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<b>Article:</b>	<b>Analyzing Trafficking in Person in Religious and Cultural Context: Pakistan Perspective</b>
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### Abstract

The modern world has declared trafficking in person as modern day slavery while Pakistan is considered as a major contributor to the rise of human trafficking in the South Asia. In this context, this research aims to evaluate the issue in the light of the Qur'an, Sunnah (pbuh) and sociocultural context of Pakistan. This study argues that Islam is the only religion which showed its greatest concerns towards the issues of trafficked persons. It also aims to recognize the efforts of the modern world to overcome the issue. This study, however, concludes that despite much legislation nationally and internationally, the issue could not be resolved and is going to worsen every day. All this, thus, demands an overhauling of the prevailing sociocultural and legal context. It recommends Renaissance of the ethics of Islam and the policies of the Holy Prophet (pbuh) and Hadrat Umar to overcome the evils of trafficking in person in Pakistan.

**KEY WORDS:** Trafficking in person: response of Islam: international context: cultural context of Pakistan: conclusions and recommendations

## Introduction

The term human trafficking is defined in the meaning of holding a person without his/her consent by way of force and exploitation and not let him free to move, to go or to do something at his own discretion (Osmanczyk, 2006). It, thus, has a nature of confinement against a trafficked person. Article 3, of the “Organized Crime Convention and Trafficking and Smuggling Protocols 2000”, stipulates that the “trafficking in person shall mean the recruitment, transportation, transfer, harboring, or receipt of a person by means of threat or force or other form of coercion, of abduction, fraud, of deception, of the abuse of power or of a position vulnerably 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”.

The issue of the trafficking in person as a general was taken into consideration by the Western Europe in the early 20<sup>th</sup> century (Jan, 2002). The League of Nations (1921), at an International Conference, signed the “International Convention for the Suppression of Traffic in women and Children”.

After WWII, the UN General Assembly adopted the “United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949. It was the first legally binding Convention yet ratified only by 66 member states. In 1993, the “Maastricht Treaty” was signed by the European Union regarding abolishing of trafficking of human beings in Europe.

In 1997, the European Union Ministers conference was held for trafficking in women and “the Hague Ministerial Declaration” was adopted for effective measures and to prevent and combat trafficking in women for the purpose of sexual exploitation. Further, the “SAARC Convention on the prevention of Trafficking in Women and Children” (1997) was adopted to combat the grave crime of trafficking in women and children.

The UN General Assembly adopted the “Palmero Protocol” and the “Protocol against the Smuggling of Migrants through Land, Sea and the Air 2000,” to launch a worldwide movement against trafficking and smuggling in person. This protocol named trafficking in person as “modern day slavery” and included all forms of slavery and exploitation like organ harvesting and forced labor of migrants. It is also called as “The United Nations Convention against Transnational Organized Crime (Take & Godfrey, 2002).

The Council of the European Union adopted the “Treaty of Amsterdam In 2002”. The Council suggested for the member states, three key elements for combating trafficking of human beings such as adopting a common definition of the relevant act by way of legislation, prescribing a minimum penalty for traffickers, inserting the provisions for the protection of victims (Fosythe, 2002; Obokata, 2005).

The UN Convention against Transitional Organized Crimes” came into force in December 2003. This Convention declares human trafficking as a crime which includes all forms of exploitation. It has made its member states bound to legislate for combating trafficking in persons, and for protecting people from being trafficked.

To act upon the suggestions, in 2003, a “Group of Experts” was constituted that was comprised of the agents of governments, universal associations, NGOs and researchers who have experience and master in trafficking. The principle capacity of this group is to inform the commission on the improvement with respect to EU activity against trafficking.

The U.S. Senate designated January 11 as a National Day of Human Trafficking in 2007. Moreover, the “United Nations Office on Drugs and Crime (UNODC) started a research project throughout the world to collect primary data about the issue of the trafficking in persons and to take the response of the governments

(<http://www.unodc.org/unodc/en/human-trafficking>). In 2014, many significant political and religious leaders met and signed a declaration for the elimination of slavery and human trafficking by the year 2020.

It is, however, a matter of great concern that despite too much legislations and conventions, trafficking in persons could not be controlled and the ratio of the human trafficking is increasing day by day. Each year, millions of the people are trafficked and are treated inhumanely and are exploited physically and sexually (Neman & Selm, 2005).

