2018).

⁶⁹⁶ Section 2 (e) of the Punjab prohibition of Child Labor at Brick-kilns Ordinance, 2016.

⁶⁹⁷ Ibid. Section 3.

⁶⁹⁸ Ibid. Section 5.

⁶⁹⁹ Ibid. Section 13.

⁷⁰⁰ Ibid. Section 2 (a &c).

welfare organizations, whether run for profit or otherwise and any other establishment, class of establishments or workplace notified by the government in the official gazette."⁷⁰¹

Under this clause, brick-kiln comes within the definition of establishment. Hazardous work is one which is likely to harm the health, safety or morals of adolescents and is mentioned in the Schedule.⁷⁰² A schedule of hazardous works is given in the end of the Act wherein various types of work are provided being hazardous. This list is not complete because of the contents of definitional clause due to the use of words 'morals of adolescent.' Under this clause, sexual abuse and exploitation also comes within the definition of hazardous work. Working of children and hazardous working of adolescent at any establishment are prohibited respectively.⁷⁰³ Duration of work is determined as maximum three hours and subject to other conditions, seven hours in a day, with prohibition of night shift.⁷⁰⁴ Employing any child and employing any adolescent at hazardous work at any establishment entail the punishment with maximum imprisonment of six months which shall not be less than seven days, and maximum fine of fifty thousand rupees which shall not be less than ten thousand rupees, while a person employing a child or adolescent in any form of slavery, practices similar to slavery, such as the sale and trafficking of children or adolescents, debt bondage and serfdom and forced or compulsory labor; the use, procuring or offering of a child or adolescent for prostitution, for the production of pornography or for pornographic performances require punishment with maximum imprisonment of seven years which shall not be less than three years, and maximum fine of one million rupees which shall not be less than two hundred thousand rupees; the repeater of offences of employing children and adolescent as above shall be punishable with maximum imprisonment of five years which shall not

⁷⁰¹ Ibid. Section 2 (f).

⁷⁰² Ibid. Section 2 (i).

⁷⁰³ Ibid. Section 3.

⁷⁰⁴ Ibid. Section 5.

be less than three months in addition to the fine prescribed for the offence.⁷⁰⁵ Abetment of the offence is punishable with the same imprisonment as provided for the offence he abetted; while parents or guardian are made equally liable for the offence along with the employer.⁷⁰⁶ The offences of employing a child at an establishment and employing an adolescent in hazardous work at an establishment shall be tried summarily in accordance with the provisions of chapter XXII of the Code of Criminal Procedure, 1898 (CrPC), and magistrate having powers under section 30 of the CrPC shall try the offences of slavery etc. as mentioned above.⁷⁰⁷ All the offences under the Act are cognizable and non-bailable.⁷⁰⁸ In order to avoid the overlapping of punishments with any other previous laws such as Mines Act, 1923, the Factories Act, 1934 and the Punjab Shops and Establishments Ordinance, 1969, regarding children and adolescents, the punishments under this Act shall be imposed and not under the said laws.⁷⁰⁹ The Act is comprehensive enough in terms that slavery like practices are made punishable for the first time. The Act is meant to protect children and adolescents from trafficking, slavery and other slavery like practices.

Azad Jammu and Kashmir Prohibition of Child Labor and Regulation of Labor at Brick-Kilns Act, 2017 is another effort towards the abolition of the problem. It prohibits the employment of children at brick-kilns. Written agreement along with all its details is sine qua non. The punishments up to six months' imprisonment and fine of Rs. 500,000/- is prescribed for the offenders.

⁷⁰⁵ Ibid. Section 11.

⁷⁰⁶ Ibid. Section 12. For the purpose of this section, abetment has the same meaning as is associated to it in the Pakistan Penal Code, 1860.

⁷⁰⁷ Ibid. Section 16.

⁷⁰⁸ Ibid. Section 17.

⁷⁰⁹ Ibid. Section 18.

8.8 Law Pertaining to Sardari (Chieftdom) System

Even before the judgment of Darshan Masih case, the country was facing various issues relevant to human trafficking. The Act of 1992 supra is not the first legislation towards the abolition of the problem. Certain issues relevant to human trafficking were present even since its very inception. The Chieftdom structure was, even today is, prevalent in the provinces of Sind and Baluchistan which is called Sardari system. The chief is called the Sardar. The Sardars were maintaining their private jails wherein the workers were kept in inhumane conditions. The exploited labor was extracted from the whole family of workers. The common people were illiterate and had no means, courage and awareness to raise a slogan against the status quo. On the other hand, there were reactionary elements such as landlords or feudal or sardars. During the government of Pakistan People's party (PPP), a resolution was passed in the Baluchistan Assembly to end the Sardari system. It was only a resolution and not the law. The Sardari system is the cruelest system.⁷¹⁰ This system was inherited from the British rule in India. The then prime minister of Pakistan, Mr. Zulfikar Ali Bhutto, announced to abolish the Sardari system while addressing to the crowd at Quetta on 8th April, 1976. The System of Sardari (Abolition) Ordinance, 1976 was promulgated by the then president, Fazal Elahi Choudhry. On 04th June, the Ordinance was turned into the System of Sardari (Abolition) Act, 1976.⁷¹¹ In the opening paragraph of the Ordinance, the Sardari system, prevalent in certain parts of Pakistan, was held to be the worst remnant of the oppressive feudal and tribal system which, being derogatory to human dignity and freedom, is repugnant to the spirit of democracy and equality as enunciated by Islam and enshrined in the Constitution of Islamic Republic of Pakistan and opposed to the economic advancement of the people.

⁷¹⁰ It is a system which exploits more than the land-owners, jagirdars, nawabs, and spiritual leaders do.

⁷¹¹ The Act was published in the Gazette of Pakistan, Extraordinary, Part-I, dated 04th June, 1976.

Restrictions were imposed on the persons to act as Sardars.⁷¹² The Ordinance is very short document having only 5 sections from definition to punishment but enough to crack the prevailing status quo situation.

Unequal distribution of lands was one of the major causes of labor exploitation. This engendered the feudalism⁷¹³ where feudal lords used to exploit their fiefs with impunity. The feudal archetype consists of landlords possessing hundreds or even thousands of acres of land. The poor peasants are forced to live a miserable life where feudal lords enjoy all the comforts of life and consider farmers or village men as their personal goods.⁷¹⁴ This situation is not less than the slavery. The substantial numbers of agricultural workers or peasants are in conditions of coercive recruitment and debt bondage.⁷¹⁵ I am confident to hold that this system is not the tale of the past, but is still continued in various areas of Pakistan.

8.9 Laws Pertaining to Migration

Migration is one of the main reasons for human trafficking. It is the moving or travelling into new region or country. The migration may be legal or illegal; within a state boundaries or cross-border; and permanent or temporary. Migrant workers are exploited due to their vulnerable status. Migration may occur within as well as outside the country. They are vulnerable to compromise in exploitative environment as they have no other option for their livelihood, except to accept the exploitation. The traffickers take the advantage and make them as victims of human trafficking. They are ready to sell their

⁷¹² The detail of the persons who were defined as Sardars is provided under section 3 of the Ordinance which provides that sardars were exercising judicial powers without any such authority conferred on them officially; they were maintaining their private jails without any sanction from government wherein people were kept under their custody; exploitative labor was extracted from them. Any violation would entail penal consequences.

⁷¹³ There is no exact definition of feudalism but one thing is clear that this is a system in which poor man lives a miserable life and is exploited by his landlord.

⁷¹⁴ Jahanzeb Khan and others. "Feudalism is a major obstacle in the way of social mobility in Pakistan," *J.R.S.P.* 50 (2013): 1.

⁷¹⁵ ILO, "Forced Labor in Latin America: Declaration on Fundamental Principles and Rights at Work," *Cornell University, ILR School, International Labor Office* (January 2005).

labor even at meager wages; involve their children or women even without wages; and also in commercial sexual activities. Trafficking in respect of illegal migrants means cheating, intimidation and brutality.⁷¹⁶ As discussed in the preceding chapters, there are millions of illegal migrants in Pakistan who came from neighboring countries. The informal sectors of Pakistan welcome them for exploitative labor. A chain of people earns profits from their vulnerability. These people range from recruiters to actual exploiters in the field. Migration is an umbrella term which includes both emigration and immigration. Pakistani laws relating to immigration, emigration, foreigners, and passport refer to the elements of migrant workers who may be exploited in the destination country.

8.9.1 Migrants Entering into Pakistan

Settling of foreign nationals into Pakistan is called the immigration to Pakistan. Immigration may be legal or illegal. Illegal immigrants are mostly exploited in labor and sex practices. They are the victims of human trafficking. According to some estimates, illegal immigrants in Pakistan comprise 2.5 million Afghans, 2 million Bangladeshi and 0.5 million nationals including Africans, Iranians, Iraqis and people from Myanmar.⁷¹⁷ These people have no valid documents issued by the government of Pakistan, so they fall easy prey for the traffickers to earn money for themselves by involving such vulnerable people in exploitative works. The immigration Ordinance, 1979 contains a number of offences relating to the entry of non-citizens into the territory of Pakistan.

The immigrants also enter into Pakistan legally, such as Afghan refugees. As of 2017, nearly 1.4 million registered Afghan refugees are residing in Pakistan.⁷¹⁸ The Foreigners Act, 1946 prohibits assisting the illegal entry of non-citizens in to Pakistan⁷¹⁹

⁷¹⁶ Lasha Kukhianidze. "Legal aspects of Labor Migration and Trafficking in Human Beings," *European Scientific Journal* 12 (December 2016): 35. ISSN: 1857-7881.

⁷¹⁷ Newspaper Clipping "Pakistan Today" published on 7 march 2017.

⁷¹⁸ UNHCR report dated 07 February 2017, and Press Release of UNHCR dated 20 October 2017. < <https://unhcrpk.org/new-representative-for-unhcr-in-pakistan-arrives/> >. (accessed on 10-05-2018).

⁷¹⁹ Section 13-A of Foreigner Act, 1946.

and requires that every foreigner in Pakistan shall get himself registered with the Alien Registration Authority (the Authority), established by the Federal government, then the Authority may permit a foreigner registered with it to work in Pakistan at such place and for such period as the Federal Government may, from time to time, prescribe.⁷²⁰ In Pakistan, such registration Authority is the National Database and Registration Authority which issues the registration cards to the foreigners. If any foreigner contravenes any direction given in pursuance of this Act, he shall be liable to punishment with imprisonment for a term which may extend to three years and fine. The Act further stipulates that where any foreigner knowingly enters into territory of Pakistan illegally, he shall be guilty of an offence under this Act and shall be punished with imprisonment for a term which may extend to ten years and fine.⁷²¹

8.9.2 Migrants Leaving Pakistan

For those migrants who are leaving the territory of Pakistan are called the emigrants. They are also vulnerable to foreign countries seeking jobs. Cases of force labor and sexual practices are common. Pakistan has a special law for emigrants, called the Emigration Ordinance, 1979. This law is enacted so as to save the interests of Pakistani nationals in abroad. Such people become the victims of human trafficking. The government has authority to enter any port or point of entry or departure to inspect any conveyance carrying or bringing or believed to be carrying any emigrant.⁷²² This is preventive policy and the government can arrest the persons who are being carried away for exploitative labor. Even the vessel can be detained in this regard. Unlawful emigration is punishable offence in the following words: -

⁷²⁰Ibid. Section 14-D.

⁷²¹Ibid. Section 14.

⁷²² Section 11 of Emigration Ordinance, 1979.

*“Whoever emigrates or departs or attempts to emigrate or depart shall be punished with imprisonment for a term which may extend to five years or with fine or both.”*⁷²³

Any agreement binding a person to emigrate or depart or even attempt for the same is punishable offence with maximum imprisonment of five year, or with fine, or with both, for first time offender; and seven years, or with fine, or with both, for repeater.⁷²⁴ Fraudulently inducing for emigration is also punishable as: -

*“Whoever forges any document required for, or relating to, the emigration of any person, or has in his possession or under his control any instrument or article which may be used for the purposes of such forgery, or (b) by means of intoxication, coercion, fraud or willful misrepresentation, causes or induces, or attempts to cause or induce, any person to emigrate, or enter into any agreement to emigrate, or leave any place with a view to emigrating, shall be punishable with imprisonment for a term, which may extend to fourteen years, or with fine, or with both.”*⁷²⁵

Any person departing from or entering into the territory of Pakistan must have a valid passport which is required by section 3 of the Passports Act, 1974. Any contravention of this section shall be punishable with maximum imprisonment of one year, or with fine, or with both.⁷²⁶ The offence is non-bailable in nature.⁷²⁷ The 1974 Act provides for a number of offences relating to passport which are punishable for maximum imprisonment of three years, or with fine, or with both.⁷²⁸

8.9.3 The Prevention of Smuggling of Migrants Ordinance, 2018

As discussed above, people into and out of Pakistan are illegally migrated and thereafter become the victims of human trafficking with no other option to adopt. So migrant smuggling is always looked from the mirrors of human trafficking. The

⁷²³ Ibid. Section 17.

⁷²⁴ Ibid.

⁷²⁵ Ibid. Section 20.

⁷²⁶ Section 4 of the Passports Act, 1974.

⁷²⁷ Ibid. Section 4.

⁷²⁸ Ibid. Section 6.

vulnerable people are lured for better employments in the destination countries but exploitation is their real fate. Pakistan promulgated the Prevention of Smuggling of Migrants Ordinance, on 8th April, 2018. Smuggling of migrants is defined as under: -

*“The facilitation, for benefit, of illegal entry of another person who (i) is a foreigner, as defined in clause (a) of the Foreigner’s Act, 1946, into or from Pakistan into a country of which the person is not a national or a permanent resident; or (ii) is a citizen of Pakistan, as specified in the Pakistan Citizenship Act, 1951, into another country of which the person is not a national or permanent resident.”*⁷²⁹

The Ordinance provides punishments for different offences such as committed through documents, harboring illegal migrants for benefits, aggravating circumstances, abetment, conspiracy etc. The offences are made cognizable, non-bailable and non-compoundable and shall be tried by the Magistrate of the First Class.⁷³⁰

8.10 Laws pertaining to Obscene Literature and Pornography

As discussed in the previous chapters, pornography is a related issue with human trafficking. Pakistani legislation prohibits pornography and spreading its contents. Various measures including the blocking of websites containing explicit material have been adopted by the Pakistan Tele-Communication Authority (PTA). International law permits website blocking for the purpose of combating child pornography, provided that national law is sufficiently precise.⁷³¹ The PPC also provides prohibitions on sale, importation, exportation, exhibition, advertisement etc. of any obscene and porn literature.⁷³² Still there was need to penalize the further acts, hence, new sections are inserted through the Criminal Law (Amendment) Act, 2016 wherein exposure to seduction; child Pornography; and sexual abuse are made punishable offences. The relevant provisions of PPC are provided in the Appendix One.

⁷²⁹ Section 2 (h) of the 2018 Ordinance.

⁷³⁰ Ibid. Section 9 and 10.

⁷³¹ David P. Fidler. “Internet Governance and International Law: The Controversy Concerning Revision of the International Telecommunication Regulations,” *American Society of International Law* 17 (February 2013): 6.

⁷³² Sections 292, 293 and 294 of PPC.

8.11 Special Laws Pertaining to Human Trafficking

8.11.1 Prevention and Control of Human Trafficking Ordinance, 2002

Against the backdrop of international anti-human trafficking developments, Pakistan's ratification of various relevant instruments, and U.S. pressure to enact any specific legislation caused the enactment of anti-trafficking legislation. Pakistan has to enact a special legislation namely the Prevention and Control of Human Trafficking Ordinance, in 2002. The Ordinance addresses it as a crime with definitions of new offences such as exploitative entertainment, inhuman sports etc. and providing recourses to protect and restore victims. To achieve the purpose of the Ordinance, the Prevention and Control of Human Trafficking Rules, 2004, are also framed. Although, Pakistan is not the signatory to the Palermo Protocol, but its elements have been reflected in the PACHTO. Like Palermo Protocol, the PACHTO is also a law-enforcement instrument and execute to criminalize human trafficking as an offence. It further requires that the conduct prohibited in the definition must be punished. This legislation establishes the notion that the human trafficking is a separate substantive offence. The PACHTO defines the crimes of sexual practices and inhuman sports; prohibited exploitative entertainment, slavery and forced labor and all the related acts being unlawful and punishable. Originally, the Ordinance was intended to create a new regime of addressing human trafficking, but it did not yield the results and was criticized on various aspects which would be discussed in detail in the next chapter.

The exploitative entertainment and inhuman sports are defined as under: -

Exploitative Entertainment: "All activities in connection with human sports or sexual practices or sex and related abusive practices."⁷³³

⁷³³ Section 2 (f) of the Ordinance.

Inhuman Sports: “All sports involving as a matter of normal course infliction of physical or mental injury on a person against his will, intention or reasonable expectation.”⁷³⁴

The term human trafficking is defined as under: -

*“Obtaining, 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 for such person’s subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3.”*⁷³⁵

It also provides for other definitions such as benefit,⁷³⁶ coercion,⁷³⁷ and organized criminal group⁷³⁸ for the first time which were not provided by any other criminal statute previously. Sections 3, 4 and 5 belong to the various types of punishments recommended for the traffickers. Section 7 is compensatory in nature for the victims. The offence of trafficking is declared to be cognizable, non-bail-able and non-compoundable;⁷³⁹ and Judicial Magistrate of first class is declared to be the lowest court trying such offence.⁷⁴⁰ The word benefit in the definition is very much relevant to the phenomenon of human trafficking. A person traffics another person for the purpose of attaining a benefit. If there is no benefit to the trafficker, there is no human trafficking. However, even an attempt of human trafficking can constitute the offence, so it is not necessary that the trafficker got the actual benefit. An attempt to get benefit also constitutes human trafficking. In order to complete the offence, there must be a combination of three basic elements i.e. acts, means

⁷³⁴ Ibid. Section 2 (i).

⁷³⁵ Ibid. Section 2 (h).

⁷³⁶ Section 2 (a) defines benefits includes monetary profits, proceeds or payment in cash or in kind.

⁷³⁷ Section 2 (d) defines coercion as 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 of infliction of serious harm.

⁷³⁸ Section 2 (j) defines it as a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing any offence under the Ordinance, in order to obtain, directly or indirectly, any financial or other material benefit and includes a person knowingly receiving or disbursing benefits accruing from the commission of any offence in relation to human trafficking by an organized criminal group.

⁷³⁹ Ibid. Section 8.

⁷⁴⁰ Ibid. Section 10.

and purpose. If any of the elements is missing, then the offence does not fall within the definition of human trafficking. It may be some other offence but not the human trafficking. The PACHTO was initially enacted as an Ordinance, but it was given approval by the National Assembly on 03rd October, 2002. Although it became an Act after the approval from National Assembly, but its name is not changed from Ordinance to Act.

8.11.2 Prevention and Control of Human Trafficking Rules, 2004

The Ordinance is accompanied by the Prevention and Control of Human Trafficking Rules, 2004 which stipulate overall regulatory measures, generally relating to the victim protection and law enforcement. The victims are required to be produced before the court for recording of statement under section 164 of the CrPC.⁷⁴¹ This section provides an important provision of law wherein the victim narrates the whole story of his exploitation before a judge. Such statement has much evidentiary value as compared to statement recorded before the police officer under section 161 of the CrPC. The court fully regards such victim and sends him/her to shelter home established by the government or NGOs for accommodation, food and medical treatment.⁷⁴² During the trial of the case, the legal assistance to the victim is also provided. It is the basic essential of the principle of right to fair trial. The victims are poor persons and they do not have means to contest the trial of the case. Further, the offenders are always influential persons and they have all means to obstruct the victims from pursuing the case. The state is, therefore, responsible for their safe custody and expenses on trial, so that the ends of justice should be defeated. The foreigner victims are repatriated to their original countries at the earliest after recording their evidence. But where the presence of victim is necessary till conclusion of whole trial, then they shall be entitled to apply to the National

⁷⁴¹ Section 3 of the Rules.

⁷⁴² Ibid. Section 3 and 4. The welfare of the victim is the utmost priority of the courts; hence, a victim may be handed over to any of his blood relative, if the court deems appropriate.

Alien Registration Authority (NARA) for temporary registration as alien or even they can apply for work permit.⁷⁴³ The Rules 2004 are framed just to facilitate the victims of human trafficking when they are exposed. The victims are protected at every stage. From disclosure of offence to repatriation to original countries, the government of Pakistan helps them. Women and children are the particular concern of the PACHTO. In 2010, a Bill to enact the Prevention and Control of Women Trafficking Act was introduced in the National Assembly of Pakistan,⁷⁴⁴ but it could not get the required number of votes for its approval because there was likelihood of overlapping between both the legislation which might had muddled the issue.

There is a trend of child migration from rural areas to cities for domestic service. Most of the parents of backward areas sell out their children to the rich families in urban areas as home servants. Such children are living like practices similar to slavery. Street children are also particular victims of human trafficking. In 2014, a Bill to enact the Child Protection System Act was introduced for Islamabad Capital Territory in the National Assembly of Pakistan, but it also could not succeed in getting the required show of hands. In 2015, a Bill to enact the National Commission on the Right of Child Act was introduced in the national Assembly of Pakistan. Street children are homeless children. The most common definition of a street child is as under: -

“Any girl or boy who has not reached adulthood, for whom¹ the street has become his habitual abode and source of livelihood and he is inadequately protected, supervised or directed by his family members.”⁷⁴⁵

The problem of street children links with the human trafficking.⁷⁴⁶ Street children are highly vulnerable to sexual abuse and worst forms of child labor. The recruiting,

⁷⁴³ Ibid. Section 7.

⁷⁴⁴ UNODC, *Trafficking in Persons in Pakistan: A Review of national Laws and Treaty Compliance*, (October 2011).

⁷⁴⁵ SPARC NGO. < <http://www.sparcpk.org/2015/Other-Publications/streetchildren-bro.pdf> > (accessed on 10-05-2018).

selling, purchasing, detaining, harboring or receiving a child for the purpose of exploitation is considered as child trafficking. Approximately 1.2 to 1.5 million children are on the streets of major cities of Pakistan.⁷⁴⁷

8.11.3 The Prevention of Trafficking in Persons Act, 2018 (PTPA)

In 2010, a Bill to enact the Prevention and Control of Women Trafficking Act was introduced in the National Assembly of Pakistan, but the same could not get the required number of votes for its approval on the ground that it would overlap the previous legislation on the issue i.e. the PACHTO. Various stake holders such as FIA, UNODC etc were not satisfied with the PACHTO, so that more effective measures to prevent the human trafficking especially women and children be adopted. So efforts remained vibrant to enact some other better legislation as a substitute. On 10th October, 2017, the Trafficking in Persons Bill was introduced which was not accepted in the parliament. On 16th January, 2018, another bill was introduced to amend the existing law on human trafficking i.e. PACHTO. In order to make the PACHTO more effective, it was recommended in the Bill to add internal and external forms of exploitation; sex trafficking; labor trafficking; and enhancement of existing punishments. This Bill was also rejected as it was suggested to repeal the PACHTO and introduce some new legislation.

Consequently, the Prevention of Trafficking in Persons Ordinance, 2018 was promulgated on 26th April, 2018,⁷⁴⁸ while the PACHTO stood repealed by this Ordinance.⁷⁴⁹ On 23rd May, 2018, the Ordinance is passed as an Act by the National Assembly of Pakistan, with name as “the Prevention of Trafficking in Persons Act

⁷⁴⁶ Joshua Oyeniya and others. “Street Children, Human Trafficking and Human Security in Nigeria: Competing discourses of vulnerability and danger,” *African Population Studies* 27 (March 2014): 2.

⁷⁴⁷ Ibid.

⁷⁴⁸ The 2018 Ordinance is published in the official gazette of Pakistan, Extraordinary, Part-I, pp. 269-273, dated 08th May, 2018.

⁷⁴⁹ Section 16 of the 2018 Ordinance.

(PTPA), 2018.” The PTPA makes its commitment in the preamble to provide for effective measures to prevent and combat the trafficking in persons especially women and children; to promote and facilitate national and international co-operation; to protect the trafficking victims; and provide for matters connected or ancillary. Trafficking in persons is defined and punished as under: -

“(1) Any person who recruits, harbors, transports, provides or obtains another person, or attempts to do so, for compelled labor or commercial sex acts through the use of force, fraud or coercion, commits an offence of trafficking in persons and shall be punished with imprisonment which may extend to seven years or with fine which may extend to one million rupees or with both. (2) if the offence of trafficking in persons under sub-section (1) is committed against a child or a women, the person who commits the offence shall be punished with imprisonment which may extend to ten years and which shall not be less than two years or with fine which may extend to one million rupees or with both.”⁷⁵⁰

The PTPA splits up into two types of offences i.e. Labor Trafficking and Sexual Trafficking. The Act enhances the punishments under certain circumstances called the aggravating circumstances as under: -

“Where an offence under section 3 involves: (a) serious injury, life threatening illness or death of the victim or another person; (b) activity of an organized criminal group; (c) confiscation or destruction of any travel document of the victim; (d) repetition of the offence by the same offender; the offender shall be punished with imprisonment which may extend to fourteen years and shall not be less than three years and fine which may extend to two million rupees.”⁷⁵¹

The combined effect of sections 3 and 4 supra splits the traffickers into two types i.e. individual trafficker and organized criminal group. Any single trafficker shall be punished under section 3; while the member of the group shall be punished under section

⁷⁵⁰ Ibid. Section 3.

⁷⁵¹ Ibid. Section 4.

4. The Ordinance fills some other lacunas of PACHTO by introducing provisions regarding abetment and criminal conspiracy as under: -

“Any person who participates as an accomplice, aids, or abets an offence under section 3 or 4, shall be punished in accordance with Chapter V of the PPC; (2) Any person who is a party to a criminal conspiracy to commit an offence under section 3 or 4, shall be punished in accordance with Chapter V-A of the PPC.”⁷⁵²

This section retains the liaison between PTPA and PPC. Sections 3 and 5 collectively splits up the offenders into two categories i.e. traffickers and abettors. It was previously noted that the victims were also held criminally liable for the offence and were prosecuted; in most of the cases, were even convicted. The US Department of State advised to avoid this practice being violative of the very essence of criminal justice system. So the protection from prosecution is provided to the victims of trafficking.⁷⁵³ It was also a big question mark on the performance of FIA to deal with the issue of internal human trafficking. The FIA lacks jurisdiction in this regard, so it was necessary to solve this issue as well. The PTPA makes it clear that investigations for internal trafficking and external trafficking shall be carried out by the local police and FIA respectively.⁷⁵⁴ The bifurcation of powers of investigating agencies separates the trial proceedings before the ordinary courts and special court of FIA. This section also splits up the offences into two categories i.e. internal human trafficking and cross-border human trafficking. The offences under the PTPA are made cognizable and non bailable and Magistrate of the First Class is empowered to try the offences.⁷⁵⁵ The PTPA repealed the section 369-A of PPC which was clear-cut overlapping of both the laws.

⁷⁵² Ibid. Section 5.

⁷⁵³ Ibid. Section 6.

⁷⁵⁴ Ibid. Section 8.

⁷⁵⁵ Ibid. Section 9 and 10.

8.12 Policy Measures for Control of Human Trafficking

The government of Pakistan stands fully committed to its international obligations to combat human trafficking, particularly towards the victim protection. In this regard, the government allocated Rs. 8.39 billion towards the victim protection and assistance in 2016. Previously, Pakistan has launched an inclusive policy document known as the National Action Plan (NAP) for Combating Human Trafficking in 2006. It was developed by the Ministry of Interior. As a part of NAP and in recognition of international significance of human trafficking, the Ministry of Interior established a steering committee to monitor and review of anti-trafficking efforts in Pakistan. The Joint Secretary (Security) is the focal person for co-ordination and information exchange. The Additional Director General of Immigration Wing in FIA acts as the National Rapporteur and makes liaison with other authorities such as ministries, agencies, international partners, Director General FIA, Anti-Trafficking Units, border security officials, and any other law-enforcement agency, in order to efficiently implement operational investigation and criminal prosecution of human trafficking offences.⁷⁵⁶ Thirteen Anti-Trafficking Units (ATUs) have been established throughout the country to deal with all matters of human trafficking more effectively, following the establishment of sub-units in all zonal Directorates of FIA at Karachi, Peshawar, Quetta, Lahore and Rawalpindi.⁷⁵⁷ In addition to this, An Inter-Ministerial Committee on Human Trafficking, Smuggling and Illegal Immigration was formed to monitor and review efforts to combat human trafficking. The

⁷⁵⁶ The duties of DG include; (1) identification of requirements arising from implementation of the NAP and taking appropriate measures to resolve them; (b) provisions of information ensuring that other authorities have been properly informed on the activities; (3) liaison with all other stake-holders; (4) supervisions over activities of ATUs; (5) arrangement of meetings to resolve functional issues; (6) ensuring about the availability of adequate support from appropriate government bodies for the NAP; and (7) maintaining contacts for potential donor support through international partners.

⁷⁵⁷ The duties of ATUs include; (1) to prevent and protect the victims; (2) to investigate cases and prosecute offenders; (3) to build a data base of human traffickers; (4) to liaise with NAS of US Embassy, NGOs and 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.

government of Pakistan passed its Strategic Framework against for combating human trafficking and migrant smuggling for 2016-2020.

Pakistan is also a member of the Regional Task Force (RTF) for the implementation of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The member countries convene a meeting annually to discuss and enhance international co-operation against human trafficking. The National Action Plan for Children (NAPC) was sanctioned in the year 2006 under the responsibility of the National Commission for Child Welfare and Development (NCCWD).⁷⁵⁸ The NAPC covers all areas of child issue, including National Plan of Action against Child Sexual Abuse and Exploitation. A National Child Protection Policy was drafted to address exploitation and discrimination in children in 2008. Pakistan is also a part of the South Asian Initiative to End Violence against Children (SAIEVAC) which convened its first Board Meeting in Kathmandu in 2010, where a work-plan for 2010-15 was approved. A specific Inter-Agency Group on Child Trafficking was also launched by 10 agencies including UN agencies and NGOs in 2008. Child Protection Committees were also formed in each district. Child Protection Institutions are built in 12 districts of Punjab namely Kasur, Hafizabad, Chakwal, Jhelum, Vehari, Mianwali, Bhakkar, Pak-Pattan, Rajanpur and Layyah – by the Child Protection & Welfare Bureau (CP&WB). The CP&WB provides prompt assistance and support to children who have been subjected to violence, exploitation, abuse and neglect through Helpline (1121). The latter has also been utilized for dissemination of information and guidance in respect of child rights. The helpline number 1121 is centralized and functioning all over Punjab. Pakistan is also concerned about the child pornography. In this regard, the PTA has formed a code of conduct for internet providers. Most recently, Pakistan launched the

⁷⁵⁸ NCCWD is the main authority in charge of child rights and protection in Pakistan.

Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants, and the Public Awareness Campaign against Human Trafficking and Migrant Smuggling on 19th July, 2017 with the help of European Union, Australian Government Department of Immigration and Border Protection, and United States Department of State.

8.13 4 Ps' Model for Combating Human Trafficking

The Palermo Protocol provides a standard approach to state parties in combating human trafficking which is “4Ps” model. Law can be used to address various aspects of human trafficking through means that include four Ps (prevention, protection, prosecution and partnership). The addressing of human trafficking means the enforcement, victim assistance and adjudication at all levels. In other words, the addressing of issue comprises prevention, protection and prosecution. All these Ps will be examined with relevant legal provisions. The national law adopted till date has concentrated largely on criminal law. Anyhow, all are discussed as below.

8.13.1 Prevention of Crime

Prevention of human trafficking is the foremost element in combating the offence. National law has also focused on prevention of the offence. In this regard, the law mainly emphasizes on awareness raising programs. Awareness can be achieved, among others, through developing and disseminating information to general public regarding offence of human trafficking and dangers to the victims. The same policy was adopted to abolish slave trade when such types of campaigns were initiated by fixing brochures etc. on the railways, bus stations. Prevention can be either for short term or long term; short term method is implemented through policies; while long term method is implemented through

laws.⁷⁵⁹ Laws and policies are considered effective tools to combat human trafficking. The policies disseminate awareness among the citizens to keep away from the menace of human trafficking; while laws place a deterrent effect by punishing the offenders. Such deterrence may be direct or indirect. In order to achieve long term prevention, the legal framework must be comprehensive and effective. These requirements will sufficiently prevent the crime of human trafficking.⁷⁶⁰

8.13.2 Protection of Victim

Protection means the assistance to the victims of human trafficking. Protection is very much important because it restores the confidence of the society that in case of any violation of rights, the state is concerned for its residents. There is also a practice that the trafficking victims are treated as offenders and punished.⁷⁶¹ If the women and children are held in jails, they suffer further abuse and exploitation by the police.⁷⁶² This practice must be abandoned and the state is under an obligation to protect and assist the victims and not to treat them as offenders. It is recommended that trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.⁷⁶³ Like ‘4Ps’ model, the protection of victim is measured on ‘3Rs’ model i.e. Rescue, Rehabilitation and Re-Integration.

⁷⁵⁹ Khairil Azmin Bin Mokhtar and others. “Incorporating the United nations protocol on Trafficking in Persons in the Malaysian Legal Framework,” *International Islamic University, Malaysia (IIUM) Law Journal* 24 (2016): 2.

⁷⁶⁰ Let us take the example of human trafficking for the purpose of prostitution. In some Muslim countries like Iran and Saudi Arab, prostitution is a crime in their legal system which is punishable by death. Such type of law will deter the trafficker from trafficking the vulnerable people for prostitution.

⁷⁶¹ US Department of State, *Non-criminalization of Victims for Crimes committed in the course of being trafficked*, 2013. < <https://2009-2017.state.gov/documents/organization/211841.pdf> > (accessed on 08-08-2018).

⁷⁶² Kevin Bales. “Because she looks like a child,” *Global Women, New York, Holt Paperbacks* (2002).

⁷⁶³ Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the United Nations Office of the High Commissioner for Human Rights.

8.13.2.1 Rescue

Black's law dictionary defines rescue as '*an act or an instance of saving or freeing someone from danger or difficult situation*'. It requires that the victim and trafficker must be identified correctly, so that the victim should receive a reasonable support and resource including shelter, medical assistance, work and safe house for the victims pending the completion of the trial against the offenders. The Recommended Guidelines make an obligation on state parties to use due diligence to identify trafficker and trafficked.

8.13.2.2 Rehabilitation

Black's law dictionary defines rehabilitation as '*the process of seeing to improve or restoring someone to his normal state by training etc.*' to rehabilitate the trafficked person is not an easy task, particularly is a situation when he suffers mental injury as a result of being tortured or physically abused for a long period, but it is essential to rehabilitate him so that he may lead a normal life again. It is also a bitter fact that most of the victims' families do not accept the trafficked person when they are back.

8.13.2.3 Re-integration

Black's Law Dictionary defines reintegration as '*someone's integration back into the society.*' It follows the rescue process and links to the rehabilitation process. Without re-integration, the return of the victims to his country may expose them to the risk of being re-victimized and re-exploited. Article 8 of the Palermo Protocol and article 33 of the UN Model laws against the trafficking in persons require the state parties to repatriate the victims to their original country without unnecessary delay by providing them with relevant travel documents after considering their rights and safety.

8.13.3 Prosecution of Offenders

Prosecution means to bring the offender into the clutches of the law and to punish him. For this purpose, an effective legislation is necessary. In order to succeed in prosecuting and punishing the offender under the PACHTO, the three parts i.e. act, means and purpose, must be proved. The United Nations' Recommended Principles and Guidelines also emphasize in this regard.⁷⁶⁴ The national framework also prescribes different terms of punishments based on the severity of the actions committed.

8.13.4 Partnership among the States

To abolish the human trafficking completely, it is necessary to make mutual collaboration by the states because it involves criminal network which spans countries. This model is added as a recent trend. It applies only on cross-border trafficking. International as well as national law obligates state parties to make efforts for abolition of human trafficking by sharing information, joint investigations, handling offenders through extraditions etc. Without the partnership, it is not possible to prevent the offence because the offenders are residents of different countries. This fourth type of model facilitates the remaining three models. It includes the task forces among law enforcement agencies that cooperate to share intelligence, work across jurisdictions, alliances between governments etc.

8.14 Conclusion

The national legal regime on human trafficking consists of constitutional provisions to criminal law. The criminal law further consists of general law and special law. In general law, PPC is the most important; while in special laws, various laws are enacted for combating of human trafficking; some are provincial laws while two are federal laws. Current special federal law currently is the PTPA which repealed the

⁷⁶⁴ Under sections 29, 30 and 31, it is provided that the member states should (i) have legislation; (ii) efficiently prosecute; and (iii) provide proper sentence to the offender.

previous special federal law i.e. PACHTO. This chapter is the answer to the fifth research question of the thesis.

Next chapters are the most important chapter of this thesis because they include the critical analysis of the legal regime which is discussed in this chapter.

Chapter 09: Legal Principles relevant to the Critical Evaluation of Anti-Human Trafficking Legal Regime

9.1 Introduction

This chapter of the thesis is the basis for critical evaluation of the legal regime on the subject and provides some legal principles which are necessary to critical evaluate the anti human trafficking legal regime. As discussed in the previous chapters that human trafficking is a world-wide crime and no one really knows about how many people are affected; international as well as national legal responses to combat this crime are already debated in this thesis, but how much national legal regime is significant to combat human trafficking is the subject matter of next two chapters which have been critically evaluated to conclude the central argument of the thesis. But how the legal regime is insignificant, for this purpose, the legal regime has been looked through setting certain legal principles on which the Courts rely while deciding the cases. Two legal regimes have made attempts to combat human trafficking in Pakistan. First legal regime starts with the enactment of PACHTO in 2002 and ends with the enactment of PTPA in 2018. The second legal regime starts with the enactment of PTPA which is recent enacted legislation when the write-up of this thesis was almost complete. So PTPA is also made part of this thesis for evaluation. Both the legal regimes are critically evaluated in chapters 10 and 11 respectively. Before addressing the critical evaluation of legal regimes, it is necessary to define the significant legal regime as well as certain relevant legal principles for evaluation.

9.2 What is Significant Legal Regime?

The word '*significant*' denotes anything which is remarkable, determinative, outstanding, substantial or valuable. It is an adjective term which shows the quality of a thing having or likely to have influence or effect. In terms of this study, a significant legal

regime is that has the quality of effectiveness and comprehensiveness, so a legal regime to be a significant must have two essentials such as it must be effective and comprehensive. The word '*Effective*' denotes anything which is competent, purposeful, utilitarian, efficacious, fit for use, having legal force, or practical. So an effective legal regime must fulfill the purpose for which it is framed. It must be utilitarian and practical having legal force to combat the offence for which it is framed. It must produce a decided, decisive and desired effect. It must be ready for purposeful action if there is any violation of its provisions. The word '*Comprehensive*' denotes anything which is all-covering, complete, or wide- ranging. So a comprehensive legal regime must have all or everything relevant to the subject. Therefore, a significant anti-human trafficking legal regime is one that has the legal force and is fit for use to combat the offence in practical terms, coupled with having detailed contents which cover all the relevant terms. So in order to evaluate the legal regime being significant, it bases upon its effectiveness and comprehensiveness.

9.3 Legal Principles

Legal principles are considered to be legal norms or legal values and sometimes they are regarded as standards upon which legal rules should be based upon. So the legal principles are defined as the prevailing standard or set of standards of a judgment.⁷⁶⁵ For the purpose of this research thesis, some of the legal principles are discussed as under: -

9.3.1 Principle of Prevalence of Special Law over General Law

The word offence is defined as under: -

*"An act or omission made punishable by any law for the time being in force; a thing made punishable by PPC."*⁷⁶⁶

⁷⁶⁵ Dr. Jordan Daci, "Legal principles, legal values, and legal norms: are they the same or different?" *Academicus International Scientific journal*: 109-115.

⁷⁶⁶ Section 3(37) of General Clauses Act; and section 40 of PPC respectively.

The General Clauses Act, 1897 (GCA) provides a bar to double punishment for the same offence as under: -

“Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.”⁷⁶⁷

The term ‘same offence’ would mean the offences the ingredients of which are same. What is prohibited under this section is punishment for the same set of facts under two sections. In *Niaz Ali case*,⁷⁶⁸ the section 26 of GCA is applied while inflicting punishment to the accused. This section is wider enough on account that not only does it deal with an act which is an offence under the general law but also under a special law. A special law does not repeal the general law unless the intention is made clear in that law. So in view of section 26 supra, it is not permissible to punish the accused twice for the same offence, but provision of this section applies only when an act or omission which constitutes an offence is punishable by two or more different enactments and the accused shall be liable to be prosecuted and punished under either or any of those enactments. It is concluded from the foregoing discussion that section 26 of GCA makes no difference between general law and special law; if an act or omission constitutes an offence under general law or special law simultaneously, then prosecution and punishment can be held under any of the said laws without any distinction of either law.

Now to proceed with the critical analysis, I begin with the concepts of general law and special law. General Law is always applied to the whole territory that it encompasses and all the people living in that territory must abide by it. So general law is one which is

⁷⁶⁷ Section 26 of the General Clauses Act, 1897.

⁷⁶⁸ *Niaz Ali versus the State*, PLD 1961 Lahore 269. The facts of the case are that a canal patwari, being a public servant, was convicted and sentenced by the trial court under section 161 of PPC and under section 5 (9) of the Prevention of Corruption Act, 1947. This conviction was challenged in the High Court where it was held that separate sentences for the two convictions recorded by the trial court are illegal as the accused has committed only one act constituting one offence, although falling under two enactments and he cannot be punished twice for the same offence.

unrestricted in terms of its applicability to all issues covered by its subject matter. As contrast to general law, there is incorporated a special law which is considered as an exception to this general law. In juxtaposition special law is restricted to certain localities, persons or types of cases. Section 41 of PPC defines special law is a law applicable to a particular subject; while under section 42 of PPC, a local law is a law applicable only to a particular part of the territories comprised in Pakistan. Thus special law is a law enacted for special cases which can also entertain special circumstances in conflict with general law laying down or applicable generally to all cases with which general law deals.⁷⁶⁹ Whether a statute is general or special depends on the particular features of the statute in issue. The PPC is a comprehensive code for creating all criminal offences in Pakistan and applies throughout the country and every person shall be liable to punishment under PPC for every act or omission contrary to its provisions thereof.⁷⁷⁰ This makes the PPC a general law. The PPC and Code of Criminal Procedure (CrPC), 1898 are statutes which complement and supplement each other and are generally considered as counter-parts in criminal justice system of Pakistan. Therefore, like PPC, the CrPC is also a general law as it applies to the whole of Pakistan.⁷⁷¹ Almost all criminal offences are tried by the courts of ordinary jurisdiction under the general law including the offences committed with respect to human trafficking.

In *Ganeha case*,⁷⁷² it is held that in case of overlapping between the general law and special law, the special law would be implemented subject to condition that the general law was enacted first. Conversely, if the special law was enacted first and general law in later period of time, then the two would be considered to be valid and good

⁷⁶⁹ *Malik Abdul Qadir versus Atiq Ahmed*, PLD 2004 Karachi 555.

⁷⁷⁰ Sections 1 and 2 of PPC.

⁷⁷¹ Section 1 of CrPC.

⁷⁷² *Gahena Versus the State*, PLD 1968 Lahore 1266.

laws.⁷⁷³ However in such situation, only one law would be applicable. A general law and special law on the same subject are statutes in *pari materia*, so should be read together and harmonized with a view to give effect to both. It is an established standard of interpretation that where there is a conflict between a special law and general law, the former will prevail over the latter; so general provisions must admit to the specific provisions and in case of any conflict, the courts should prefer specific provisions. The Latin maxim '*Generalia specialibus non derogant*' provides that general things do not detract from the specific things.⁷⁷⁴ In *Naimat Ali Goraya case*,⁷⁷⁵ where a general law as well as special law is applied to a particular case, then to the extent of application of special law in that case, the provisions of general law stands displaced. In *Muhammad Yasin case*,⁷⁷⁶ where both general law and special law are applicable, preference should be given to the provisions of special law.⁷⁷⁷ In *Agha Muhammad case*,⁷⁷⁸ special provision overrides the general provision and the special enactment prevails over the general enactment. In *Punjab Province case*,⁷⁷⁹ the special law has an overriding effect over the general law in as much as that special law excludes the general law. General Law, whether substantive or procedural, is superseded by the special law. In *Muhammad Mohsin Ghuman etc. case and GM SNGPL case*,⁷⁸⁰ the special statute overtakes the operation of general statute. In *ZHV Securities case*,⁷⁸¹ it is held that when a special law and general law deal with the same offence, the former shall prevail over the latter and subject shall be dealt with under the special law. When there is a conflict or inconsistency

⁷⁷³ Ibid.