The most vulnerable to trafficking are the minorities, migrants, children and women from developing countries (Fosythe, 2002; Obokata, 2005). A study (Enca.com, 2020) showed that in Asia, 64% of the trafficked persons are exploited by way of forced labor, and servitude while in America and Africa majority of the trafficked persons that is almost 48% and 53% respectively is exploited sexually. Moreover, the organs of the trafficked persons are used for transplantation (Take & Godfrey, 2002).

Due to its destructive effects on the lives of trafficked persons and their families, the US State Department Report (2015) declared trafficking in person as “modern day slavery” and against the fundamental rights of the people (p.23). The report acknowledged that human trafficking has become a grave challenge and intended to target the root causes of this issue (<http://www.unodc.org/unodc/en/human-trafficking>).

### Literature Review

Belden Fields (2011) discussed the issue of trafficking in persons in his book “Rethinking Human Rights for the New Millennium”, and highlighted its evils on the humanity.

David Hume (2000) in his writing “A Treaties of Human Nature”, points out human trafficking as modern day slavery. Bodenheim (1998) discussed the issue with reference to bonded labour while Osmanczyk (2006), discussed the issue of trafficking in person, differentiated it with human smuggling and declared the issue trafficking in person more harmful than human smuggling.

Kenneth Waltz (2007) wrote “Man, the State and War”, and studied the issue from a humanitarian perspective. The author declared the war as a major source of trafficking in person and bonded labour. Pollis and Schwab (2004) wrote “Human Rights New Perspectives, New Realities”, and studied the issue with reference to the fundamental rights of liberty and freedom of movement.

Solotaro and Pande (2005) pointed out in their writing “Violence against Women and Girls: Lesson from South Asia”, studied the issue in regional perspective, particularly, in South Asian countries and found the number of cases of trafficking against women and girls is much higher than against men and boys.

Tom Obokata (2008) wrote on Trafficking of Human Beings from a Human Rights Perspective. Arnold and Quenivet, (2010) discussed the issue in “International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law”, and predicted a new phenomenon of human rights development at a greater level. Faust and Brantingham (2001), wrote in *Juvenile Justice Philosophy: Readings, Cases, and Comments*, about the trafficking of children in jails.

Platt, (2000) discussed the issue in his book “*The Child Savers*” and highlighted the cases of trafficking in person during civil war in America. Morgan, and Zedner, (1992) discussed the issue in their writing “*Child Victims: Crime, Impact and Criminal*”, and pointed out that the trafficking of children led them to react negatively and to become criminals.

Pakistan Demographics Profile (2020), **Human Rights Watch** World Report (2020), and United States Department of State, (2020) ranked Pakistan 2<sup>nd</sup> worst in trafficking in person in South Asia after India. Federal Investigation Agency, Red Book

(2012) issued a list of most wanted persons running different gangs, for trafficking in person. The Constitution of Pakistan (1973), Pakistan Penal Code (1860) and The Prevention and Control of Human Trafficking Act (2018) provide protection against trafficking, bonded labour and smuggling.

To get data of Islamic point of view about slavery and trafficking in persons, the author collected some relevant verses regarding slavery from the Qur'an and utilized some important *tafsir* such as tafsir al-Qurtabi (19978), Tafseer al-Kabir by Imam al-Razi (1967) and Ahkam al-Qur'an by Ibn al-Arabi (1978) and tafsir al-Manar by Muhammad Abduh (1988) etc. The author also over viewed the writings of some significant Muslim writers such as Muhammad Hamidullah (1980), The Emergence of Islam and Muslim Conduct of State (1986), Fazlur Rahman (1980) *Islamic Methodology in History*, Ibn Rushd (1967), Bidayah al-Mujtahid wa Nihayah al-Muqtasid, Allama Shibli Nu'mani (1999), AL-Farooq: A Biography of Hadrat Umar etc.

### **Methodology**

This research aims to utilize analytical methods of research by using theoretical and empirical data, survey and reports on the issue. It also aims to consult Qur'an, *tafsir* of the relevant verses of the Qur'an and the books of *ahadith* (pbuh).

### **Hypotheses**

**H1.** Trafficking in person can easily be overcome by enforcing ethical principles of Islam?

**H2.** Only, state legislation can overcome the issue of trafficking in person.

**H3.** Trafficking in person can only be reduced by enforcing state legislation and ethical principles of Islam.

### **Discussion**

#### **1. Response of Islam towards the Practice of Human Trafficking**

The roots of the issue of human trafficking can be found in the customary practices of all the ancient societies, the Greeks, the Romans, the Asian, and the Arabs. Kidnapping and smugglings were the most favorable means of trafficking and slavery (Aristotle, 1965).