⁷⁷⁴ *Gulistan Textile Mills Ltd versus Soneri Bank Ltd*, 2018 CLD 203 (Supreme Court).

⁷⁷⁵ *Naimat Ali Goraya versus Jafir Abbas inspector*, 1996 SCMR 826.

⁷⁷⁶ *Muhammad Yasin versus the State*, 2001 YLR 289.

⁷⁷⁷ Ibid.

⁷⁷⁸ *Agha Muhammad versus Additional Collector Pakistan Coast Guards*, 2002 CLC 1584.

⁷⁷⁹ *Punjab Province versus Muhammad Ishaq*, 2005 YLR 148.

⁷⁸⁰ *Muhammad Mohsin Ghuman etc. versus Government of Punjab through Home Secretary etc.*, 2013 SCMR 85; *General Manager SNGPL versus Safeerullah Khan*, 2018 YLR 1721 (Peshawar).

⁷⁸¹ *ZHV Securities Pvt Ltd etc. versus Federation of Pakistan etc*, 2018 CLD 1338 (Sindh).

between the two laws in respect of punishment and procedure for the same offence, the one granting greater punishment must yield in favor of the law carrying a lesser punishment. However, if there is a conflict or inconsistency in respect of same offence between two special laws having over-riding clauses, the latter in time being the latest intention of the legislator shall prevail over the one prior in time but such presumption is not automatic and would be subject to determination of many other factor such as object, purpose and policy of both the statutes and the legislature's intention as expressed by the language employed therein. It is not irrelevant to emphasize here that the rule that the special law shall prevail over the general law is attracted ordinarily when both the laws concurrently apply to and permit of parallel platforms for the adjudication of the same offence under both the laws. However, if the scope of a general law or for that matter any special law (prior in time) is wider than the special law (later in time) dealing with the same offence, the former would yield to the latter to the extent of acts and omissions which constitute an offence there-under. If the special law (may be later in time) does not directly and specifically deal with or apply to a particular act which constitute an offence under the general law or for that matter under any special law (prior in time), no presumption of latter ceding in favor of the former would be read. So legally it would be only when the two laws, be a general law versus special law, or special law prior in time versus special law later in time with over-riding clauses dealing with a particular act constituting an offence under both the laws provide for distinct punishments and permit of different procedures, the presumption that the law harsher in punishment and procedure shall cede to the law less onerous would come into being.

At this juncture, it is useful to point out certain relevant provisions of CrPC and PPC. The CrPC provides that it extends to the whole of Pakistan but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or

local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.⁷⁸² It further provides that all offences under the PPC shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained; on the other hand, all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.⁷⁸³ It also provides that subject to the other provisions of this Code, any offence under any other law shall, when any court is mentioned in this behalf in such law, be tried by such Court.⁷⁸⁴ The PPC stipulates that nothing in this Act is intended to repeal, vary, suspend or affect any of the provision of any special or local law.⁷⁸⁵ All these provisions make it clear that not only do the CrPC and the PPC recognize special laws, but they also indicate that such general laws would cede to the special laws. In case of same matter and conflict between both the statutes, the special law must prevail irrespective of the fact that the special law is passed before or after the general law because it reveals the legislative intent more explicitly than that of the general law. The nutshell of the above discussion is that the special law always prevails over the general law if there arises any conflict between the both.

9.3.2 Principle of Prevalence of Special Law over Special Law

After the evaluation of overlapping of general law versus special law, there appears another principle of prevalence of special law over special law. In *Ashok Marketing Ltd. Case* and *Employees Provident Fund Commissioner case*,⁷⁸⁶ the Supreme

⁷⁸² Section 1 (2) of CrPC.

⁷⁸³ Ibid. Section 5.

⁷⁸⁴ Ibid. Section 29 (1).

⁷⁸⁵ Section 5 of PPC.

⁷⁸⁶ *Ashok Marketing Ltd etc. versus Punjab National Bank etc.*, (1990) 4 SCC 406; *Employees Provident Fund Commissioner versus O.L Esskay Pharmaceutical Limited*, AIR 2012 SC 11.

Court of India held that the principles which emerges from the various cases that in case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. It is held in *FECHS case*,⁷⁸⁷ in case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policies underlying the two enactments. In *Solidair India Ltd. Case*,⁷⁸⁸ it is held that in case of two special Acts inconsistent with each other, it the later Act which must prevail. The relevant extract of the judgment is read as under: -

“It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted.”

In *I.G HQ case*,⁷⁸⁹ it is held that when there are two special laws both of which containing over-riding clauses and there are conflicts between them, generally the statute later in time would prevail over the statute prior in time. However, the said presumption is not automatic instead a host of other factors including the object, purpose and policy of both statutes and legislature’s intention as expressed by the language employed therein, need to be considered in order to determine which of the two special laws is to prevail. The same principle has been enunciated in *SNGPL case* by the Islamabad High Court, Islamabad.⁷⁹⁰

There is another rule of interpretation which deals with non-obstante clause in which one of the acts over-rides the other. In *M/S Maruti Udyog Ltd case*,⁷⁹¹ the Indian

⁷⁸⁷ *Federal Employees Co-operative Housing Society versus DG FIA, Islamabad etc.*, 2019 CLC 347 (Islamabad).

⁷⁸⁸ *Solidair India Ltd. versus Fair-growth Financial Services Ltd*, (2001) 3 SCC 71.

⁷⁸⁹ *IG HQ Frontier Corpse and others versus Ghulam Hussain and others*, 2004 SCMR 1397.

⁷⁹⁰ *SNGPL versus Director (Legal) President Secretariat*, PLD 2018 Islamabad 51.

⁷⁹¹ *M/S Maruti Udyog Ltd. versus Ram Lal etc.*, (2005) 2 SCC 638.

Supreme Court relied on *Solidair's* case supra by holding that it is well settled principle of law that when both statutes containing non-obstante clauses are special statutes, an endeavor should be made to give effect to both of them. In case of conflict, the latter shall prevail. In *Kumaon Motor Owners Union case*,⁷⁹² the Indian Supreme Court compared the provisions of the Motor Vehicles Act, 1939 and Defense of India Act, 1962, and held that the latter would prevail over the former being inconsistent and latter in time. In *Inland Revenue RTO case and Tanvir Hussain case*,⁷⁹³ it is held that in case of conflict between two special laws, preference is to be given to the new law and the implied repeal of earlier law could be inferred only when there was enactment of a later law which had the power to over-ride the earlier law, and was totally inconsistent with the earlier law and when there are two laws, the earlier and later law could not stand together, therefore, the later laws abrogate the earlier contrary laws. To conclude, if there is conflict between the two special legislations, the latter in time shall prevail.

9.3.3 Principle of Implied Repeal

Section 6 of the GCA is relevant to this principle. It is a rule to the effect that when a later statute dealing with a subject is inconsistent with an earlier statute dealing with the same subject, the court may assume that the earlier statute had, to the extent of inconsistency, been repealed. This is called the principle of implied repeal. In *Syed Abul Ala Maudoodi case*,⁷⁹⁴ the court reproduced the authoritative extracts in para 10 of the Full Bench Judgment as under: -

“In volume 36 of the Halsbury's Laws of England (3rd Edition) at page 465, the doctrine of implied repeal is enunciated as the repeal by implication is not favored by the Courts for it is to be presumed that parliament would not intend to effect so important a

⁷⁹² *Kumaon Motor Owners Union Ltd etc. versus The State of Uttar Pradesh*, AIR 1966 SC785.

⁷⁹³ *Inlanad Revenue RTO versus M/S Almakdi international*, 2013 PTD 2125; and *Tanvir Hussian versus Division Superintendent Pakistan Railways*, PLD 2006 SC 249.

⁷⁹⁴ *Abul Ala Maudoodi versus Government of West Pakistan*, PLD 1964 Karachi 478 (Full Bench). See now PLD 1964 SC 673.

matter as the repeal of a law without expressing its intention to do so. If, however, provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that parliament, unless it failed to address its mind to the question, intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms. The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to the other that the two are incapable of standing together.”

In *Syed Mir Ahmed Shah case*,⁷⁹⁵ the court held that if the provisions of a later Act are so inconsistent with those of an earlier Act that both cannot stand together, the earlier stands impliedly repealed by the latter. This principle is based on the maxim '*leges posteriores priores contrarias abrogant.*' In other words, the latest expression of the will of the legislature must prevail. However, this principle is subject to the condition contained in the next principle i.e. if the prior enactment is special and the subsequent enactment is general, the earlier special legislation will not be indirectly repealed from merely by force of the general words of the latter statute. The judgment further provides that in so far as the penal Acts are concerned, if a later statute again describes an offence created by a former one, and provides a different punishment, creates a new jurisdiction, varies the procedure and changes the forum of trial, the earlier statute is impliedly repealed by the later unless, of course, both of them can exist in parallel application to different localities, subjects or objects. In *Syed Mushahid Shah case supra*, the interpretational principles with respect to special jurisdiction are as under: -

- i. It is settled principle of interpretation with regard to penal Acts, if a later statute again describes an offence created by a former one, and provides a different punishment, creates a new jurisdiction, remedy and varies the procedure, modifying the manner or changing the forum of trial or appeal, the

⁷⁹⁵ *The State versus Syed Mir Ahmed Shah and another*, PLD 1970 Quetta 49.

earlier statute is impliedly repealed by later one, unless both of them can exist in parallel jurisdiction with different localities, subjects or objects.

- ii. When the words are clear and capable of proper operation, the revocation or alteration of a statute by construction is not permissible. The legislature is normally not presumed to have intended to keep two contradictory enactments on the statute book with intention of repealing one with the other, with expressing an intention to do so. Such an intention cannot be imputed to the legislature without some strong reasons and unless it is inevitable.
- iii. All other considerations being equal, if the inconsistency, in spite of applying all general principles of interpretations of statutes, cannot be resolved, a statute more beneficial in remedy or method of taking action will over-ride the statute which is not so beneficial.

In *Intikhab A. Syed case*,⁷⁹⁶ if an offence is already in existence in a statute, and the same offence is again made part of another statute, then as a general principle of statutory interpretation, the law later in time shall prevail to the law former in time. The reason behind is that the parliament is aware of existence of such a similar offence; it has deliberately and consciously intended to give preference to the offence as provided in later statute. In *M. Ajmal case*,⁷⁹⁷ it was reiterated that where two enactments on identical points/ subject are holding the field, the Court is to try to harmonize the both but if same cannot be done, then the Act which is earlier in time would be deemed to have been repealed by the latter on the doctrine of implied repeal. In *HBL case*, *Commissioner Inland Revenue (Zone-I) case*,⁷⁹⁸ necessary conditions for implied repeal of an earlier statute or provision by a later statute are that firstly, the two statutes or provisions cannot stand and co-exist together; secondly, if they stand side by

⁷⁹⁶ *Intikhab A. Syed etc. versus Chairman NAB etc.*, 2019 MLD 127 (Sindh). In this case, there was a dispute over the applicability of law of offence of 'willful default'. The said offence was in existence in two laws i.e. National Accountability Ordinance, 1999 and Financial Institutions (Recovery of Finances) Amendment Act, 2016. The latter law impliedly repealed the former law.

⁷⁹⁷ *Muhammad Ajmal Qureshi versus Nazia Bibi etc.*, 2019 YLR 1560 (Supreme Court AJ&K).

⁷⁹⁸ *HBL versus FOP*, 2018 CLD 1152 (Islamabad); *Commissioner Inland Revenue versus M/s Golden Pearl Cosmetics*, 2017 PTD 1485 (Lahore); and *Commissioner Inland Revenue (Zone-I) versus M/S Al-Mehdi International*, 2013 PTD 2125 (Lahore).

side, the same may lead to absurd consequences; and thirdly, when the entire subject matter of earlier statute or provision thereof is taken away by the later statute or provision. Such is a logical necessity because two inconsistent laws cannot both be valid without contravening the principle of contradiction, so later laws abrogate earlier contrary laws. To conclude, the statute later in time shall be presumed to repeal the statute earlier in time, if there arises any inconsistency dealing with same subject.

9.3.4 Principle of Prevalence of Federal Law over Provincial Law

The test for categorization of subject matter for legislative competence is the written basis of the Constitution, 1973. The 18th constitutional amendment abolished the Concurrent Legislative List which narrowed down the legislative competence of federal legislature and expanded the scope of provincial legislatures. The Constitution provides the subject matter of Federal and Provincial laws as under: -

“Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.”⁷⁹⁹

This provision of the Constitution was substituted by the Constitution (Eighteenth Amendment) Act, X of 2010. The Constitution further provides inconsistency between the Federal and Provincial laws as under: -

“If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e Shoora (Parliament) which Parliament is competent to enact, then the Act of Parliament, whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.”⁸⁰⁰

Thus on the touchstone of this provision, the act of Parliament has been placed on the high pedestal and any provincial law enacted by the Provincial Assembly shall give way to the Federal Law enacted by the parliament, if the former is inconsistent to the

⁷⁹⁹ Article 142 (b) of the Constitution, 1973.

⁸⁰⁰ Article 143 of the Constitution, 1973.

latter. This is called the doctrine of occupied field which is based on the idea of dominant legislature in case of non-conforming legal provisions of two competing legislations. So the Federal legislation has been explicitly professed prevailing in case of non-conformity and its legal provisions have the prevailing effect in such cases. The combined legal effect of the two articles supra is that a new '*Criminal Concurrent Field*' has been established as far as criminal law, criminal procedure and evidence are concerned.⁸⁰¹ In *Aarez Ali case and Wajid Ali case*,⁸⁰² if any provision of an Act of Provincial Assembly is repugnant to any provision of an Act of parliament which it was competent to enact, then the Act of parliament whether passed before or after the Act of provincial assembly would prevail and the Act of provincial assembly would be void to the extent of repugnancy. In *Noor Daraz khan case*,⁸⁰³ the word '*inconsistency*' in the common law was described as the doctrine of paramountcy which was discussed by the Commonwealth of the Australian Constitution Act under article 109 that when the Federal government has given the same law, then the provincial law would be inconsistent. The Federal law shall always prevail over the provincial law, in case of any conflict. In *Fatehchand Hummatlal case*,⁸⁰⁴ it is held that there must be a real conflict between two Acts i.e. the two enactments must come into collision. The doctrine of dominion paramountcy does not operate merely because the dominion (federation) has legislated on the same subject-matter. The doctrine of occupied field applies only where there is a clash between federal legislation and provincial legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests.

⁸⁰¹ Kamran Adil, "Criminal Law and the Eighteenth Amendment of the Constitution of Pakistan." < https://www.academia.edu/13063718/CRIMINAL_LAW_AND_THE_EIGHTEENTH_AMENDMENT_TO_THE_CONSTITUTION_OF_PAKISTAN > (last accessed on 22-07-2018). However, before the 18th Amendment, the criminal law, criminal procedure and evidence were present as items 1,2 and 4 on the Concurrent Legislative List.

⁸⁰² *Aarez Ali versus MDA*, 2019 CLC 155(Lahore); and *Wajid Ali versus Pakistan Bar Council*, PLD 2017 Lahore 584.

⁸⁰³ *Noor Daraz Khan versus FOP*, PLD 2016 Peshawar 114.

⁸⁰⁴ *Fatehchand Himmatlal versus State of Maharashtra*, [(1977) 2 SCC 70].

In *Human Rights Commission of Pakistan case*,⁸⁰⁵ the provisions of the Tenancy Act, 1950 and the Bonded Labor System (Abolition) Act, 1992 were under discussion. It was held that on account of section 3 of the latter Act explicitly conferring an overriding effect to its provisions, any provision in an earlier law repugnant thereto would be void and inoperative. It was further added that on account of mandate of article 143 of the Constitution, having been enforced by the parliament, its provisions would prevail upon any existing laws being made by a provincial legislature. In *Kabal Shah case*,⁸⁰⁶ the inconsistency between the Qisas and Diyat Ordinance (Federal Statute) and the Sindh Children Act, 1955 (Provincial Statute) was under discussion. Since there was conflict between the two, the latter has to yield to the former in view of the article 143 of the Constitution. In *Kashif Nadeem case*,⁸⁰⁷ the accused was sentenced for the offence of committing sodomy under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (although the same was altered from Hudood Ordinance to PPC). A plea was raised in the Federal Shariat Court that the accused is a minor and cannot be convicted and sentenced as provided by the Sindh Children Act, 1955. The plea was repelled as where there is inconsistency between a federal and provincial law, the former shall prevail. To conclude, the federal laws have over-riding effect over the provincial laws if there arises any inconsistency between the both.

9.3.5 Principle of Lesser Punishment

This principle stipulates that where if the accused may be charged under two different statutes or laws for offence which are alike or similar in nature, then he would

⁸⁰⁵ *Human Rights Commission of Pakistan etc. versus Government of Pakistan etc.*, PLD 2009 SC 507. The facts of the case are that appeals were filed before the Supreme Court of Pakistan against a Judgment of Sindh High Court, Circuit bench, Hyderabad dated 09-01-2002, by the tenants as well as landlords for the recognition of their respective rights. The tenants were relying on the Bonded Labor System (Abolition) Act, 1992; while the landlords were relying on the Tenancy Act, 1950 claiming the right to force tenants for work under the Act. The former is a federal law; while the latter is provincial law.

⁸⁰⁶ *Kabal Shah versus the State*, 1995 PCrLJ 2058 (Karachi).

⁸⁰⁷ *Kashif Nadeem versus the State*, 1992 PCrLJ 1799 (Federal Shariat Court).

be proceeded against for the offence under the law which provides lesser punishment. It is held in *Syed Mushahid Shah case*,⁸⁰⁸ that the law providing greater punishment must relent in favor of the law ordaining lesser punishment. In *Muhammad Ayaz case*,⁸⁰⁹ it is reiterated that when two penal provisions prescribe two distinct punishments for the same offence, it is a settled principle of safe administration of criminal justice that the accused is to be charged for an offence carrying a lesser punishment. In *Muhammad Afzal case*,⁸¹⁰ it is held that the two statutes almost deal with the same subject and are enacted for the same purpose and object. Both are in field as valid laws and have not been repealed. Both the said statutes are running parallel to each other and one cannot substitute the other. The quanta of prescribed punishments in both the statutes are different and thus it is to be seen that which one of the two shall prevail. In *Waris Ali case*,⁸¹¹ it is held that whenever penal statute requires interpretation then it shall be so interpreted which favors the accused and not the state. In *Muhammad Younus case*,⁸¹² the accused were travelling on fake passports and documents from Pakistan to Abu Dhabi but were apprehended and charged in FIR No. 358/2000, under sections 6(1)(a)(c)(f) of Passport Act, 1974, sections 109, 411, 419, 420, 468, 371 of PPC, section 3(2)(a)(b) & 13/14 of Foreigners Act. The court held that there is no dispute with the established principle that if an accused is charged under two different statutes or laws which are alike or similar in nature, then he would be proceeded against for the offence under the law which provides lesser sentence. On the basis of this principle, the accused would be tried

⁸⁰⁸ *Syed Mushahid Shah etc. versus Federal Investment Agency etc.*, 2017 SCMR 1218.

⁸⁰⁹ *Muhammad Ayaz versus Superintendent District Jail, Timergara*, PLD 2018 Peshawar 1. The facts of the case are that the accused was charged with section 3 of the Explosive Substantive Act, 1908 for for which punishment with death or imprisonment for life is prescribed. The facts of the offence are also contained in section 6 (2) (ee) of the Anti-Terrorism Act, 1997 for which punishment is imprisonment which shall not be less than fourteen years but may extend to imprisonment for life. Thus there are two penal provisions prescribing two distinct punishments for the same offence. Faced with such circumstances, the accused is to be charged for an offence carrying with lesser punishment.

⁸¹⁰ *Muhammad Afzal versus the State*, 1998 PCrLJ 955 (Peshawar).

⁸¹¹ *Waris Ali versus the State*, 2017 SCMR 1572.

⁸¹² *Muhammad Younas versus the State*, 2001 PCrLJ 157 Karachi.

under the provisions of the Passport Act which provides maximum sentence of three years' rigorous imprisonment.

In *Murad Ali Shah case*,⁸¹³ the police station FIA, Passport Cell Karachi, lodged a FIR No. 61 of 2003 for offences under sections 3 (i) and 4 of the PACHTO. The FIA officials interrogated paxes upon suspicion of forged passports at Karachi airport who were travelling for Colombo. Those persons were found to be Afghan Nationals who entered into Pakistan and travelled from Afghanistan to Pakistan (Peshawar to Karachi) through various agents for which they paid huge amounts to the agents. They were also arranged for their arrival at Colombo and then further arrangements for departure to United Kingdom for the purpose of finding jobs overseas. Going through the investigation of the case, it was held by the court that all the facts of case are applicable not only on the definition of human trafficking offence but also on the definition of passport offence. Such facts are defined under two different statutes. The question arose before the court that how it is to take into consideration regarding the facts as to under which statute the accused could be tried? The court held that there is no dispute with the established principle of law that where two different statutes or laws are applicable on the same facts of the case, provided that the offences are alike or similar in nature, in that eventuality, the settled principle is that the case shall proceed against the accused under the law which provides lesser punishment for the offences alleged to have been committed by him.⁸¹⁴ So on the basis of this principle, the accused was tried under the provisions of Passport Act, rather than the PACHTO, merely on the ground that the Passport Act provides maximum sentence of three years; while the PACHTO provides sentences for these offences as seven years or upwards. Again it is settled principle of interpretation of statute that while construing provisions of criminal law, an interpretation

⁸¹³ *Murad Ali Shah versus the State*, 2004 PCrLJ 925 Karachi.

⁸¹⁴ The definition of offence is important here. Section 40 of PPC defines offence as a thing which is punishable. According to Black's Law Dictionary, offence means a violation of the law.

in favor of accused has to be given weightage, particularly in cases of conflicts, ambiguities and doubts. In *Mst Zainab case*,⁸¹⁵ it is held that while construing statutes, a beneficial interpretation to the widest possible extent ought to be given. To conclude, where there are two different statutes having similar set of facts for an offence, the accused shall be tried under the statute having lesser terms of punishment.

9.4 Conclusion

The jurisprudence of two similar in definitions but inconsistent in punishments provisions of law or statutes developed in terms that the special provision or statute shall prevail over general one; special provision or statute later in time shall prevail over former one; later in time provision of law or statute shall impliedly repeal the former in time one; federal statute shall prevail over provincial one; and the provision of law or statute having lesser punishment shall prevail over having greater one.

Now on the basis of above legal principles, both the national anti-human trafficking legal regimes shall be critically analyzed in the next two chapters to evaluate the central argument of the thesis.

⁸¹⁵ *Mst Zainab versus Kamal Khan*, PLD 1990 SC 1051.

Chapter 10: Critical Evaluation of the Prevention and Control of Human Trafficking Ordinance, 2002 (PACHTO)

10.1 Introduction

The PACHTO was enacted in the year 2002 being special law on the subject. But its provisions were overlapping with other special laws. Even the provisions of PACHTO were contradictory each other. So the same was highly criticized. The enactment could not improve the status of Pakistan even in the TIP reports. When analyzed critically, the enactment of PACHTO in the legal regime of anti-human trafficking could not yield the desired results of the legislator. It remained insignificant in combating the problem as under: -

10.2 In Terms of Overlapping Laws

One of the main criticism of the PACHTO is that its penal provisions overlap with the provisions of other national laws, hence, making itself vulnerable in the hands of judicial interpretation as well as law-enforcement agencies. Overlapping is of two kinds i.e. overlapping with general law and overlapping with special law.

10.2.1 Overlapping with General Law

As discussed earlier, general criminal law is contained in PPC. Various provisions of PACHTO overlap with the PPC as under: -

(i) Kidnapping or Abduction of a Person under the Age of Ten

Before the enactment of PACHTO, the cases of human trafficking were dealt with by the provisions of PPC only. In *Muhammad Akbar case*,⁸¹⁶ a case was registered under sections 364-A, 371, 342, 317 and 109 PPC at Baghdadi police station, Karachi. The facts of the case are that the police recovered some abducted children along with their passports who were brought from Punjab to Karachi. The accused had the plan to send the

⁸¹⁶ *Muhammad Akbar and others versus the State*, 1990 PCrLJ 50 Karachi.

children to Gulf countries for the purpose of slavery. In another case titled *Ramzan case*,⁸¹⁷ the accused abducted the minor girl from District Lahore and brought her to District Chiniot with the intention to sell her for the purpose of slavery. The former is the case of external human trafficking; while the latter is the case of internal human trafficking.

Section 364-A of PPC exactly overlaps the section 3 (iii) of PACHTO with regard to act, means and purpose. Means are not necessary in case of child trafficking; only acts and purpose are sufficient to constitute the offence. This section defines the act as taking away; means as kidnapping or abduction; and purpose as slavery or lust of any other person or exploitative entertainment.

(ii) Procurement of Minor Girl

Sections 366-A & B were enacted by the Act XX of 1923 to give effect to the provisions of the International Convention for the Suppression of Traffic in Women and Children, 1919. The consent of the minor is immaterial. This section constitutes three ingredients, firstly, the girl below the age of 18 years; secondly, she is induced to go from one place to another; and lastly, with intent that she may be forced to illicit intercourse with another person. It is the requirement of this section that the girl must be forced to have sexual intercourse with another person and not with the person who induced her to go. This means that the girl is taken away by inducing her for the purpose of prostitution and monetary benefits to the inducer. This clearly resembles with the definition of human trafficking under section 3 (iii) of the PACHTO.

Section 366-A of PPC again overlaps with section 3 (iii) of the PACHTO with regard to act, means and purpose elements. Under section 366-A, the act is to transport any minor girl under the age of eighteen years by inducing her; the means may be of any

⁸¹⁷ *Ramzan versus the state*, 1994 MLD 1714 (Lahore).

kind; and purpose is the force or seduction for illicit intercourse with another person i.e. exploitative entertainment. Such act, means and purpose are the same as in PACHTO under section 3 (iii). Both the sections have same elements and facts. Facts of same case can be applied under both the statutes.

(iii) Importation of Girl from Foreign Country

Section 366-B PPC deals with bringing of any foreigner girl into Pakistan with the purpose of any sexual work. The acts, means and purpose elements are same as in the PACHTO. Section 3 (iii) of PACHTO clearly overlaps with the section 366-B of PPC.

(iv) Kidnapping or Abducting in order to Subject Person to Slavery etc.

Section 367 of PPC deals with the kidnapping or abducting any person for the purpose of indulging him into slavery. The requirement of this section is kidnapping or abduction of any person which must be for the purpose of slavery etc. Although this section does not contain the act part as provided in the definition of human trafficking, but the act of abduction or kidnapping includes the detaining of person. So the acts, means and purpose of this section clearly overlap with the section 3 (i) of the PACHTO.

(v) Kidnapping or Abducting in order to Subject Person to Un-natural Lust

Section 367-A of PPC is again an overlap of section 3 (i) of the PACHTO. The section was inserted in PPC through Protection of Women (Criminal Law Amendment) Act, 2006 (Act XLV of 1860). It is the reproduction of repealed section 12 of the offence of Zina Ordinance.

(vi) Trafficking of Human Beings

Section 369-A PPC is very specific provision on human trafficking. It is inserted through Criminal Law (Second Amendment) Act, 2016 with a view to criminalize the offence through general law. In the presence of special law on the subject, the introduction of this offence in the general law is quite a surprising. An order of a later

date annuls all inconsistent orders of former dates. Though as a rule, a prior special statute is not to be taken to be repealed by a later general enactment.⁸¹⁸

(vii) Buying or Disposing of any Person as a Slave

Section 370 of PPC deals with importing, exporting, removing, buying, selling or disposing off any person as a slave. Although national law does not define the person as slave, but as discussed earlier in international law, a person is treated as a slave if another person asserts an absolute right to restrain his personal liberty, and to dispose of his labor against his will. This section along with next section is enacted for the suppression of chattel slavery. This section again overlaps with section 3 (i) of the PACHTO.

(viii) Habitual Dealing in Slaves

Section 371 deals with an offender who engages in habitually importing, exporting, removing, buying, selling, trafficking, or dealing in persons as slaves. This section provides for punishing the habitual offender. Habitual offender is also called the recidivist – one who has been convicted of criminal offences, usually of similar nature because of tendency to relapse into a habit of criminal activity or behavior. According to Black's Law Dictionary (8th Edition), a recidivist is also termed as repeat offender who has been convicted of a crime more than once. So section 371 of PPC deals with the repeat offender who deals in the slaves. This section overlaps with sections 3 (i) and 5 of the PACHTO.

(ix) Selling and Buying Persons for the Purpose of Prostitution

Section 371-A PPC makes it an offence if a person is sold, hired, disposed of, or employed for the purpose of prostitution or illicit inter-course or for any other immoral or unlawful purpose. The section was inserted in PPC through Protection of Women

⁸¹⁸ *Pehlwan Khan versus J.F Elahi*, PLD 1962 Lahore 751.

(Criminal Law Amendment) Act, 2006 (Act XLV of 1860).⁸¹⁹ It is the reproduction of repealed section 12 of the offence of Zina Ordinance. This section aims against trafficking of women and girls. The words 'sells or lets to hire' necessarily connotes a transaction for consideration. These words further connote a complete making over of the possession of the victim to the person buying or hiring. This section overlaps with section 3 (iii) of the PACHTO.

Section 371-B PPC deals with offences relating to buying or hiring, or otherwise disposing of, or employing any person for purposes of prostitution or illicit intercourse or for any unlawful and immoral purpose. Like previous section, this section was also inserted by Protection of Women Act, 2006. The word 'buys' is co-relative to the word 'sells' occurring in the previous section.

(x) Unlawful Compulsory Labor

Before the enactment of PACHTO, the offence of forced labor was being dealt with by the PPC. In *Muhammad Khan case*,⁸²⁰ a boy of 13 years of age was abducted by the accused for the purpose of forced labor, for which the accused was booked in the criminal case under section 374 PPC. This section makes it a criminal offence if a person is unlawfully compelled to labor against his will. This section overlaps with section 3 (i) of PACHTO. This section also overlaps with Bonded Labor System (Abolition) Act, 1992.

10.2.2 Consequences of Overlapping

The consequences of overlapping of special law with general law of human trafficking have been discussed in detail under 11.3.2 of the next chapter and the same are adopted here for the purpose of criticism.

⁸¹⁹ PLJ 2007 Cent. St. 463.

⁸²⁰ *Muhammad Khan versus the State*, 1987 PCrLJ 1240 (Lahore).

10.3 Overlapping with Special Laws

Now there comes the second category of overlapping of laws wherein the PACHTO, being special law on the subject, overlaps with other special laws.

10.3.1 Suppression of prostitution Ordinance, 1961

The Prostitution Ordinance is a special law for the protection of female gender from the menace of prostitution which is adopted by Punjab and KPK provinces. Various circumstances are made punishable. The PACHTO had penal provisions for child or woman trafficking. Various provisions of both the legislations overlap with each other as under: -

(i) Procuration for Prostitution

Section 8 of the 1961 Ordinance provides that procuring or enticing away or leading away or either attempts for the same any women or girl for the purpose of prostitution is made an offence. This section clearly overlaps with section 3 (iii) of the PACHTO.

(ii) Importation of Woman or Girl

Section 9 provides that bringing or attempt to bring into the province concerned any woman or girl for the purpose of prostitution is an offence. This section again overlaps with section 3 (iii) of the PACHTO.

(iii) Keeping any Woman or Girl

Section 10 provides that keeping any woman or girl in a brothel, or detains her against her will in any place with intent to use her for the purpose of prostitution is an offence. This section again overlaps with section 3 (iii) of the PACHTO.

10.3.1.1 Points of Distinction

The distinction between the provisions of two statutes is shown in the table No. 02 below.

Inconsistency	PACHTO	1961 Ordinance
Punishment	Maximum imprisonment of ten years and fine.	Maximum imprisonment of three years and maximum fine of Rs. 1000/-.
Cognizable	Cognizable by FIA Officials.	Cognizable by local police
Bail	Non-bailable	Not provided
Compounding	Non-compoundable	Not provided
FIR	Registered by FIA.	Registered by local police
Investigation	Conducted by FIA officials ⁸²¹	Conducted by local police officer
Trial	1 st class magistrate	1 st class magistrate

10.3.1.2 Consequences of Overlapping

The consequences of overlapping of special law over special law of human trafficking have been discussed in detail under 11.4.1.2 of the next chapter and the same are adopted here for the purpose of criticism.

10.4 Critical Evaluation of the Provisions of PACHTO

Badly failed to comply with international standards and overlapping with other laws, the PACHTO itself is not significant as a national legislation. Although Pakistan had made its first attempt to enact a law which could combat human traffic in the country. The PACHTO was enacted like a pilot project but it could not bear the fruitful results. So the authorities have to replace it with another enactment after sixteen years of insignificant regime. However, following is the critical evaluation of the provisions of the PACHTO.

⁸²¹ Under section 3 of the FIA Act, 1974, the investigation of the offence of human trafficking is the mandate of FIA. The offence is added at entry No. 22 in the Schedule by SRO No. 741(1)/2002, dated 24th October, 2002.

10.4.1 In Terms of Definition of Child

The PACHTO defines child as a person less than eighteen years of age.⁸²² Further detailed criticism is discussed under 11.5.1 of the next chapter and the same be considered over here.

10.4.2 In Terms of Definition of Coercion

Coercion is one of the means of committing the offence of human trafficking. The definition of coercion provided in the PACHTO is unclear.

The Palermo Protocol refers to the term '*coercion*' as one of the means by which the act of human trafficking is committed. It is used in the definition of 'trafficking in persons' as "*by means of the threat or use of force or other forms of coercion.*"⁸²³ This suggests the notion that '*threats or use of force*' are the forms of coercion and other forms may be included or interpreted.

The UNODC's Model Law on Trafficking in Persons defines coercion as under: -

*"The use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to: (i) threats of harm or physical restraints of any person; (ii) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; (iii) abuse or any threat linked to the legal status of a person, (iv) psychological pressure."*⁸²⁴

The Model Law addresses other forms as non-violent or psychological use of force or threats as mentioned in clauses (i) to (iv) above. Abuse of authority is also a form of coercion. SAARC Convention on Trafficking refers to the coercion as one of the means of committing the act of trafficking but does not define the term.⁸²⁵ The term

⁸²² Section 2 (b).

⁸²³ Section 3 (a) of the Protocol.

⁸²⁴ Chapter II, article 1 (5)(e) of the UNODC Model Law against Trafficking in Persons, 2009.

⁸²⁵ Article 1 (5) of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 1995.

coercion is also defined in the civil law of Pakistan under the Contract Act, 1872 as under: -

*“Coercion is the committing, or threatening to commit, any act forbidden by the Pakistan Penal Code, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatsoever, with the intention of causing any person to enter into an agreement.”*⁸²⁶

This definition has four ingredients: (i) commission or threatening to commit; (ii) an act forbidden by the Pakistan Penal Code; (iii) unlawful detention or threatening to detain any property; and (iv) with the intention of compelling any person to make the agreement complained of. The afore-mentioned definition is wide enough to include all the acts forbidden by the PPC as coercion such as unlawful detention of property, intimidation, threat to commit suicide etc. The expression ‘any act forbidden by PPC’ is wider than the expression ‘punishable by law’.⁸²⁷ The PACHTO defines the term ‘coercion’ as under: -

*“Coercion means 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 of infliction of serious harm.”*⁸²⁸

The coercion is not defined in the wider range to include all the forms of coercion such as psychological or mental coercion, or abuse of authority etc. Coercion means not only constraint or compulsion or pressure by application of physical but also mental force with intention to occasion negation of free choice through affirmative action. Threat to unlawfully cause injury or actually causing injury unlawfully in respect of employment including removal, discharge, dismissal etc. of a worker would amount to coercion and

⁸²⁶ Section 15 of the Contract Act, 1872.

⁸²⁷ For instance, if a man escapes punishment, it does not follow that the act is not forbidden by PPC. Such as a lunatic or an infant need not be punished; that does not mean that their criminal acts are not forbidden by PPC.

⁸²⁸ Section 2 (d) of PACHTO.

unfair labor practices.⁸²⁹ Since it stands that coercion can extend to acts or circumstances calculated to have the same effect as physical force. This specific expression appears vulnerable to judicial interpretation. Physical force is defined as under: -

*“A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other; while criminal force is the intentional use of that force to any person without that person’s consent in order to the committing of any offence.”*⁸³⁰

These definitions of physical force or criminal force include a number of other forms of coercion in which motion, change of motion or cessation of motion of any person can be obtained in order to commit the offence of human trafficking, but such forms are not defined by the PACHTO. Further, coercion may be direct or indirect such as in the definition of coercion in Contract Act, i.e. detaining or threatening to detain any property. Coercion is sometimes mixed with duress. What the Pakistani law calls coercion is called duress in English law. However, coercion is much wider than duress. Coercion includes unlawful detention of property and may be directed against any person, even a stranger, unlike duress.⁸³¹ Duress is an unlawful constraint exercised upon a man whereby he is forced to do some act that he otherwise would not have done.

When the PACHTO’s definition of coercion is kept in Juxtaposition with other definitions, it seems lacking some important elements. It creates uncertainty as to what may be considered coercion, without recognizing the specific and precise other forms of coercion. It is concluded that any means, whether physical or psychological, through which motion, change of motion or cessation of motion can be obtained for committing the offence of human trafficking comes with the definition of coercion, but the PACHTO includes limited number of means as coercion.

⁸²⁹ *Abdul Karim Qureshi versus Abdul Khaliq*, 1984 CLC 259.

⁸³⁰ Section 349 and 350 PPC.

⁸³¹ [(1987) 2 Mad LJ 138].

10.4.3 In Terms of Internal Human Trafficking

The definition of human trafficking provided in the PACHTO is not comprehensive enough to address all the situations. As discussed in detail in the previous chapters that human trafficking may be either within or across the country. The issue of internal human trafficking is much greater than the cross-border human trafficking. The use of words '*out of or into Pakistan*' in PACHTO clearly limit its scope to cross-border human trafficking, absolutely neglecting the issue of internal human trafficking.

10.4.4 In Terms of Punishments

The punishments provided for the offence of human trafficking are not made uniform and satisfactory. They are contradictory with each other. Detail is given as under:

(i) Amount of Fine

The human trafficking is made punishable under section 3 of the PACHTO. A liability for fine is consistently imposed in each clause of punishment but no sum is expressed to which a fine may extend. It gives the court more discretionary powers for allowing too small or too large amount of fines and also variable fines. Further, it is again not provided in the PACHTO that in case of failure to pay the fine, what will happen then? The general criminal law (PPC) provides in sections 64 and 65 that in case of non-payment of fine by the accused, he shall undergo further term of imprisonment that shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence. The PACHTO neither stipulates such type of provisions in it nor adopts such provisions from the general criminal law; hence, leaving a drawback with respect to punishment of fine.

(ii) **Section 3 - Punishment for Human Trafficking**

The terms of imprisonment prescribed for each set of offences are not in uniformity; rather are contradictory with each other. In order to contradict the punishments, clause-i is reproduced as under: -

“Whoever knowingly plans or executes any such plan for human 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 shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine: Provided that in case of an accused who, in addition to committing an offence as aforesaid has also been guilty of kidnapping or abducting or any attempt thereto in connection with such offence, the imprisonment may extend to ten years with fine; Provided further that whoever plans to commit an offence under this clause but has not as yet executed the same shall be punishable with a term of imprisonment which may extend to five years and shall also be liable to fine.”⁸³²

The above terms of imprisonment are contradictory on account that in the first paragraph it is stated that whoever even plans for human trafficking shall be punishable with imprisonment which may extends to *seven years* with fine. In the first proviso, the offence of human trafficking is aggravated with additional offences of kidnapping or abducting and punishment is prescribed as ten years with fine. Then second proviso follows which is contradictory with the first punishment of seven years. It states that whoever plans to commit the offence of human trafficking coupled with kidnapping or abduction shall be punished with imprisonment which may extend to *five years* with fine. The circumstances of second proviso are more aggravating in form than the circumstances of main section, but its punishment is lesser than the main section. The punishment in the second proviso should be more severe than the punishment in the main section. It is, therefore, concluded that punishments under section 3 (i) are contradictory and are not aligned with each other.

⁸³² Section 3 (i) of the PACHTO.

(iii) Section 4- Offences Committed by Organized Criminal Groups

The involvement of an organized criminal group is considered an aggravating circumstance to the offences under section 3. Section 4 of the PACTO is again under criticism in this research. It states as follows: -

“Where an organized criminal group is guilty of any offence under clauses (i), (ii), (iii) or (iv) of section 3, the term of imprisonment for each member of such group involved in the commission of such offence shall not be less than ten years and may extend to fourteen years where the purpose of trafficking of a victim is exploitative entertainment and shall also be liable to fine.”

Under this section, human trafficking is seen as an organized crime, but provisions related to organized crime such as common intention, abetment, conspiracy etc. are not made use of in trafficking cases. Where the offence is committed by the organized criminal group for any of the purposes mentioned in section 3 (i) to (iv) except exploitative entertainment, the term of punishment shall not be less than ten years, however, there is no maximum sentence specified; but where the purpose would include the exploitative entertainment, the term of punishment may extend to fourteen years. Section 4 clearly demonstrates that the trafficker may be an individual or an organized group. Where it is an organized criminal group, then the severity of offence is always bigger because of the fact that an individual in his singular capacity may not be so hazardous to the society as compared to the group. The involvement and joining of more persons in a criminal activity makes it more serious and heinous.

Let us take an example to understand it. The offences of extortion, robbery and dacoity are provided in the Pakistan Penal Code, 1860 under sections 383, 390 and 391 of PPC respectively. When a single person puts another person in fear of any injury and induces him to deliver any property, it is said to commit extortion. When extortion is

committed by more than one person but less than five persons, it is called robbery. When five or more persons conjointly commit or attempt to commit a robbery, it is said to commit dacoity. The terms of punishments in all three offences are much relevant to the discussion of the present matter. The punishment for extortion is maximum imprisonment of three years, or with fine, or with both⁸³³; the punishment for robbery is rigorous imprisonment for a term which shall not be less than three years nor more than ten years and shall also be liable to fine⁸³⁴; while punishment for dacoity is imprisonment for life or with rigorous imprisonment for a term which shall not be less than four years nor more than ten years and shall also liable to fine.⁸³⁵ The punishments in all the offences are commensurate to the severity of the offence. The dacoity has more severe punishment than the robbery and extortion merely on the ground that the numbers of offenders involved in dacoity are higher than the number of offenders in robbery and extortion. Similarly, the robbery has more severe punishment than the extortion because number of offenders involved in robbery is greater than the number of offenders involved in extortion. Committing a crime as a member of a group organized for serious offences can be used by the courts as ground for lengthening the term of punishment because of the fact that criminal activity is systematic in nature.⁸³⁶ This sufficiently concludes that when an offence is committed by a greater number of persons in an organized manner, then its punishment is also severe.

Now we come back to the discussion of section 4 of the PACTO. When the offence of human trafficking is committed by an organized criminal group, then its punishment must be severe as compared to the offence committed by an individual. First proviso of section 3 (i) of PACTO states that a person committing the offence of human

⁸³³ Section 384 PPC.

⁸³⁴ Ibid. Section 392.

⁸³⁵ Ibid. Section 395.

⁸³⁶ Minna Viuhko and Anni ina Jokinen. "Human Trafficking and Organized Crime: Trafficking for Sexual Exploitation and Organized Procuring in Finland," *Hilsinki* (2009). ISBN 978-952-5333-76-3.

trafficking in his singular capacity would receive the term of imprisonment which may extend to ten years with fine. Now section 4 states that each member of an organized criminal group guilty of offence of human trafficking shall receive punishment not less than ten years. This sentence is not in uniformity with the sentence of section 3 (i). When we keep both the sentences in juxtaposition, it is inferred that an individual accused who committed the offence in his singular capacity may receive the same punishment of ten years as of a member of organized criminal group. This is against the soul of criminal justice system which lay a higher level of accusation and sentence upon the criminal groups.