In the same manners, the oldest religious book like the Bible ((Leviticus, 25:44-46) contains verses which permits slavery and considers slaves as personal property ([www.biblegateway.com](http://www.biblegateway.com)).

Likewise, Hinduism favored bondage as a religious practice and millions of the people were forced to bonded labor. Further, the discriminated caste system also made the people of inferior caste vulnerable and a victim of trafficking in persons (Pollis and Schwab, 2004; Solotaro and Pande, 2005). Feudalism and tenancy have also a great contribution in the development of the issue of trafficking in person (Solotaro and Pande, 2005).

Obokata (2005) pointed out that "the trafficked persons were treated as personal property and were usually used as housekeepers, guards, cooks and manufacturer of pottery, glassware, etc. They were forced to engage in agriculture, construction and other labor without any wage or with very low wage (p. 67)". Women and children were trafficked for sexual use as well as for household tasks and were forced to live under inhuman conditions and constant fear. They had no legal entity and could not enjoy their natural rights rather were dependent upon the discretion of their masters (Pollis and Schwab, 2004; Obokata, 2005).

In this way, the practice of trafficking in persons remained as a well-recognized and common practices among all nations of the world and could never be condemned or discouraged until the dawn of Islam in the early seventh century.

The Qur'anic revelation discussed the issues of trafficking in person with reference to slavery and bonded labor as both are easy prey to trafficking. First of all, Almighty

Allah ordered the masters to treat with their slaves humanly and with kindness. It is stated in (chapter 4, verse 36) the Qur'an: "Worship Allah and join none with Him and do good to parents . . . and to the slaves, whom your right hands possess. Verily Allah does not like such as are proud and boastful." Further, to eliminate the trafficking of women slave and to protect them from sexual misuse, Allah Almighty ordered the believers to do marry with the slave girls, and give them the status of their wives and ordered to pay them dower (Chapter 4, verse 25).

Moreover, to discourage the practice of slavery and trafficking in person, the Qur'an has motivated the believers to set free the slaves for ransom or by way of expiation (Chapter 2, verse 177; Chapter 4, verse 29; Chapter 5, verse 89). At that time, the prisoners of wars were trafficked, treated badly and inhumanly (Arnold, and Quenivet, 2009). However, Islam ordered his believers to set free the prisoners of war against ransom (Chapter 47, verse 4).

Likewise, the Prophet (pbuh) showed extraordinary concerns towards the issues of trafficking, bonded labor and slavery. It is reported that the Holy Prophet (pbuh) ordered his followers to treat their slaves and servants with kindness rather prohibited to call them as slaves. Hadrat Abu Huraira had reported that the Holy Prophet (pbuh) prohibited us from saying: "my slave, or my slave-girl, as all of you are the slaves of Almighty Allah... and then advise us to speak about them as: "my servant, my girls, and my young man" (Imam Bukhari, 1967; Imam Muslim, 1988).

To raise up the status of the slaves and to protect their self-respect, the Prophet (pbuh) said: "Almighty Allah has made some of your brothers as slaves under your protection, so anyone who has a brother under his protection, should feed him and clothe him from his own food and clothes" (Al-Tirmadhi, 1986).

To cure the evils of trafficking in person, the Holy Prophet (pbuh) also prohibited beating, torturing and bonded labor of slaves and said: "There is no compensation for beating a slave, except his freedom" (Abu Dawud, 1998). Once a person beat his slave and when the Holy Prophet (pbuh) was informed about that he (pbuh) ordered the person to set free his slave and he acted upon the order of the Prophet (pbuh) and freed his slave (Al-Tirmadhi, 1986).

To suppress the mischief of the slaves and to provide a remedy to them on an equal basis as being human, the Prophet (pbuh) said: "Anyone who kills his slave would be killed by way of retaliation" (Abu Dawud, 1998).

During the period of the Caliphate, certain steps were taken to condemn trafficking in person. The prisoners of wars were trafficked and treated like slaves, and to reform that corrupt practice, Hadrat Umar (RA) granted freedom to the prisoners of war brought to Arab from Egypt and Iraq (Ibn Sa'ad, 1967; Al-Buladhuri, 1970; Nau'mani, 1990).