(iv) Section 5- Repetition of Commission of Offences

The provision of the PACHTO is also not exceptional to the criticism. It states the repetition of commission of the offence in the following words;

“Whoever repeats the commission of an offence under this Ordinance, the term of imprisonment may extend to fourteen years and shall also liable to fine.”⁸³⁷

When we look at the sentences given under clause (iii) of section 3 and section 4 where the purpose of trafficking is exploitative entertainment, the terms of imprisonment may extend to fourteen years with fine. The offence of human trafficking committed by a person under sections 3 (iii) and 4 for the first time may award him the imprisonment of fourteen years and any person who would repeat the said offences under section 5 may receive the imprisonment of fourteen years. This is contradictory stance because first time offender and repeat offender both may get equal sentence which is again against the soul of criminal justice system.

10.4.5 In Terms of Knowledge and Intention

The PACHTO under section 3 (i)(ii)(iii)(iv) makes the offences punishable when committed by the offender with knowledge of the same. Article 5 of the Convention

⁸³⁷ Section 5 of the PACHTO.

against Transnational Organized Crime stipulates that the state parties shall adopt such legislative measures to establish such offences when committed intentionally. Pakistan is a state party to this Convention. Section 5 (1) of the Palermo Protocol also requires the state parties to establish as criminal offences the conduct set forth in article 3 of the Protocol when committed intentionally; while the PACHTO uses the word '*knowingly*' instead of '*intentionally*'. Whoever knowingly commits the acts mentioned therein is said to commit human trafficking. All the persons involved in the trafficking process are rationale actors and are traffickers because they commit the offence either with intention or knowledge.⁸³⁸ But this may not be true in all cases because the use of words intentionally and knowingly differentiate offenders and leaves a gap in the PACHTO.

The knowledge and intention have different connotations. According to Black's Law Dictionary, *intention is the state of mind accompanying an act especially a forbidden act; the willingness to bring about something planned or foreseen*. Intention is the design or purpose with which an act is done. More accurately, it is the fore-knowledge of the act, coupled with the desire of it, such fore-knowledge and desire being the cause of the act, in as much as they fulfill themselves through the operation of the will; an act is intentional if, and in so far as, it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied.⁸³⁹ So intention is the fore-sight that definite outcome will follow from the act; and the hope for those outcome working as a motive which persuades the act. More precisely, intention connotes a conscious state in which mental faculties are awakened into activity and called into action for the deliberate purpose of being directed towards a particular consequence.

⁸³⁸ Pak Hung Mo. "International Human Trafficking: Theory and Solution," *Hong Kong Baptist University, MPRA Paper No. 35104*, (30th November 2011).

⁸³⁹ John W. Salmond, *Jurisprudence or the theory of the law* (Stevens and Haynes: Cornell University Library, 1902).

On the other hand, the Black's Law Dictionary defines *knowledge is the awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact.* Knowledge signifies a state of mental comprehension in which the mind is an inactive addressee of certain consequences arising in it. So it refers to a bare state of conscious awareness of certain facts in which mind might itself remain passive. However, desire for consequences is important element to distinguish knowledge and intention. Let us take an example of labor trafficking. An employer recruits an employee at a brick-kiln in which he is daily exposed to forced labor. The labor inspector visits the brick-kiln knowing all the working conditions but did not take any action against the employee for exploitative labor of the employee. Are both the persons i.e. employer and inspector said to be traffickers as they both have knowledge of exploitative labor? The answer is negative, because of the desired consequence of the act. This fact creates two types of offenders in the phenomenon of human trafficking; one who is actually exploiting the victim and one who is facilitating in the process of exploitation. The Actual exploiter and abettor are two different concepts which are not addressed by the PACHTO. It seems, therefore, essential to differentiate between producing a result intentionally and producing it knowingly.

Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them.⁸⁴⁰ But there may be some situations where there is intention without knowledge, the consequence being desired but not foreknown as certain or even probable. On the contrary, there may be knowledge without intention, the consequence being foreknown as they certainly related to that which is desired, but being itself an act of dislike rather than desire, and therefore not intended. Intention, therefore, has a broad

⁸⁴⁰ Ibid.

sweep when used in connection with the element of an offence and is a step ahead from the knowledge. The Convention against Transnational Organized Crime, 2000 requires each state party to adopt stricter or severer measures than those provided for by this Convention for preventing and combating transnational organized crime.⁸⁴¹ Pakistan is a state party to this Convention. The Palermo Protocol is a supplementary to this Convention which provides that offence of human trafficking is committed with intention. This may lead the notion that the threshold of the offence of human trafficking under PACHTO is lower than the international law. It would, therefore, be more appropriate if the word '*knowingly*' be substituted with '*intentionally*'.

10.4.6 In Terms of Abetment of Offence

Now set the above discussion in the human trafficking cases. Since it is an organized crime and chain of various people is involved to accomplish the same; hence, it is necessary to punish each and every offender involved in accordance with his role played. The offenders involved may range from initial recruiters to actual exploiters. As per definition, they all are traffickers who detain, secure, sell, purchase, recruit, detain, harbor and receive a person (victim) for the purpose of exploitation because they commit the offence with the intention of exploitation. They have direct dealing and contact with the victims of trafficking. During the whole chain, all the traffickers have the knowledge of end consequences of exploitation of the victim. In addition to all this, there are some other persons involved who do not have direct dealing with the victims of trafficking; rather they have dealings with these traffickers for facilitation of the process. These offenders also have the knowledge about the trafficking consequences, but they do not have intention for the same. They just facilitate the traffickers and receive bribes for this purpose. They are called abettors or facilitators. Two things make them abettors or

⁸⁴¹ Article 34 (3) of the Convention.

facilitators instead of traffickers: (i) absence of intention for end consequence i.e. exploitation; and (ii) dealing and contact with traffickers instead of victims. This may be the reason the transportation and transfer of the victims are not included into the definition of PACHTO because the legislator intentionally ousts them from the definition due to their facilitation's role.

The Palermo Convention requires state parties to adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established.⁸⁴² Now what the PACHTO talks about these abettors or facilitators? The answer is negative. Not a single provision is available in PACHTO to address the offenders who facilitate or abet the offence. Being an organized crime, all offenders including traffickers and abettors must be criminalized, but there is no specific criminalization of participating as an accomplice to commit the offence. Some relevant provisions are available in PPC which states that when two or more persons agree to do, or cause to be done an illegal act, such an agreement is designated as criminal conspiracy.⁸⁴³ Any criminal conspiracy involves the abetment of offenders. So it further enumerates as under: -

“A person abets the doing of a thing, who: Firstly. Instigates any person to do that thing; or Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing.”⁸⁴⁴

Abettor is defined as under: -

“A person abets an offence, who abets either the commission of an offence or the commission of an act which would be an offence, if committed by a person capable by law of

⁸⁴² Article 8 (3) of the Convention.

⁸⁴³ Chapter V-A, Section 120-A of PPC.

⁸⁴⁴ Chapter V, Section 107 of PPC.

committing an offence with the same intention or knowledge as that of knowledge as that of abettor."⁸⁴⁵

The organized crimes provide punishments of all offenders involved in the sequence, but PACHTO has neglected to address the participation of accomplices and their punishments. To conclude, corrupt maneuvering is part of human trafficking, particularly where organized crime associations are involved. Various officials are given bribes so as to ensure the success of trafficking ventures. But the PACHTO does not cover the specific provisions on the criminalization of corruption, while the Organized Crime Convention does have the obligation on state parties under article 8. Participation of offenders as an accomplice is also not criminalized in PACHTO, which is again the subject of discussion in article 8 supra.

10.4.7 In Terms of Women and Children

Section 3 (iii) of the PACHTO provides for punishing the offender who purchases, sells, harbors, transports, provides detains or obtains a child or woman for trafficking; the means enumerated are coercion, kidnapping or abduction; while the purpose is exploitative entertainment. This is the only clause in which the trafficking of women and children is criminalized. The purpose is only of exploitative entertainment and nothing else. Two conclusions can be inferred from the contents of this clause, i.e. either the other purposes such as slavery or forced labor are excluded in cases of trafficking of women and children, or trafficking of women and children for exploitative entertainment is differently dealt with as compared to trafficking of women and children for slavery or forced labor. The second inference seems to be sound to some extent. Where women and children are trafficked for the purpose of forced labor or slavery, the offender will be punished under first proviso of clause (i) of section 3; and where they are trafficked for the purpose of exploitative entertainment, the offender will be punished

⁸⁴⁵ Chapter V, Section 108 of PPC.

under clause (iii). Maximum punishment for both offences is ten years with fine. The question may then arise here as to why the legislator bifurcated such trafficking into two clauses. The answer is the action part of the definition. The acts of transportation and providing of the trafficked person are made part of clause (iii) which are not the part of definition of human trafficking under section 2 (h).

10.4.8 In Terms of Definition of Person

The word '*person*' is not defined in the PACHTO. However, detail discussion has been made under 11.6.4 of the next chapter and the same is adopted here for discussion.

10.4.9 In Terms of Protection of Victim

It is mostly seen that the trafficked persons are also considered as criminals and are punished accordingly. This issue of non-prosecution of trafficked persons is neither provided in the Palermo Convention nor in national laws. However, the HCHR Principles and Guidelines require the principle of non-prosecution of the trafficked persons which is in line with the human rights instruments. It states that immunity must be guaranteed to the trafficked persons by ensuring in their national laws that they are not detained, prosecuted or punished for violating laws which is a direct consequence of their situation as trafficked persons. The UNODC Model Law and the 2008 Vienna Forum Report also reinforce the same principle of non-punishment of the trafficked victims. The PACHTO does not contain in such provisions; hence, the victims are further victimized in the legal as well as judicial system.

10.10 Conclusion

The legal regime of PACHTO is neither effective not comprehensive to combat human trafficking, because the laws are overlapping and contradictory. So first legal regime under the PACHTO is insignificant. After the repeal of PACHTO, the legal regime under PTPA is evaluated in the next chapter.

Chapter 11: Critical Evaluation of the Prevention of Trafficking in Persons Act, 2018 (PTPA)

11.1 Introduction

The offences under the PACHTO were tried from period 2002 to 2018 when it was repealed by the Prevention of Trafficking in Persons Act (PTPA), 2018. Significant efforts are made to prevent the human trafficking through legislating the PTPA but it also failed to produce the desired results and has many lacunas underlying in it. Before critically evaluating this legal regime, it is necessary to put an overview on the PTPA.

11.2 An Overview on the PTPA

The PACHTO was under criticism since long due to being insignificant legislation. At last it was replaced by the PTPA. An effort is marked to make a viable legislation and to fill the lacunas already identified in the PACHTO. Following are some characteristics of the PTPA.

The offence of human trafficking has the acts, means and purpose elements. The acts are the recruiting, harboring, transporting, providing or obtaining another person. The means are only three in number such as force, fraud and coercion. Force and fraud are not defined, but coercion is defined in detail which is differently explained from the previous definition of PACHTO. The coercion includes the use of force which further includes the vulnerable position of a person or psychological pressure. Two types of purposes are provided i.e. compelled labor and commercial sex acts. It means that PTPA recognizes two types of trafficking i.e. labor trafficking and sexual trafficking.

The PTPA under section 3 classifies gender based punishments. The male gender and female gender are punished for the offence of human trafficking under clauses (1) and (2) respectively. The latter classification entails severer punishments. However, punishment for child trafficking is also placed with female gender.

The combined reading of sections 3 and 5 classifies the offenders into two types i.e. the traffickers and abettors. The offenders who have direct contacts with the trafficked persons are called the traffickers; while the offenders who have contacts with these traffickers are called the abettors. Both these types of offenders are punished differently under different statutes. The formers are punished under the PTPA; while the latter are punished under the PPC. FIRs against both offenders are registered and trials are concluded under respective statutes.

The combined reading of sections 3 and 4 classifies the traffickers into two types i.e. individual trafficker and traffickers forming an organized criminal group. The latter are punished severer being members of criminal group.

One of the main criticisms of PACHTO was that it did not provide the internal human trafficking which is the major issue of Pakistan. The PTPA fills this lacuna under section 8 which classifies the human trafficking into two types i.e. internal human trafficking and external human trafficking. Section 8 further classifies the investigating agencies into two types i.e. local police and FIA. In case of internal trafficking, the local police shall register the criminal case and investigate the offence; while the FIA shall investigate the offence of external human trafficking whether Pakistan is the country of transit, origin or destination. Both the agencies shall have the powers under the PTPA. Previously, the FIA was only the agency investigating the offence because of the reason that the PACHTO was enacted only for external human trafficking. The bifurcation of internal and external human trafficking further bifurcates the investigating agencies giving powers to local police as well under the PTPA.

11.3 Critical Evaluation of PTPA

Like PACHTO, the offences of PTPA overlap with general as well as special laws in the following manner: -

11.3.1 Overlapping with General Law

Following provisions of PPC and PTPA overlap with each other as: -

(i) Kidnapping or Abduction of a Person under the Age of Ten

Section 364-A of PPC overlaps with section 3 (2) of PTPA. The word kidnapping or abducting in section 364-A of PPC denotes that there are elements of transportation and use of force, fraud or coercion for committing the offence. The section further provides that such kidnapping or abduction must be for the purpose of lust of any other person which means that the offence may be committed for commercial sex act. This is the exact definition of human trafficking under section 3 (2) of the PTPA. In a criminal case FIR No. 418, dated 10-10-2018, under section 364-A, police station Bara Kahu, Islamabad, the accused persons kidnapped the minor daughter of the complainant and attempted to sold her for the purpose of sexual practices.

(ii) Procurement of Minor Girl

Section 366-A of PPC describes the transportation of minor girl with intent of offender that she will be forced to illicit intercourse with another person. The elements of transportation of minor girl for commercial sex work through the means of fraud and force are provided in the said section. In an English case *R versus V*,⁸⁴⁶ the word 'to procure' was defined as to obtain a woman, to cause or bring about her availability for intercourse. The court further referred to a similar provision in English law in which the statute was intended not at persons who provided opportunity for women or girls to prostitute themselves, but at persons who get women or girls by some fraud or persuasion, or by inviting them to it; hence, section 3 (2) of PTPA again overlaps with section 366-A of PPC.

⁸⁴⁶ *R versus V*, 1950 (4) SA 64 (SR).

(iii) Importation of Girl from Foreign Country

Section 366-B of PPC describes the transportation of girl from foreign country with intent that she will be forced to illicit intercourse with another person. The elements of transportation of girl for commercial sex work through the means of fraud and force are provided in this section; hence, section 3 (2) of PTPA again overlaps with section 366-B of PPC.

(iv) Selling and Buying Persons for the Purpose of Prostitution

Section 371-A of PPC provides the selling of any person with intent that such person shall at any time be employed or used for the purpose of prostitution. The word 'selling' denotes that such person is transported or provided or obtained to another person. The intent provided shows that such person is obtained with fraud. The word 'prostitution' denotes that such person is obtained for commercial sex work because section 2 (d) of Prostitution Ordinance, 1961 defines prostitution as sexual intercourse for hire. All the elements of section 3 (2) of PTPA resemble with section 371-A of PPC, making a clear-cut overlapping between both. Similarly, the overlapping of section 371-B of PPC with section 3 (2) of PTPA is the same as discussed in the section 371-A of PPC *supra*.

(v) Selling and Buying Minor for the Purpose of Prostitution

The overlapping of section 372 of PPC with section 3 (2) of PTPA is the same as discussed in the section 371-A of PPC *supra*. Similarly, the overlapping of section 373 of PPC with section 3 (2) of PTPA is the same as discussed in the section 371-A of PPC *supra*. In *Mst. Shaman case*,⁸⁴⁷ the accused purchased and recruited a minor girl for the purpose of commercial sex acts.

⁸⁴⁷ *Mst. Shaman versus State*, 2009 YLR 1013 Karachi.

(vi) Unlawful Compulsory Labor

Section 374 of PPC provides the compulsion of any person for forced labor. The words 'unlawfully compels' denote that such person is recruited against his will. The presence of elements of recruitment and labor against his will through coercion makes it clear that section 3 (1) of PTPA overlaps with section 374 of PPC.

11.3.2 Consequences of Overlapping

Overlapping of offences of PTPA and PPC is one of the main criticisms of the anti-human trafficking legal regime. Admittedly, the act by which the accused violates two laws i.e. PPC and PTPA is the same. As noted above, various provisions of PTPA have the same elements of offences which the offences of PPC contain. Now it is seen as to which punishment should be awarded to the accused, either as provided under PPC or under PTPA. While dealing with the question of applicability of particular law, the literal rule has to be applied at the first instance, where the words of the statute were to be first understood in their natural, ordinary or popular sense. The court has to discover the true legislative intent while interpreting and applying the statute. While enacting the special law, the law makers knew fully that the offence of kidnapping or abducting a minor for the purpose of slavery or sexual work is already made punishable in the general law. However, under the principle of prevalence of special law over the general law, the provision of PTPA will prevail over the PPC and accused shall be tried and punished under the provisions of PTPA.

This overlapping gives wide powers to law enforcement agencies to register the case against the accused in any of the statutes as per section 26 of the GCA. However, it is also provided that special law shall prevail over general law. But it is seen that various cases are still being registered under the PPC which are the domain of PTPA. Till to date, not even a single case has been registered under the PTPA despite the fact that almost one

year has passed to the enactment of PTPA. All the cases of human trafficking have been registered under the PPC. The reason being that neither the law enforcement agencies nor the prosecutors really know about the true spirit of the special law.

The criticism on overlapping is that if the accused is caught by the local police, then criminal case is registered under the PPC and trial is concluded as per procedure given by the general law. In the same situation, if the accused is caught by the FIA officials for the same offence, then criminal case is registered under the PTPA and trial is concluded by the Special Court only. Hence, it becomes a matter of chance for the accused as to which law enforcement agency has raided on him. Then he is prosecuted and punished accordingly. This practice can be stopped only in a situation where there will be an end to overlapping legislation and the offence would be described only under one statute so as to achieve the uniformity in the punishments as well.

Let us take an example to explain this point. A woman or girl is transported from Afghanistan to Pakistan. "A", an accused, sells or buys the said woman or girl for the purpose of prostitution. He is arrested by local police, prosecuted under general law and convicted under section 371-A/B of PPC. He receives twenty-five years' imprisonment (maximum punishment) and fine. On the other hand, a woman or girl is transported from Afghanistan to Pakistan. "B", an accused, sells or buys the said woman or girl for the purpose of prostitution. He is arrested by the FIA officials, prosecuted and convicted under section 3 (2) of the PTPA. He receives ten years' imprisonment (maximum punishment) and fine. When we keep both the sentences of "A" and "B" in juxtaposition, they are punished differently on the same facts and prosecution story. This is whole due to the overlapping legislation. As long as the issue of overlapping of legislations is not resolved, the anti-human trafficking legal regime cannot be effective. There are a number of criminal cases registered under section 371-A/B of PPC against the persons who were

managing the transferring and selling/buying foreigner women or children for the purpose of prostitution. These are actually the cases of human trafficking but law enforcement agencies, prosecutors, counsels, judicial officers etc. are least interested to know the true nature of the crime of human trafficking and such traffickers are punished under the provisions of PPC instead of PTPA.

In a nutshell, although the special legislation enacted later in time impliedly repeals the general legislation enacted prior in time, but it is also fact that there is clear-cut overlapping of various provisions of PPC and PTPA.

11.4 Overlapping with Special Laws

PTPA is a special law, but it overlaps with other special laws as under: -

11.4.1 Sindh Children Act, 1955

The Sindh Children Act is a special law enacted for the protection of children and prosecution of offenders who violate the provisions of the Act. Some of the provisions of PTPA overlap with the provisions of this Act as under: -

(i) Employing Children for Begging

Discussed earlier that retaining a person for begging is a form of forced labor. Section 49 of the Act prohibits employing any child for the purpose of begging or causing any child to beg. The child is recruited for compelled labor through means of force, fraud or coercion. Although recruiting child through means of force, fraud or coercion is not mentioned in the Act, but recruiting a child for begging always needs the use of force, fraud or coercion. However, section 7 of PTPA exempts the use of force, fraud or coercion element in case of child trafficking. So all the elements of human trafficking under section 3 (2) of PTPA are provided in section 49 supra which is a clear overlapping of both the laws.

(ii) Exploitation of Child Employees

Section 59 (1) of the Act prohibits securing a child for the purpose of exploitative labor in a factory or other establishment. Such establishment includes the brick-kiln as well. Securing a child means recruiting or obtaining a child. The purpose of such securing is to extract labor from him but in fact exploits the child for his own ends, withholds or lives on his earnings. Withholding the earning means refusing or suppressing his earnings through the use of coercion. However, section 7 of PTPA exempts the use of force, fraud or coercion element in case of child trafficking. This section contains all the elements of human trafficking such as recruitment, forced labor and coercion, so section 3 (2) of PTPA overlaps with this section.

Section 59 (2) of the Act prohibits securing a child for the purpose of prostitution. This section again contains all the constituents of human trafficking such as recruiting or obtaining a child through use of force, fraud or coercion for commercial sex work, so section 3 (2) of PTPA overlaps with this section.

11.4.1.1 Points of Distinction

The inconsistency between the provisions of two statutes is shown in the table No. 03 below.

Inconsistency	PTPA	1955 Act
Punishment	Section 3(2) provides maximum imprisonment of ten years, and not less than two years; or maximum fine of Rs. one million, or both.	(1) Section 49 provides maximum imprisonment of one year or maximum fine of Rs.300/- or both; (2) Section 59 (1) provides only the punishment of maximum fine of Rs.1000/-; (3) Section 59 (2) provides maximum imprisonment of two years or maximum fine of Rs.1000/- or both.
Cognizable	FIA as well local police.	Local police only.

Bail	Non-bailable	Not provided
Compounding	Non-compoundable	Not provided
FIR	Registered by FIA as well as local police.	Registered by local police only.
Investigation	Conducted by FIA officials as well as local police.	Conducted by local police only.
Trial	1 st class Magistrate	Sessions Judge especially empowered under the Act.

11.4.1.2 Consequences of Overlapping

Section 26 of the GCA provides for prosecution and punishment to the offender for an offence under either or any of the enactments where the offence falls under two or more enactments. Hence, when an offence is committed by an offender against the above acts, then he may be tried either under 1955 Act or PTPA.

Article 143 of the Constitution provides for the prevalence of federal law over provincial law in case of any inconsistency between them. The PTPA is the federal law; while the 1955 Act is the provincial law. The inconsistency of punishments between the two statutes has already been shown in the table above. So in accordance with article 143 supra, the punishments of PTPA shall prevail, meaning thereby the accused shall be tried and punished under the provisions of PTPA instead of 1955 Act. The Kabal Shah case and Kahif Nadeem case supra are discussed in detail wherein Qisas & Diyat Ordinance and Zina Ordinance were given preference over the Sindh Children Act, 1955 being inconsistency between federal law and provincial law respectively.

The principle of lesser punishment comes ahead to disparage the discussion supra. The maximum punishment under the PTPA is ten years and fine for the offences; while maximum punishments under the 1955 Act are two years or fine. It is also a settled principle of interpretation of statute that an interpretation favoring the accused must be adopted in case of conflict between the statutes. So on account of this discussion, the

accused would be prosecuted and punished for the offences above under the provisions of 1955 Act instead of PTPA.

There appears another point of criticism that it is not provided in the 1955 Act whether the offences are bailable or non-bailable? So for the purpose of bail, two years' term of imprisonment is interpreted in *Anjum Sheraz case*⁸⁴⁸ wherein it is held that offences having the punishments upto three years are treated as bail-able offences where the bail-able or non bail-able status of the offence is not provided in the statute. In bail-able offences, the bail is granted to the accused as a matter of right and not as a matter of grace.⁸⁴⁹ So due to overlapping of legislation, the accused guilty of human trafficking cases may get bail as a matter of right, if he is booked in criminal case under the provisions of 1955 Act on the same facts and prosecution story which is similar with the provisions of the PTPA. Let us explain this point through an example. "A", an accused, imports a child girl from another country or even from within the country and brings her into Sindh province for the purpose of prostitution. He is arrested and booked in a criminal case by the local police under section 59 (2) of the 1955 Act. He may get bail by the police officer on a surety bond, or he will be released on bail by the court as soon as he is brought before the court because of two years' term of imprisonment for the offence. On the other hand, "B", an accused, transports a child girl from another country or even from within the country and brings her into Sindh province for the purpose of prostitution. He is arrested and booked in a criminal case by the FIA officials or local police under section 3 (2) of the PTPA for external or internal human trafficking, as the case may be. He would not be released on bail by the court as soon as he is brought before him because the offences under the PTPA are non-bailable and grant of bail in such offences is the discretion of the court and not as a matter of right. When we keep

⁸⁴⁸ *Anjum Sheraz versus the State*, NLR 1999 Criminal 1.

⁸⁴⁹ See section 496 CrPC.

both the offences of “A” and “B” in juxtaposition, they are treated differently, with respect to bail matter, on the same facts and prosecution story. In the former case, the accused gets released on bail without any discretion of the court; while in the latter case, his release on bail is with the discretion of the court. This is due to the overlapping of two special laws.

It is held in *Malik Naseer case*,⁸⁵⁰ the legal principles settled in a series of decisions, which comes within the scope of stare decisis or having bonding effect under the constitution, has to be followed strictly. Further, article 189 of the Constitution provides that any decision of the Supreme Court shall, to the extent that it decides question of law or is based upon or enunciates a principle of law, be binding on all other courts. So the lower courts have to follow the legal principles enunciated by the higher courts in letter and spirit. In a nutshell, overlapping of the provisions of PTPA with the 1955 Act places the anti-trafficking legal regime highly under criticism; hence, making the same ineffective.

11.4.2 The Punjab Destitute and Neglected Children Act, 2004

This Act cares for destitute and neglected children within the province and seeks punishment to the offenders who are involved in the exploitation of children. Some provisions of the PTPA overlap with 2004 Act as under: -

(i) Employing Child for Begging

Like the Sindh Children Act, this Act under section 36 also prohibits employing children for the purpose of begging or causing any child to beg. ‘Causing child to beg’ necessitates the element of force, fraud or coercion. However, section 7 of PTPA exempts the use of force, fraud or coercion element in case of child trafficking. So section 3 (2) of the PTPA overlaps with this section.

⁸⁵⁰ *Malik Naseer versus Wishno Mall*, 2014 PCrLJ 1496 (Sindh).

(ii) Exposure to Seduction

Section 40 of the Act prohibits securing the custody of child for the purpose of prostitution. So section 3 (2) of the PTPA overlaps with this section.

11.4.2.1 Points of Distinction

The inconsistency between the provisions of two statutes is shown in the table No. 04 below.

Inconsistency	PTPA	2004 Act
Punishment	Section 3(2) provides maximum imprisonment of ten years, and not less than two years; or maximum fine of Rs. one million, or both.	(1) Section 36 provides maximum imprisonment of three years or maximum fine of Rs. 50,000/- or both. (2) Section 40 provides maximum imprisonment of three years or maximum fine of Rs.50,000/- or both.
Cognizable	FIA Officials as well as local police.	Local police.
Bail	Non-bailable	Not provided
Compounding	Non-compoundable	Not provided
FIR	Registered by FIA as well as local police.	Registered by local police.
Investigation	FIA officials as well as local police.	Local police officer.
Trial	1 st class Magistrate	Sessions Judge, or Additional Sessions Judge as a Child Protection Court.

10.4.2.2 Consequences of Overlapping

The detailed discussion of overlapping in previous paragraphs has been made. As per section 143 of the Constitution, the provisions of PTPA shall prevail over 2004 Act being federal law. But as per principle of lesser punishment, the provision of 2004 Act shall prevail. However, section 40 of the Act includes the non-obstante clause as "*The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.*" This means that this Act has an over-riding effect over other laws of the country. So in case of any conflict between the statutes, the provisions

of this Act shall prevail. This section also gives prevalence to 2004 Act over any other law including PTPA. Rest of the discussion is already made in previous criticisms under 11.4.1.2 and is being adopted over here.

11.4.3 Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010

This Act also cares for the children within the province and seeks punishment to the offenders who are involved in the exploitation of children. Some provisions of the PTPA overlaps with this Act as under: -

(i) Employing Child for Begging

Like previous Acts, this Act under section 45 also prohibits employing children for the purpose of begging or causing any child to beg. Section 3 (2) of the PTPA overlaps with this section.

(ii) Exposure to Seduction

Section 50 of the Act prohibits securing the custody of child for the purpose of prostitution. Section 3 (2) of the PTPA overlaps with this section.

(iii) Child Trafficking

Section 52 of the Act prohibits and punishes the child trafficking within Pakistan. Section 3(2) of the PTPA clearly overlaps with this section.

11.4.3.1 Points of Distinction

The inconsistency between the provisions of two statutes is shown in the table No. 05 below.

Inconsistency	PTPA	2010 Act
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	Section 3(2) provides maximum imprisonment of ten years, and not less than two years; or maximum fine of Rs. one million, or both.	(1) Section 45 provides maximum imprisonment of three years or maximum fine of Rs. 50,000/- or both. (2) Section 50 provides maximum imprisonment of seven years or maximum fine of Rs. 100,000/- or both. (3) Section 52 provides punishment with imprisonment for life or which shall not be less than fourteen years and shall also be liable to fine which shall not be less than five hundred thousand rupees and may extend to ten hundred thousand rupees.
Repeat Offender	Section 4 provides maximum punishment of fourteen years which shall not be less than three years and maximum fine of Rs. two millions.	Section 54 (3) provides rigorous imprisonment not less than maximum punishment prescribed for that offence or twice the number of years of imprisonment and fine of twice the amount of fine prescribed.
Cognizable	FIA officials as well as local police.	Local police only.
FIR	Registered by FIA as well as local police.	Registered by local police only.
Investigation	Conducted by FIA officials as well as local police.	Conducted by local police officer.
Trial	1 st Class Magistrate	Sessions Judge, or Additional Sessions Judge as a Child Protection Court.

11.4.3.2 Consequences of Overlapping

Section 61 of the 2010 Act includes the non-obstante clause as under: -

“The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, with the exception of any section(s) of any other law for the time being in force, which may be more protective in case of a child at risk.”

This section has two parts i.e. prevailing clause and better legislation clause. This Act has an over-riding effect over other laws of the country. So in case of any conflict between the statutes, the provisions of this Act shall prevail. But this section simultaneously invites the better provision of any other statute regarding the protection of

child at risk. However, the second part of this section talks about the better legislation of protection of child at risk and not the prosecution of offenders, so to the extent of prosecution and punishment to the offenders, the over-riding effect of this Act shall remain the same as prevailing provided in the first part of the section.

Rest of the criticism is already made in the preceding paragraphs under 11.4.1.2 and the same is being adopted here for further criticism.

11.4.4 Bonded Labor System (Abolition) Acts

The Punjab Bonded Labor System (Abolition) Act, 2012 prohibits debt bondage and bonded labor system in which labor is extracted from the laborer by the use of force. Such system is abolished and punished under 4, and 11 & 12 of the Act respectively. The KPK Bonded Labor System (Abolition) Act, 2015 also prohibits such bonded debt and bonded labor system. Such system is abolished and punished under 3, and 14 & 15 of the Act respectively. The Sindh Bonded Labor System (Abolition) Act, 2016 also prohibits such bonded debt and bonded labor system. Such system is abolished and punished under 4, and 11 & 12 of the Act respectively. In bonded labor system, a laborer is recruited and then detained along with his family by the employer forcefully at the brick-kiln for compelled or forced labor. Such labor is also extracted from his family. The word 'compels any person' under the Acts denotes that such labor is extracted by the use of force, coercion etc. All the elements such as recruitment, compelled labor and use of force & coercion are provided in the cases of bonded labor system. Such type of labor is also prohibited under section 3 of the PTPA. So, the PTPA overlaps with provincial laws in this regard.

11.4.4.1 Points of Distinction

The inconsistency between the provisions of statutes is shown in the table No. 06 below.

Inconsistency	PTPA	Bonded Labor Acts
Punishment	(1) Section 3 (1) provides maximum imprisonment of seven years; or maximum fine of Rs. one million; or both. (2) Section 3(2) provides maximum imprisonment of ten years, and not less than two years; or maximum fine of Rs. one million; or both.	(1) Section 11 of Punjab Act provides imprisonment of minimum of two years and maximum of five years; or fine of minimum of fifty thousand rupees; or both. (2) Section 14 of KPK Act provides imprisonment of minimum of two years and maximum of five years; or fine of minimum of fifty thousand rupees and maximum of two hundred thousand rupees; or both. (3) Section 11 of Sindh Act provides imprisonment of minimum of two years and maximum of five years; or fine of minimum of one hundred thousand rupees; or both.
Cognizable	FIA officials as well as local police.	Local police.
Bail	Non-bailable	Bailable
Compounding	Non-compoundable	Not provided
FIR	Registered by FIA as well as local police.	Registered by local police.
Investigation	FIA officials as well as local police.	local police officer.
Trial	1 ST Class Magistrate	1 st Class Magistrate empowered in this behalf by the government.

11.4.4.2 Consequences of Overlapping

Article 143 of the Constitution gives prevalence to the provisions of PTPA over the bonded labor laws being federal law and provincial law respectively. The rule of lesser punishment gives the bonded labor laws dominance over the PTPA. Further, the inclusion of debt bondage in the definition of human trafficking by the PTPA clearly overlaps with the provisions of bonded labor laws. It would be said more appropriately that after the addition of debt bondage in the definition of human trafficking, the bonded labor laws have lost their validity because in all cases of debt bondage, the criminal cases would always be registered under the PTPA and not under the bonded labor laws. Under

the PTPA, the offence of debt bondage is made non-bailable offence; while under the bonded labor law, the offence of debt bondage is bail-able one.

Now another point of criticism with regard to the offenders of debt bondage appears on record. Admittedly, the offence of human trafficking is committed by an organized criminal group. The members of such group organize their network throughout the country. When any of its members is apprehended for the offence of debt bondage in the provinces, then he may be tried under the provisions of the Bonded Labor System (Abolition) Act. But if the same offender is apprehended in the capital territory of Islamabad, then he would be tried under the provisions of the PTPA because provincial law is not applicable in the capital territory of Islamabad. In such situation, the same offender is treated differently with respect to its trial and punishments for the same offence. Now it is matter of chance as to his apprehension either in any of provinces where bonded labor law is applicable or in the capital territory of Islamabad. Under the provincial laws, the offence is bail-able and lesser in punishments; while under the federal law, the offence is non-bailable and severe in punishments.

11.5 Critical Evaluation of the Provisions of PTPA

11.5.1 In Terms of Definition of Child

The definition of child is controversial throughout the legal regime of Pakistan. The age of majority relates to the attainment of the legal control over one's person, decisions and activities, and the parallel cessation of the legal authority of the parents or guardians over the child's matters generally.⁸⁵¹ The definition of child and fixation of minimum age for certain activities are problematic in some of the laws in force in Pakistan. There is no consistency for the definition of child in all the relevant laws of human trafficking and as such is problematic. Although, the PTPA defines child any

⁸⁵¹ Wikipedia source.

person below the age of eighteen years; and international law also defines the child as of same age, then question may arise as to why it is controversial in legal regime of human trafficking? The answer is that when there is overlapping of laws, then this contention of age limit makes problem to define a person as child. On the basis of this controversy, the punishment of offence becomes contradictory.

The age of majority is determined as eighteen years in the United Nations Convention on the Rights of the Child, 1989.⁸⁵² The Majority Act, 1875 of Pakistan determines the age of majority as eighteen years.⁸⁵³ The PTPA also recognizes the age of majority as eighteen years.⁸⁵⁴ It means that any person who is below the age of eighteen years would come within the definition of minor. Attainment of eighteen years is the criteria which changes the status on the legal personality of a person.

On the other hand, contradictions also lie therein. The Constitution of Pakistan, 1973 defines a child as a person below the age of fourteen years.⁸⁵⁵ The Mines Act, 1923 muddles the situation when it defines the child as a person who has not completed his fifteen years of age.⁸⁵⁶ The Child Marriage Restraint Act, 1929 defines child a person who, if male, is under eighteen years of age, and if a female, is under sixteen years of age.⁸⁵⁷ The Children (Pleading of Labor) Act, 1933 defines a child under the age of fifteen years.⁸⁵⁸ The Factories Act, 1934 defines a child below the age of fifteen years⁸⁵⁹; an adult is a person who has completed his seventeen years of age⁸⁶⁰; and an adolescent is a person who has completed his fifteen years but has not completed his seventeen

⁸⁵² Article 1 of CRC.

⁸⁵³ Section 3 of the Act.

⁸⁵⁴ Section 2 (a).

⁸⁵⁵ Section 11 (3) states that no child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

⁸⁵⁶ Section 2 (c).

⁸⁵⁷ Section 2 (a).

⁸⁵⁸ Section 2.

⁸⁵⁹ Section 2 (c).

⁸⁶⁰ Section 2 (b).

years.⁸⁶¹ The West Pakistan Shops and Establishments Ordinance, 1969, defines child a person who has not completed his fourteen years of age.⁸⁶² The Tea Plantation Labor Ordinance, 1962 defines a child below the age of fifteen years.⁸⁶³ The Employment of Children Act, 1991 defines child a person who has not completed his fourteen years of age.⁸⁶⁴ The Passport Act, 1974 defines child as a person of twelve years. The Bonded Labor System (Abolition) Act, 1992 defines child as a person below the age of sixteen years.

Under the 18th Constitutional amendment of 2010, the matter of child rights, legally and administratively, are devolved to the provinces. The Factories Act, 1934 is adopted by the Punjab through the Factories (Amendment) Act, 2012 and it retains the age of child as fifteen years; while the KPK Factories Act, 2013 and the Sindh Factories Act, 2015 define a child as a person below the age of fourteen years.⁸⁶⁵ The Punjab Restriction on Employment of Children Act, 2016, defines child a person who has not attained the age of fifteen years.⁸⁶⁶ The province of Khyber Pakhtunkhwa Prohibition of Employment Act, 2015 defines the child as a person who has not completed his fourteen years of age.⁸⁶⁷ The Punjab Prohibition of Child Labor at Brick-Kilns Ordinance, 2016 also defines the child as of fourteen years of age.⁸⁶⁸ The Punjab Restriction on Employment of Children Act, 2016 defines the child as of fifteen years of age.⁸⁶⁹ The Sindh Prohibition of Employment of Children Act, 2017 is again confusing as defining the child a person of fourteen years of age.⁸⁷⁰

⁸⁶¹ Section 2 (a).

⁸⁶² Section 2 (c).

⁸⁶³ Section 2 (c).

⁸⁶⁴ Section 2 (iii).

⁸⁶⁵ Section 2 (d).

⁸⁶⁶ Section 2 (c).

⁸⁶⁷ Section 2 (b).

⁸⁶⁸ Section 2 (e).

⁸⁶⁹ Section 2 (c).

⁸⁷⁰ Section 2 (ii).

All the above discussion results that there is no any aligned definition of child and this contradiction is still continued. So human trafficking cases are also in confusion where the victim is a child. Let us take one example to understand the problem. Where a child 'A' of age fifteen years is transported to a brick kiln for exploitative labor. The PTPA defines a child as of below the age of eighteen years, but the Punjab Prohibition of Child Labor at Brick-Kilns Ordinance, 2016 defines the child as of age of fourteen years. Now according to PTPA, 'A' working at brick kiln is a child; while according to Ordinance of 2016 supra, 'A' is not a child. There is no uniform definition of child. When a child is recovered in any industry or establishment against the charge of child labor or exploitative labor who was transported there for such labor, but contradictory age limit of child confuses the situation about the status of child and applying correct provisions of law. Such contradictions in the statutes cause an environment of extreme discretion to the law-enforcement agencies which further exploit the situation.

11.5.2 In Terms of Definition of Human Trafficking

The definition of human trafficking under the PTPA is totally contradictory from the international law and PACHTO. The element of exploitation is excluded and the offence is made punishable to the extents of act and means only. As discussed earlier that exploitation is a necessary element for the offence of human trafficking. Where there is no exploitation of the victim, there is no human trafficking. In such situation, the offence may be named to some other offence, but not the human trafficking. However, no exploitation is required under the PTPA which infers that the offence is not made an offence of benefit or profits which is the absolute departure from the conventional definition of human trafficking.

Two types of offences are provided therein such as compelled labor and commercial sex acts. The first offence, compelled labor, is defined under section 3 (3) (b) as it includes;

- (1) involuntary servitude, (2) slavery, (3) practices similar to slavery, (4) debt bondage and (5) forced labor.

Debt bondage is already defined under the BLSAA; while other terms such as involuntary servitude, slavery or practices similar to slavery and forced labor are defined neither under PTPA nor any other national instruments. It is not defined anywhere in the national legal regime that what acts may be called the practices similar to slavery? However, practices similar to slavery are defined in international law under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956. Pakistan is a party to this Convention. According to this Convention, debt bondage is one of the forms of practices similar to slavery. Therefore, the purpose '*practice similar to slavery*' is broad enough to incorporate the purpose '*debt bondage*' and there is no need to include '*debt bondage*' in a case where '*practices similar to slavery*' is also included.

Serfdom, forced selling of women into marriages, illegal cultural practices of giving women by the clan to another person for value received, and delivering of children by parents or guardians to other persons for exploitation (illegal adoption of children) are such practices similar to slavery which are defined by the Supplementary Convention supra. The last practice of illegal adoption may also fall under the binding provisions of the CRC which prohibits child exploitation in general as well as specific forms of child exploitation under article 19 (1). If all such practices are also included in the definition of practices similar to slavery under the PTPA, then the scope of human trafficking under the PTPA will become wide enough to include some cultural practices against women

and children. However, due to un-defined term of 'practices similar to slavery' in the PTPA, it is still ambiguous as to consider such practices as human trafficking.

Forced labor is defined in Convention No. 29 which does not necessarily include exploitation. The detail discussion has already been made in 1.4.1 under chapter 1 of this thesis. If there is no exploitation, there are no monetary benefits. The term 'compelled labor' includes forced labor in its definition. Therefore, compelled labor may not include monetary benefits to the traffickers. Accordingly, this new regime of PTPA may not necessarily include the element of exploitation in cases of human trafficking where the cases involve labor trafficking for the purpose of forced labor.

The second type of offence, commercial sex acts, is nowhere defined in the PTPA. The international law is also silent on defining the term. However, the US Trafficking Victims Protection Act, 2000 defines the term as under: -

*"Any sex act on account of which anything of value is given to or received by any person."*⁸⁷¹

The definition clearly shows that it must include the monetary benefits to the traffickers. So as per PTPA, labor trafficking may not include benefits; while sexual trafficking must include benefits. This is a contradictory stance which needs review.

11.5.3 In Terms of Punishments under Section 4

Section 4 of PTPA mentions the enhanced punishments under aggravating circumstances which are four in numbers: -

- a. Where physical injuries or threats are involved;
- b. Where the offence is committed by an organized criminal group;
- c. Where travel documents are possessed by the offender; and
- d. Where the offence is repeated by the same offender.

In all such cases, the offender shall be punished with maximum imprisonment of fourteen years which shall not be less than three years and maximum fine of rupees two

⁸⁷¹ Section 103 (3) of TVPA.

million. Now see section 3 of PTPA, when any person commits the offence of human trafficking against a man shall be punished with maximum imprisonment of seven years or with maximum fine of rupees one million or with both. In case of same offence against a woman or child shall be punished with maximum imprisonment of ten years or with maximum fine of rupees one million or with both. Contents of both the sections clearly show that section 3 is applicable where the trafficker is a single person, and where more than one trafficker is involved, section 4 (b) is applicable with enhanced punishment on conviction. But both the sections collectively are contradictory with each other when there is repetition of the offence. If a convict, being a single offender under section 3, repeats the offence and is again convicted, then he shall be punished with maximum imprisonment of fourteen years which shall not be less than three years and maximum fine of rupees two million. Now if a convict, being a member of organized criminal group under section 4 (b), repeats the offence and is again convicted being a member of organized criminal group, then he shall be punished with maximum imprisonment of fourteen years which shall not be less than three years and maximum fine of rupees two million. In both the cases, the punishment to a single repeater and member of organized group repeater is the same which is against the very soul of criminal justice system. If they are being treated differently in terms of punishments on first time committing of offence, then their punishments on repetition should also be different.

11.5.4 In Terms of Organized Structured Group

The PTPA explains the organized criminal group as under: -

“A structured group of two or more persons, existing for a period of time and acting in concert with aim of committing any offence in order to obtain, directly or indirectly, any financial or other material benefit.”⁸⁷²

The Palermo Convention defines structured group as under: -

⁸⁷² Section 4 of the PTPA.

“A group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.”⁸⁷³

Now what is structured group is not defined anywhere in the PTPA. To define structure group is very much important as it is the basic criteria through which the commission of offence may have higher penalties under the Act. If the group is not structured, then aggravating circumstances do not exist.

11.5.5 In Terms of Compensation to the Victims

Under section 13, the PTPA provides the victims of human trafficking a right to receive compensation from the trafficker for the harm caused to the victims as required under section 545 of the Code of Criminal Procedure. The scope of this section is limited only to a case where the offender is convicted. To contradict the contents of this provision, the definition of victims is necessary to write here.

“Victim means a person against whom an offence is committed regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.”⁸⁷⁴

The criteria for being a victim of human trafficking is not limited only to the conviction of the trafficker, but it extends to a situation where the trafficker is not even identified, arrested or put on trial. The victim is always a victim whether the trafficker has come on record or not. Every victim may be entitled to receive compensation, even in a case where there is no trafficker recognized, apprehended or tried. Now the next question may arise as to who will pay the compensation to the victim in the case mentioned before? The UNODC Toolkit to Combat Trafficking in Persons provides for national compensation schemes funded from the public revenue.⁸⁷⁵ The Model Law against Trafficking in Persons also recommends for the establishment of a victim fund to which

⁸⁷³ Article 2 (c) of the Palermo Convention.

⁸⁷⁴ Section 2 (g) of the PTPA.

⁸⁷⁵ Tool No. 8.17.

the victims can apply for compensation for the damages suffered.⁸⁷⁶ Under the PTPA, the award of compensation to the victim is contingent upon the apprehension of the trafficker and then prosecuted and found guilty in the criminal proceedings. Without a successful prosecution, the victim is not qualified to receive compensation. This is also the lacuna in PTPA which needs consideration. This discussion concludes that the legal regime on the subject is not effective because the same is contradictory and overlapping. The offenders are neither adequately prosecuted nor punished. The victims are neither properly protected nor compensated.

11.6 Critical Evaluation of PTPA with Minimum International Standards

Since Pakistan has most of the international instruments relating to human trafficking ratified, thereby assigned an obligation on itself to advance its national laws and policies in line with the benchmarks set out by these instruments. When a state is a party to a treaty, it becomes under an obligation to fulfill all of its standards which are complementary in nature.⁸⁷⁷ So a member state should take all relevant ratified international instruments into account when it carries out its law reforms; advances strategies, programs or policies; or forms new structures concerning matters addressed by the instruments. This helps to make sure that the measures it adopts are complete and articulate and state is serious enough to go side-by side with the international standards. This places such state in the preferable and better international rankings. Now it will be evaluated as to whether the national legal regime is in line with the international standards contained in the instruments ratified by Pakistan.

10.6.1 Human Trafficking as Serious Crime

The Palermo Convention places the transnational organized crime into the definition of serious crime as under: -

⁸⁷⁶ Article 29.

⁸⁷⁷ UNODC, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, (UNICEF Innocent Research Center, February 2009). ISBN: 978-88-89129-85-2.

“Serious crime shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more seriously penalty.”⁸⁷⁸

The Palermo Protocol supplements the Palermo Convention and is interpreted with it. The provisions of the Convention are applicable to the Protocol. It means that the international standards put every effort that transnational organized crimes having punishments of at least four years fall into the definition of the serious offence. In simple words, the offence of human trafficking is considered as serious crime under the international law. The minimum standards concerning appropriate punishments or sanctions are drawn from the Palermo Convention under article 11. Although the state parties reserve the right to determine the severity of the punishment for the Convention offences, but at the same time they are under an obligation to consider the gravity of the offence. The Legislative Guides for the Implementation of the Convention against Transnational Organized Crime also cast a duty on states to make sure the grave nature of the offence and the need to deter its commission is taken into account in prosecution, adjudication and correctional practices and decisions. Pakistan is a member state to the Palermo Convention; therefore, Pakistan must adhere to this international standard. Now let us see how our national law complies with it. According to the provisions of PTPA, the punishment for trafficking in persons may extend to seven years. So the offence of human trafficking under PTPA is a serious crime. But on the other hand, PTPA overlaps with other national laws which have been discussed in detail above. The punishments under all those laws are less than four years; hence, making the offence of human trafficking not in the category of serious crime. This makes the offence of human trafficking not in compliance with the international standards.

⁸⁷⁸ Article 2 (b).

11.6.2 Criminalization of Trafficking Conduct

Pakistan has ratified a number of international instruments on the subject. The standards set in the Palermo Convention and Palermo Protocol is the requirement of criminalizing intentional trafficking conduct.⁸⁷⁹ However, the standards contained in other instruments are also relevant for the national legal regime. The PTPA does not fully comply with these minimum standards. Accordingly, the PTPA is not aligned with the provision in the Palermo Convention that state parties may adopt stricter and severer measures than are provided for in the Convention and, by implication, in the Palermo Protocol. In stricto sensu, the domestic laws should go further than the Protocol and Convention and include all domestic and cross-border trafficking and should punish individual traffickers as well as organized criminal group.⁸⁸⁰

11.6.3 Criminalization of the Laundering of the Proceeds of Crime

Under article 6, the Palermo Convention sets the mandatory standard for state parties to criminalize money-laundering conduct pertaining to the conversion or transfer of property in order to conceal its illegal origin. Under article 6 (2), the Convention directs the state parties to apply these money laundering provisions to predicate offences which include offences established under the Convention and its Protocols as well as serious offences punishable under domestic law by at least four years' imprisonment. Under chapter IV, the UNODC Model Law reinforces the fact that offences such as the laundering of the proceeds of crime are to be included in domestic legislation. In view of national legal response, it is noted that the PTPA does not include the provisions

⁸⁷⁹ Article 5 of the Palermo Convention and article 5 (1) of the Palermo Protocol.

⁸⁸⁰ Ann D. Jordan, "Annotated Guide to the Complete UN Trafficking Protocol, A tool to assist advocates in the development of a human rights framework for national anti-trafficking laws and policy," *Global Rights, Partners for Justice*. <
https://www.lawschool.cornell.edu/womenandjustice/upload/Annotated_Protocol.pdf > (accessed on 26-08-2018); Tamkeen Fields for Legal Aid Staff, *An Analytical Review of Jordanian Legislation Related to Anti-Trafficking*, (January 2015). <
<http://www.tipheroes.org/media/1534/an-analytic-review-of-jordanian-legislation-related-to-anti-trafficking.pdf> > (accessed on 26-08-2018).

concerning the laundering of the proceeds of crime. The PTPA should cover this lacuna so as to recover the proceeds of unlawful trafficking activities and to bring about the forfeiture of criminal assets that have been used either to commit an offence or are the proceeds of such an offence.

11.6.4 Liability of Legal Persons

The word '*Person*' is not defined anywhere in the PTPA. Legally, it includes natural as well as juridical persons i.e. human beings and non-human being entities. Article 10 of the Palermo Convention obligates the state parties to ensure the criminal liability of legal persons for participating in offences established in the Convention. Article 11 (4) of the Convention further requires state parties that effective, proportionate and dissuasive criminal or non-criminal sanctions be imposed on liable legal persons. These provisions clearly casts a duty on the state parties to adopt measures and to ensure criminal liability of not only natural persons, but also juridical persons for playing a part in offences recognized by the Convention. Article 10 applies to the legal persons only; while of those article 11 apply to both natural as well as legal persons. This obligation makes certain that juridical persons will not commit the crime with exemption being non-human entities, but they will be prosecuted and punished for their involvement in the human trafficking. Since Pakistan is a party to this Convention, hence, it is under an obligation to make sure the criminal liability of juridical persons involved in the human trafficking cases. The most repeatedly used sanction is the fine which is characterizes as one of the punishments for committing crime. Other sanctions also include forfeiture, confiscation, or even closing down the legal persons. Additionally, states may impose non-monetary sanctions to legal persons such as withdrawal of certain advantages, suspension or cancellation of certain activities including licenses/ permits etc. In *Rais*

Ahmed Siddiqi case,⁸⁸¹ the M/S Karachi Trade Test and Training Centre, a juristic person, was involved in the illegal emigrations of people. Although the word 'person' used in the definition of PTPA may include the natural person as well as the legal person, but actually this word is used only for natural person because legal person can be held criminally liable and punished only in terms of fine or confiscation of property etc. Article 12 of the Palermo Convention is also relevant on this point which requires state parties to confiscate the proceeds of crime derived from offences covered by this Convention, but punishments under the PTPA include imprisonments and legal person cannot be imprisoned, so no criminal liability of legal persons is included in the PTPA. Such obligation is necessary where juridical persons such as travel agencies, employment agencies, multinational companies, hotels etc. are involved in human trafficking.

11.6.5 Relevant Information to the Victims

Under article 6 (2)(a) of the Palermo Protocol, the UNODC Legislative Guides, and HCHR Principles and Guidelines, it is provided that the victims of human trafficking, particularly foreign victims who are not familiar with the court proceedings, should be provided several type of information such as on the protection of their physical safety, their rights, legal remedies, and assistance to legal services. Most of the foreign victims do not understand the national language, so they suffer further confusion regarding the court proceedings. The PTPA does not provide any such specific provision on this issue. So the national legal regime does not contain all the relevant terms and standards of international law which does not make the same comprehensive legal regime.

11.7 Conclusion

The provisions of PTPA have been critically evaluated. The legislature attempted to make it a viable law, so that the offence of human trafficking should be abolished

⁸⁸¹ *Rais Ahmed Siddiqi etc versus the State*, 2017 YLR 325 (Sindh).

completely, but still the legal regime is insignificant because the laws are overlapping and the provisions of PTPA are contradictory. Further, the PTPA does not fully comply with the international standards. All these make the legal regime of human trafficking insignificant. The present chapter along with the previous chapter is the answers to the sixth and seventh research questions of the thesis and holds the answers of both the research questions as negative.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

It is an admitted fact that a law which does not take care of all elements of justice in the problem it deals with, does not command acceptability. The ultimate objective of national legal response to human trafficking is to combat it through significant measures which necessitate developing a significant legal regime aligned with international standards. This thesis has been divided into three parts, each having its own objective and significance in order to conclude the main research question of the thesis. Part-I has three chapters for the true understating of the human trafficking. Since, this thesis relates to the legal regime of Pakistan; therefore, situation of human trafficking in Pakistan is discussed in the very first chapter. Pakistan is a source, origin and transit country for human trafficking. The US Tier System currently places Pakistan in tier 2 countries' list. Pakistan's position remained fluctuating on the tier system. The issue of internal trafficking is broader than the external trafficking. Some cultural practices are also linked with the internal trafficking. Bonded labor being the internal form of trafficking is the major area in which people are trafficked for exploitative labor. People from rural area to cities are trafficked for the purpose of better living, but they are exploited actually. Children and women are trafficked for sexual exploitation. Pakistan's geographical location adds to increase the chances of human trafficking. Silk route in Pakistan is the major source of transporting people from Pakistan to other countries. Afghani, Chinese, Indians, Russians, Nepali, Iranians and Bangali women are trafficked to Pakistan; while Pakistan women are trafficked to UAE, Europe, Australia etc. for sexual exploitation. The FIA in Pakistan is a specialized agency to cope with the menace of human trafficking. The very first objective of the thesis is embodied in the first chapter as to make out the true portrait of Pakistan with respect to human trafficking, giving answer to the very first

research question in the manner that international as well as internal human trafficking is widespread throughout Pakistan. However, to understand the proper association of human trafficking, the chapter 2 is much significant. The aim of chapter 2 is to advise the comprehension of the phenomenon of human trafficking by analyzing the definition of human trafficking along with key issues such as forced labor, slavery, slavery like practices, human smuggling etc. The human trafficking being a distinctive offence is correlated with these offences. The three constituents such as acts, means and purpose distinguish the human trafficking from other related offence. This chapter gives answer to the second research question in the manner that human trafficking offence is a distinguished offence from the related offences supra. This gives a conceptual understanding on the subject, then how Islam looks into the prohibition of the offence is the related issue of the thesis because Pakistan being an Islamic state cannot pass any law in contradiction with the injunctions of Islam. Chapter 3 provides the Islamic principles on the prohibition of human trafficking and its related acts. Islam categorically prohibits exploitation of human beings in any manner, either it is labor exploitation or sexual exploitation. This chapter gives answer to the third research question in the manner that Islam abhors the exploitation of any person and look into the offence of human trafficking in the category of *hudood offences* and consider it *fasad fil arz*.

Part-II of the thesis has four chapters which examines the evolution of international legal regime on human trafficking which comprises a number of international treaties concluded by the League and the UN. The evolution of international law starts from the abolition of black and white slave trades to the human trafficking. The former period of abolition is described as non-modern period of international law as discussed in chapter 4 and 5; while the latter period of abolition is described as modern period of international law as discussed in chapters 6 and 7. In the latter period, the

League and the UN played their important roles. Some treaties are specific on human trafficking such as the Palermo Convention and Palermo Protocol. Pakistan has not ratified the latter treaty but is under an obligation to comply with all its standards because of the ratification of the Palermo Convention which is the parent treaty of the Palermo Protocol. The UNODC Legislative Guides also provides principles governing the relationship between the Convention and Protocol. The principle of *mutatis mutandis* means that mandatory provisions in the Convention apply to Protocol as well. The Protocol offences outlawing human trafficking are also included within the scope of the Convention. Therefore, the sole ratification of the Palermo Convention binds state parties to observe the compliance of the standards of the Palermo Protocol, even when the latter has not been ratified. From this framework, the minimum standards to combat human trafficking are drawn. It provides a bench-mark against the national legal response. Apart from these mandatory obligations drawn from these instruments, the non-mandatory guidelines are also followed for consideration in national legal regime to enhance the significant response for combating of human trafficking. The abolition of black and white slave trades was started at city levels, then the issue was recognized at state level. It was so welcomed that abolition was documented universally. Slave trade was abolished at first and then slavery was abolished. At the end of WW-I, the League was formed which concluded various treaties on the subject. At the end of WW-II, the United Nations was formed which continued the ongoing projects of the League. One of them was the abolition of human trafficking. Various international instruments were framed but no specific treaty was framed on the subject. At last, the beginning of 21st century brought along the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 which is a dedicated international instrument on the subject.

Part-II is the answer to the fourth research question of the thesis and also the fourth objective of the thesis.

Part-III of the thesis has three chapters which provide the national legal response for combating human trafficking and its critical evaluation. The general law, PPC and CrPC, contains the provisions which are relevant to human trafficking. Other special laws are also available out of which some are federal laws and some are provincial law. Chapter 8 provides a detailed note of both the laws. The national dedicated law on the subject was first enacted in 2002 as the Prevention and Control of Human Trafficking Ordinance. The said law was replaced by the Prevention of Trafficking in Persons Act, 2018. In order to assess the significance of the national legal regime, chapters 9 and 10 are the most important. The national legal regime as described in chapter 8 along with the international standards as described in chapters 6 and 7 is critically evaluated. In order to make the critical evaluation more viable, the critical evaluation is divided into two chapters. The legal regime under PACHTO is evaluated under chapter 9; while legal regime under PTPA is evaluated under chapter 10. The findings of evaluation of both the chapters provide that the national legal regime is not significant enough to combat human trafficking in Pakistan because such legal regime is neither in compliance with international standards nor in compliance with some legal principles. In other words, the PACHTO and PTPA are neither effective nor comprehensive; hence, making the anti-human trafficking legal regime insignificant. This proves the hypothesis statement of the thesis as correct. The PTPA is the current law on the subject which has repealed the PACHTO. So the PTPA has been critically evaluated in the final chapter of the thesis. All the chapters of thesis are co-related with each other and provide the answer to the main research question (whether the national legal regime is significant to combat human trafficking?) as negative in the manner that the national legal regime on the subject is not

significant to combat human trafficking in Pakistan; and proves the hypothesis statement as correct in the manner that the national anti-human trafficking legal regime is overlapping, contradictory and far from international standards. However, the same may be made significant if the recommendations put forward are considered and laws & policies are framed accordingly.

Recommendations

Since the international law provides a standard approach to combat the human trafficking with a 4P's model (prevention of the crime, protection to the victim, prosecution of the offender and partnership among the states) as discussed earlier, so the recommendations are being put with the said model. The PTPA is the existing law on the subject; therefore, the recommendations will make the PTPA a significant law, so that human trafficking may come to an end completely.

1. For prevention of the offence of human trafficking, first of all, mass media (electronic as well as print) campaigns against the dangers of human trafficking for public awareness should be adopted. The religious personalities can also play a good role in the combat of the offence. For this purpose, they can raise awareness among the people during the Khutba speech of Friday prayers. Comprehensive policies and programs including co-operation with NGOs and other relevant organizations should be implemented. Further, proper research and information regarding the exact number of trafficking victims should be made. For this purpose, a national rapporteur on human trafficking should be appointed. The mandate of such rapporteur should be to collect and circulate information in order to underline the problems and to propose solutions for combating human trafficking. Then government should be required to respond to the Rapporteur's report in the Majlis-e-shura (parliament). Children' and women' access to

educational opportunities should be improved. Capacity of law enforcement agencies should be strengthened. Pakistan's law and regulations contain no specific provisions pertinent to border control technique. The National Action Plan should set out a range of policy measures designed to improve border management and identification of victims and offenders involved in human trafficking at airports, sea-ports and land border points. Porous borders of Pakistan and their poor management being the major reasons for cross border human trafficking should be monitored properly.

2. For protection to the victims of human trafficking, the provisions of compensation to the victims should be reviewed and made more exhaustive. The victims should be provided the monetary assistance as most of the trafficking victims are destitute and cannot afford the cost of litigation etc. The victims should be compensated even in a case where the offender is not even identified, apprehended, prosecuted and punished. For this purpose, section 13 of the PTPA needs review. In such a case, the compensation should be given from the public revenue. So some fund schemes are also needed. Further, the relevant information should be provided to the victims of the human trafficking. Furthermore, the law enforcement agencies should be sensitized to ensure the safety of the victims of trafficking as their primary responsibility. Effective mechanism should be adopted to enable the foreign trafficking victims to contact with the UNHCR for a need to apply for asylum.
3. For prosecution of the offenders of human trafficking, laws must be significant and practical. First of all, Pakistan should make arrangements for the ratification of the Palermo Protocol at its priority. However, ratification of international treaties alone is not adequate to combat the offence of human trafficking. The

standards of such treaties must be incorporated in the national legal response so as to make the same comprehensive. So Pakistani law must be reviewed and if necessary, amended or new laws must be enacted, to give effect to the anti-trafficking standards drawn from the international instruments. Further, constitutional amendment is needed to make the legal regime on the subject more effective. The article 142 (b) of the Constitution should be omitted and so called concurrent jurisdiction of federation as well as provinces in respect of criminal law and proceedings should be abolished which makes the legal regime on the subject ineffective. The legislative power should be given either to federation or provinces so that only one law should be complied with. The federal law and various provincial laws overlap with each other. So there should be only one law covering all the aspects of the offence of human trafficking. Due to overlapping of laws, the application of various legal principles as discussed in the thesis went contradictory to each other which affect the efficiency of legal regime. Furthermore, the PTPA being current national law on the subject needs review. The age of child should be made uniform in all the laws of the country. The definition of human trafficking should be reviewed so that it may contain all the three relevant constituents. If there is no exploitation, there is no benefit to the offender. Due to non-inclusion of exploitation as one of its elements in PTPA, the offences of compelled labor and commercial sex acts are contradictory with each other with respect to benefits to the traffickers. Exploitation being the most important element is missing in PTPA definition of human trafficking, so the element of exploitation should be added into the definition to make the offence more specific and in line with international standards. Debt bondage should be removed from the PTPA because there is already a specific legislation for this

offence. The original legislation of Bonded Labor System (Abolition) Act, 1992 has been adopted by the provinces, but due to the inclusion of debt bondage in PTPA, the validity of provincial laws of bonded labor becomes mere a piece of paper only. The PTPA should define the terms such as involuntary servitude, slavery, practices similar to slavery, so that true scope of the human trafficking in PTPA should be understood. This will also put an end to the misusing of the powers by the investigating agencies as well as varied judicial interpretations by the courts. Some more terms such as serfdom should be inserted in the definition of human trafficking. The PTPA should define the commercial sex work being the second most important type of human trafficking in the PTPA. The punishments under the PTPA are not uniform, but rather are contradictory with each other. They require review and the offenders should be punished commensurate with the severity of the offences committed. The PTPA should define the term structure group. It is equally important to define the term because on the basis of structured group, severer penalties are prescribed for the organized criminal group. This will also help in facilitation of prosecution of those who act together in the immediate commission of an offence. The provision of criminalization of the laundering of the proceeds of the offence of human trafficking should be inserted in the PTPA. The word 'person' should be explained with respect to both types of persons such as natural person as well as legal person. The provision of liability of the legal persons should be inserted in the PTPA. Section 15 of the PTPA gives powers to the government to make rules to carry out the purposes of the Act. But no such rules have been made yet. Therefore, the government should take a step ahead to make rules so that the offence of human trafficking should be coped with more

strictly. Pakistan should adopt stricter and severer measures as compared to be required by the international law.

4. For partnership among the states over the issue of human trafficking, Pakistan is required to have an anti-trafficking legal response in such a way that inter-country co-operation in combating human trafficking is made possible. National laws alone cannot combat cross- border trafficking. To eradicate this transnational issue, the co-operation of all countries on all continents is required. For this reason, Pakistan needs to join forces and collaborate with the rest of the world in combating this common menace. Since the offence is transnational in nature, hence, Pakistan should make mutual legal assistance with the countries where most of the human trafficking occurs. The NAP should be comprehensive enough to include local training courses, identification of trafficking victims and arrest of the offenders, multi-sectorial and multi-lateral partnerships, safe and appropriate repatriation, mutual legal assistance, and economic & social support to the victims.

APPENDIX ONE

CHAPTER XVI-A OF THE PPC

Section 360: Kidnapping from Pakistan

“Whoever conveys any person beyond the limits of Pakistan without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Pakistan.”

Section 361: Kidnapping for Lawful Guardian

“Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, said to kidnap such minor or person from lawful guardianship.”

Section 362: Abduction

“Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”

Section 364-A: Kidnapping or Abducting a Person under the Age of Ten

“Whoever kidnaps or to any person under the age [fourteen] in order that such person may be murdered or subjected to grievous, hurt, or slavery, or to the lust of any person or may be so disposed of as o put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.”

Section 365: Kidnapping or Abducting with intent Secretly and Wrongfully to Confine Person

“Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 365-B: Kidnapping, Abducting or Inducing Woman to Compel for Marriage

“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing, it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.”

Section 366: Kidnapping, Abducting or Inducing Woman to Compel her Marriage etc.

“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or reduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other methods of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.”

Section 366-A: Procurement of Minor Girl

“Whoever by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit Intercourse with another person shall be punishable with imprisonment which may extent to ten years and shall also be liable to fine.”

Section 366-B: Importation of Girl from Foreign Country

“Whoever imports into Pakistan from any country outside Pakistan any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, *[shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.”

Section 367: Kidnapping or Abducting in order to Subject Person to Grievous Hurt, Slavery etc.

“Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery or knowing it to be put in likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Section 367-A: Kidnapping or Abducting in order to Subject Person to Unnatural Lust

“Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine.”

Section 368: Wrongfully Concealing or Keeping in Confinement, Kidnapped or Abducted Person

“Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or purpose as that with or for which he conceals or detains such person in confinement.”

Section 369-A: Trafficking of Human Beings

“Whoever involves himself in human trafficking shall be punished with imprisonment for a term which shall not be less than five years and may extend upto seven years, or with fine which shall not be less than five hundred thousand rupees and may extend upto seven hundred thousand rupees, or with both. **Explanation:** The word human trafficking in this section shall have the same meaning as is assigned to it in the Prevention and Control of Human Trafficking Ordinance, 2002 (LIX of 2002).”⁸⁸²

Section 370: Buying or Disposing of any Person as a Slave

“Whoever imports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with

⁸⁸² This section was introduced in the Criminal Law (Second Amendment) Act, which was passed on 24th March, 2016.

imprisonment description for a term which may extend to seven years, and shall also be liable to fine.”

Section 371: Habitual Dealing in Slaves

“Whoever habitually imports, exports removes sells, traffics or deals in slaves, shall be punished with imprisonment for life imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.”

Section 371-A: Selling Person for Purposes of Prostitution etc.

“Whoever sells, lets to b otherwise disposes of any person with intent that such person shall at any time be employed used for the purpose of prostitution or illicit intercourse with any person or for any unlawful immoral purpose, or knowing it to be likely that such person will at any time be employed used for any such purpose, shall be punished with imprisonment which may extend to twenty five years, and shall also be liable to fine.”

Section 371-B: Buying Persons for the Purpose of Prostitution

“Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.”

Section 372: Selling Minor for Purposes of Prostitution etc.

“Whoever sells, lets to hire, o otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse w any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also liable to fine.”

Section 373: Buying Minor for the Purpose of Prostitution etc.

“Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with internet such person shall at any age be employed or used for the

purpose of prostitution of illicit intercourse with any person or for any unlawful and immoral purpose or knowing to be likely at such person will at any age be employed or used for any such purpose shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”

Section 374: Unlawful Compulsory Labor

(1) “Whoever unlawfully compels any person to labor against the will of that person shall be punished with imprisonment of either description for a term which may even owe year or with fine or with both; (2) Whoever compels a prisoner of war or a protected person to serve in the Armed Force of Pakistan shall be punished with imprisonment of either description for a term which may extend to one year.”

Section 310-A: Giving a Female in Marriage

“Whoever gives a female in marriage or otherwise compels her to enter into marriage as badal e sulah, vanni or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.”

Section 398-B: Forced Marriages

“Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of description for a term which may not be less than three years and shall also be liable to fine of five hundred thousand rupees.”

Section 107: Abetment

Since the offence of human trafficking is an organized crime, therefore, provisions of abetment and conspiracy are also applicable on it.

“A person abets the doing a thing who: first, instigates am person to do that thing; or secondly, engages with one or more other person(s) in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.”

Section 120-A: Conspiracy

“When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.”

THE PUNJAB SUPPRESSION OF PROSTITUTION ORDINANCE, 1961

Section 2 (d) & (e): Prostitution and Prostitute

“Prostitution means promiscuous sexual intercourse for hire, whether in cash or kind; Prostitute means any female available or known to be available for the purposes of prostitution.”

Section 6: Punishment for Living on Earnings of Prostitution

“Whoever being above the age of eighteen years, (a) knowingly lives, wholly or in part, on the earnings of another’s prostitution, or (b) exploits the prostitution of another person, whether with or without that person’s consent, shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend to one thousands rupees, and if the person convicted is a male, he may be punished with whipping in lieu of or in addition to any other punishment provided in this sub-section.”

Section 8: Punishment for Procuration

“Whoever procures or entices or leads away or attempts to procure, entice, or lead away any woman or girl for the purposes of prostitution, whether with or without her consent, or who with intent that she may for the purposes of prostitution become the inmate of or frequent a brothel, persuades a woman or girl to leave her usual place of abode, shall be punished with imprisonment of either description for a term which may extend to three years, and with fine which may extend to one thousand rupees, and if the person convicted is a male, he may be punished with whipping in lieu of or in addition to any other punishment provided in this section.”

Section 9: Punishment for Importing any Woman or Girl for Prostitution

“Whoever brings or attempts to bring into the province any woman or girl with a view to her becoming a prostitute, shall be punished with imprisonment of either description for a term which may extend to three years, and with fine which may extend

to one thousand rupees, and if the person convicted is a male, he may be punished with whipping in lieu of or in addition to any other punishment provided in this section.”

Section 10: Punishment for Keeping any Woman or Girl for Prostitution

“Whoever (a) keeps any woman or girl in a brothel, or (b) detains any woman or girl, against her will, in any place with intent that she may have sexual intercourse with any man other than her lawful husband, shall be punished with rigorous imprisonment for a term which may extend to three years, and with fine which may extend to one thousand rupees, and if the person convicted is a male, he may be punished with whipping.”

THE SINDH CHILDREN ACT, 1955

Section 49, Part VI: Employing Children for Begging

“Whoever employs any child for the purpose of begging or causes any child to beg of whoever having the custody, charge of care of a child connives at or encourages its employment for the purpose of begging and whoever uses a child as an exhibit for the purpose of begging, shall be punished with maximum imprisonment of one year, or with maximum fine of one hundred rupees, or with both.”

Section 56: Causing or Encouraging Seduction etc.

“Whoever having the actual charge of, or control over, a girl under the age of eighteen years, causes or encourages the seduction which shall include the inducement to indulge in immoral behavior, or prostitution of that girl, or causes or encourages anyone other than her husband to have sexual intercourse with her, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. (2) For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction of a girl or to have induced her to behave immorally, if he has knowingly allowed the girl to consort with, or to enter for continue in the employment of, any prostitute, or person of known immoral character.”

Section 57: Seduction or Outrage of Modesty

“Whoever seduces or indulges in immoral behavior with a girl under the age of 18 years shall, on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to Rs 1,000 or with both.”

Section 58: Young Girls Exposed to Risk of Seduction of, etc.

“If it appears to a Court on the complaint of any person that a girl under the age of 18 years is, with or without the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution, the Court may direct the parent or guardian to enter into a recognizance to exercise due care and supervision in respect of such girl.”

Section 59: Exploitation of Child Employees.

“(1) Whoever secures a child ostensibly for the purpose of menial employment or for labor in a factory or other establishment, but in fact exploits the child for his own ends, withholds or lives on his earnings, shall, on conviction, be punished with fine which may extend to Rs 1,000. (2) Whoever secures a child ostensibly for any of the purposes mentioned in subsection (1), but exposes such child to the risk of seduction, sodomy, prostitution or other immoral conditions, shall, on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to Rs 1,000 or with both. (3) Any person who avails himself of the labor of a child exploited in the manner referred to in subsection (1) or (2) or for whose immoral gratification such child is used shall be liable as an abettor.”

THE PUNJAB DESTITUTE AND NEGLECTED CHILDREN ACT, 2004**Section 3 (K): Destitute and Neglected Child**

“A child who - (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence; or (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the child; or (iv) lives in brothel or with a prostitute or frequently visits any place being used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral or deprived life; or (v) is being or likely to be abused or exploited for immoral or illegal purpose or unconscionable gain; or (vi) is beyond the parental control; or (vii) has lost his parents or one of the parents and has no adequate sources of income; or (viii) is victim of an offence punishable under this Act or any other law for the time being in force and his parent or guardian is convicted or accused for the commission

of such offence; or (ix) is at risk owing to disability or child labor; or (x) is imprisoned with the mother or is born in a jail; or (xi) is abandoned by the parents or guardian.”⁸⁸³

Sections 36 and 36-A: Employing Child for Begging

“If a person employs a child for begging or causes a child to beg, or having the custody, charge or care of a child, connives at or encourages employment of the child for begging or uses a child, connives at or encourages employment of the child for begging, he shall be punished with imprisonment for a term which may extend to five years but shall not be less than three months and with fine which may extend to one hundred thousand rupees which shall not be less than ten thousand rupees.”⁸⁸⁴ It further provides for prohibition of sale of goods for begging as “If a person employs or incites a child to sell goods with the intention of begging, he shall be punished with imprisonment for a term which may extend to three years but shall not be less than three months and with fine which may extend to one hundred thousand rupees which shall not be less than ten thousand rupees.”⁸⁸⁵

Section 36-B: Inciting Child for Rag Picking

“If a person employs or incites a child for rag picking, he shall be punished with imprisonment for a term which may extend to three years but shall not be less than three months and with fine which may extend to one hundred thousand rupees which shall not be less than ten thousand rupees.”⁸⁸⁶

Section 40: Exposure to Seduction

“Whoever secures custody of a child ostensibly for any purpose but exposes such a child to the risk of seduction, sodomy, prostitution or other immoral conditions, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.”⁸⁸⁷

⁸⁸³ The clauses (ix)(x)(xi) are inserted under the Punjab Destitute and Neglected Children (Amendment) Act, 2017 (Act XIV of 2017).

⁸⁸⁴ This section is substituted under the Punjab Destitute and Neglected Children (Amendment) Act, 2017 (Act XIV of 2017). The previous punishment was maximum imprisonment of three years or maximum fine of fifty thousand rupees or with both.

⁸⁸⁵ This section is inserted under the Punjab Destitute and Neglected Children (Amendment) Act, 2017 (Act XIV of 2017).

⁸⁸⁶ This section is inserted under the Punjab Destitute and Neglected Children (Amendment) Act, 2017 (Act XIV of 2017).

⁸⁸⁷ However, this section is omitted under the Punjab Destitute and Neglected Children (Amendment) Act, 2017 (Act XIV of 2017).

KHYBER PAKHTUNKHWA CHILD PROTECTION AND WELFARE ACT, 2010

Section 2 (f): Child Pornography

“Taking, permits to be taken, with or without the consent of the child, any photograph, film, video, picture ore representation, portrait, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of obscene or sexually explicit conduct, where- (i) the production of such visual depiction involves the use of a minor engaging in obscene or sexually explicit conduct; or (ii) such visual depiction is a digital image, computer image, or computer generated image that is, or is indistinguishable from that of a minor engaged in a obscene or sexually explicit conduct; or (iii) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in obscene or sexually explicit conduct, preparation, possession or distribution of any data stored on a computer disk or any other modern gadget.”

Section 2 (J): Child Trafficking

“Knowingly purchasing, selling, harboring, transporting, providing, detaining or obtaining a child through coercion, kidnapping, or abduction, or by giving or receiving any benefit for trafficking him into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and receiving or expecting to receive some benefit in lieu thereof.”

Section 2 (Y): Sexual Abuse

“Employing, using, forcing, persuading, inducing, enticing, or coercing any child to engage in, or assisting any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism, or any obscene or sexually explicit conduct or stimulation of such conduct either independently or in conjunction with other acts, with or without his consent.”

Sections 38 and 39: Harmful and Abusive Practices and Punishments

“Whoever coerces or induces any child to indulge in or to undertake any activity or vocation for the purposes of complying with a tradition or a custom which is or might be dangerous, harmful, hazardous or otherwise improper for any child, shall be guilty of the offence of harmful practice; whoever commits the offence of harmful practice shall be

punished with imprisonment for a term which may extend to three years or fine which may extend to one hundred thousand rupees or both.”

Section 30: Protection against Child Marriage

“Protection against child marriage and discriminatory customary practices shall be provided in accordance with Federal laws in vogue on the subjects.”

Section 45: Employing Child for Begging

“Whoever employs any child for the purpose of begging or causes any child to beg or whoever having the protective care of a child connives at or encourages his employment for the purpose of begging, shall be punished with rigorous imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to fifty thousand rupees.”

Section 48: Punishment for Child Pornography

“Whoever commits an offence of child pornography shall be punished with rigorous imprisonment of either description for a term which may not be less than three years and may extend to seven years and also liable to fine which may not be less than two hundred thousand rupees and may extend to five hundred thousand rupees.”

Section 50: Exposure to Seduction

“Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video or a computer generated image or attempts to do the aforementioned action, shall be punished with rigorous imprisonment of either description for a term which may extend to seven years or liable to fine which may extend to ten hundred thousand rupees, or with both.”

Section 52: Child Trafficking

“Whoever involves himself in child trafficking within Pakistan shall be punished with imprisonment for life or which shall not be less than fourteen years and shall also be liable to fine which shall not be less than five hundred thousand rupees and may extend to ten hundred thousand rupees. 53. Sexual abuse.---Whoever commits an offence of sexual abuse shall be punished with imprisonment for a term which may extend to fourteen years

and shall not be less than seven years and shall also be liable to fine which shall not be less than ten hundred thousand rupees.”

THE BALUCHISTAN CHILD PROTECTION ACT, 2016

Section 2 (f): Child Abuse

“Child abuse includes one or a combination of more than one, of the following: physical or psychological violence, exploitation, injury, neglect, or negligent treatment, maltreatment, including sexual abuse.”

Section 2 (m): Child Exploitation

“It includes all types of exploitation prejudicial to the best interests of the child.”

Section 2 (w): Sexual Abuse and Exploitation

“It includes (i) the inducement of coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (ii) the use of children in commercial sexual exploitation; (iii) the use of children in audio or visual images if child sexual abuse; and (iv) child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage.”

THE OFFENCE OF ZINA (ENFORCEMENT OF HUDOOD) ORDINANCE, 1979

Section 11: Kidnapping, Abducting or Inducing Women to Compel for Marriage etc

“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit inter-course, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall be liable to fine; and whoever by means of criminal intimidation, or of abuse of authority or any other methods of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit inter-course with another person shall be punishable as aforesaid.”

Section 13: Selling Person for Purposes of Prostitution, etc

“Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit inter-course with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine. Explanations: (a) when a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall be presumed to have disposed of her with intent that she shall be used for the purpose of prostitution. (b) For the purposes of this section, illicit intercourse means sexual inter-course between persons not united by marriage.”

Section 14: Buying Person for Purposes of Prostitution etc.

“Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit inter-course with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will, at any time, be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also liable to fine. Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female, shall be presumed to have obtained possession of such female with intent that she shall be used for the purpose of prostitution.”

CHILDREN (PLEDGING OF LABOR) ACT, 1933

Section 6: Penalty for Employing a Child whose Labor has been Pledged

“Whoever, knowing or having reason to believe that an agreement has been made to pledge the labor of a child, in furtherance of such agreement employs such child, or

permits such child to be employed in any premises or place under his control, shall be punished with fine which may extend to two hundred rupees.”

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Section 292-A: Seduction of Child

“Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, film, video, or a computer generated image, or attempts to do the afore-mentioned act, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend upto seven years or with fine which shall not be less than one hundred thousand rupees and may extend to five hundred thousand rupees or with both.”⁸⁸⁸

Section 292-B/C: Child Pornography

“Whoever takes, permits to be taken, with or without the consent of the child or his parents or guardians, any photograph, film, video, picture, or representation, portrait, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of obscene or sexually explicit conduct.”

Section 377-A: Sexual Abuse

“Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism, or any obscene or sexually exhibit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.”

⁸⁸⁸ The Criminal Law (Amendment) Act, 2016.

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- Act to authorize His Majesty to carry into immediate execution, by Orders in Council, any treaties, Conventions, or Stipulations made with any Foreign Power or State for the Suppression of the Slave Trade, was passed on 17th August, 1836.
- Act to amend certain Acts relating to the Crime of Piracy on 17th July, 1837.
- Act for the Suppression of the Slave Trade on 24th August 1839.
- Act authorizing Her Majesty to carry into immediate execution, by Orders in Privy Council, any Treaties for the Suppression of the Slave Trade, on 7th August, 1840.
- Act to amend an Act of the Second and Third Years of Her Majesty, for the Suppression of the Slave Trade, on 10th August, 1842.
- Act of the Second and third Years of Her Majesty, for the Suppression of the Slave Trade, as relates to Portuguese Vessels, on 12th August, 1842.
- Act for the more effectual Suppression of the Slave Trade, 1843.
- Act to carry into execution a Convention between His Majesty and the Emperor of Brazil, for the Regulation and final Abolition of the African Slave Trade, 1845, (also called Aberdeen Act).
- Hammerton Treaty, 1845.
- Obscene Publication Act, 1857.
- US the Comstock Act, 1873.
- Slave Trade Act, 1873.
- Act for more Effectually Punishing Offences against the Laws relating to the Slave Trade, 1876.
- General Act of the Conference Respecting the Congo, was adopted on 26th February, 1885.
- The Slave Trade and Importation into Africa of Firearms, Ammunition and Spirituous Liquors, (known as General Act of Brussels), 1890.
- US the Slave Trade Act, 1794.

- Convention Revising the General Act of Berlin, 26th February, 1885, and the General Act and Declaration of Brussels, 2nd July, 1890, signed at Saint German en Laye, 1919.
- Contagious Diseases Act, 1864.
- Act to make further provisions for the Protection of Women and Girls, the Suppression of Brothels and other Purposes. 1885.
- The International Agreement for the Suppression of the White Slave Traffic, 1904.
- The Convention for the Suppression of the White Slave Traffic, 1910.
- Agreement for the Suppression of the Circulation of Obscene Publication, 1910.
- White Slave Traffic Act (also called the Mann Act), 1910.
- International Convention for the Suppression of the Traffic in Women and Children, 1921.
- International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publication, 1923.
- Slavery Convention, 1926.
- Forced Labor Convention, 1930.
- International Convention for the Suppression of the Traffic in Women of Full Age, 1933.
- Protocol to amend the Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, 1947.
- Universal Declaration of Human Rights, 1948.
- Protocol Amending the Agreement for the Suppression of the Circulation of Obscene Publication, 1949.
- Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others, 1950.
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1950.
- Convention Relating to the Status of Refugees, 1951.
- European Convention on Human Rights, 1953.
- The Convention Relating to the Status of Stateless Persons, 1954.
- Abolition of Forced Labor Convention, 1957.
- International Covenant on Civil and Political Rights, 1966.

- International Covenant on Economic, Social and Cultural Rights, 1966.
- Inter-American Convention on Human Rights, 1969.
- Minimum Age Convention, 1973.
- Convention on the Elimination of All Forms of Discrimination against Women, 1979.
- The Hague Convention on the Civil Aspects of International Child Abduction, 1980.
- The Convention on the Rights of the Child, 1989.
- Declarations of World Congresses against the Commercial Sexual Exploitation of Children.
- The Worst Forms of Child Labor Convention, 1999.
- First Optional Protocol to the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography, 2000.
- Convention on the Elimination of All Forms of Discrimination against Women, 1979.
- African Charter on Human and Peoples' Rights, 1981.
- Cairo Declaration of Human Rights, 1990.
- Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990.
- Arab Charter of Human Rights, 1994.
- SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution, 1997.
- Rome Statute of the International Criminal Court establishing the International Criminal Court (ICC), 1998.
- US Trafficking Victims Protection Act, 2000.
- Convention against Transnational Organized Crime, 2000.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.

Statutes (National) (Arranged in Alphabetical Order)

- Azad Jammu and Kashmir Prohibition of Child Labor and Regulation of Labor at Brick-Kilns Act, 2017.
- Baluchistan Child Protection Act, 2016.

- Bonded Labor System (Abolition) Act, 1992.
- Bonded Labor System (Abolition) Rules, 1995.
- Child Marriage Restraint Act, 1929.
- Children (Pledging of Labor) Act, 1933.
- Coal Mines (Fixation of Rate of Wages) Ordinance, 1960.
- Code of Criminal Procedure, 1898.
- Constitutions of Pakistan, 1956, 1962 & 1973.
- Contract Act, 1872.
- Emigration Ordinance, 1979.
- Employment of Children Act, 1991.
- Factories Act 1934.
- Foreigners Act, 1946.
- Immigration Ordinance, 1979.
- Industrial Relations Ordinance, 1969.
- Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010.
- KPK Bonded Labor System (Abolition) Act, 2015.
- Mines Act 1923.
- Minimum Wages for Unskilled Workers Ordinance, 1969.
- Minimum Wage Ordinance, 1961.
- Offence of Zina (Enforcement of Hudood) Ordinance, 1979.
- Pakistan Penal Code, 1860.
- Passports Act, 1974.
- Payment of Wages Act, 1936.
- Prevention and Control of Human Trafficking Ordinance, 2002.
- Prevention and Control of Human Trafficking Rules, 2004.
- Prevention of Smuggling of Migrants Ordinance, 2018.
- Prevention of Trafficking in Persons Act, 2018.
- Punjab Bonded Labor System (Abolition) (Amendment) Act, 2012.
- Punjab Destitute and Neglected Children Act, 2004.
- Punjab Restriction on Employment Act, 2016.
- Punjab Shops and Establishments Ordinance, 1969.
- Punjab Suppression of Prostitution Ordinance, 1961.

- Road Transport ordinance 1961.
- Shops and Establishment Ordinance 1969.
- Sindh Bonded Labor System (Abolition) Act, 2015.
- Sindh Children Act, 1955.
- Sindh Child Protection Authority Act, 2011.
- System of Sardari (Abolition) Act, 1976.
- West Pakistan (Standing Orders) Ordinance, 1968.