Hadrat Umar banned certain types of slavery and expressed his views as: "Why you people make the person's slave while their mothers delivered them free? To protect slaves from trafficking, Hadrat Umar ordered not to separate slaves from their families ('Alauddin, al-Muttaqi, 2000; Al-Suyyuti, 1965).

As the major cause behind the issue of trafficking in person is poverty of the trafficked person, and to reduce poverty and to protect the people from trafficking, Hadrat Umar ordered to provide a certain quantity of wheat, barley and vinegar to all including slaves, old and poor people on behalf of the state (Abu Yusuf, 1960; Al-Suyyuti, 1965). Hadrat Umar also forced Hadrat Anas to set free his slave who offered him to pay ransom as a price of his freedom (Ibn Sa'ad, 1967; Al-Buladhuri, 1970; Nau'mani, 1990).

In this way, Islam led to abolish the practice of trafficking in person yet in later periods, the Muslim governments showed the least concern towards the issue of trafficking

and bonded labor and no significant steps could be taken to ban or to protect the rights of the slaves or trafficked people except on moral and ethical grounds.

## **2. Trafficking in Person in Pakistan**

Looking into the current socio-economic context of Pakistani society, it is suffering from many acute problems such as poverty, illiteracy, overpopulation, corruption, unemployment and lack of political concern. All this has led many other associated issues like child labor, bonded labor, terrorism and trafficking in person, etc (<http://yumtoyikes.com/2015/11/24/10-biggest-problems-faced-pakistan>).

Talking about the issue of trafficking in person, it is very unfortunate that Pakistan is considered an origin and a safe destination for trafficked persons. The US State Department, Report (2020) revealed that the largest number of the victims of trafficking belongs to South Asia, particularly, to India and Pakistan (<http://www.unodc.org/unodc>).

The prevailing situation is that at each city and village many children, men and women are being trafficked yet due to unawareness of the human rights, the trafficked persons do not know that they are being trafficked. The poor people are also trafficked for bonded labor and domestic servitude for the return of the loan they had to fulfill the necessities of life, such as food, clothing and medical treatment (Pollis and Schwab, 2004; Solotaro and Pande, 2005).

Throughout the country, many organized mafias and groups are indulged in the trafficking of persons actively, without any fear (Betancourt, and Lopez, 1998; Admin, 2015). Due to poverty, illiteracy and unemployment, willing trafficking is also very common and the traffickers easily trafficked and smuggle millions of men, women and children with deceptive promises and good jobs abroad (Solotaro and Pande, 2005).

In the agriculture fields many children and women are hired against very low wage or without any wage just for wheat or bread from morning to night. The feudal lords have many families at their farms and homes who have restricted freedom and cannot move without the permission of their lords. They have no right to negotiate the terms of their work or labor (Admin, 2015).

The traffickers and illegal labor agents take high fees from parents for giving work visa to their children. People let their sons and daughters with a hope for an improved economic condition and for a better future for their generation. Thus, the traffickers can abuse, exploit and sale them easily, the victims who are dependent upon them and have no way to escape (Foster, 1999). Admin (2015) pointed out that the people from the different countries like Afghanistan, Iran, Russia, China, Sri Lanka and Nepal are brought to Pakistan by way of trafficking and forced to bonded labor and prostitution.

In the same manners, trafficked persons are transited through Pakistan to Iran, Dubai, Abu Debi and European countries. It is reported that during 1991-1993, every day 19000 children were to be trafficked to Dubai Pakistan ([www.lhrla.com.pk/upcoming\\_proj.html](http://www.lhrla.com.pk/upcoming_proj.html)).

There are systematic networks throughout the country that are busy in this inhuman trade. The Federal Investigation Agency (2018) reveals that the number of human trafficking network is increasing every year. For instance, in 2011 there were only 95 networks of human trafficking that reached to 132 in 2012, and reached to 141 next year in 2013, that generated about \$927 million. Most of these networks belong from Gujranwala and Gujarat and some to Rawalpindi, Sialkot and AJK.

Another report reveals that about one million persons from Bangladesh and two hundred thousand from Barma have been trafficked only in Karachi. Law enforcing agencies such as Police department are offered heavy bribery by the traffickers to provide them protection (<http://tribune.com.pk/story/782953>).

The traffickers use threat, violence, psychological and physical, seizes travel documents and force the trafficked persons to comply their instructions (The Nation, 02-May-2016).

He Report (2020) shows that out of low wage labor, the trafficked persons are almost 38-49% across Pakistan utilized for bonded labor. It is largely practiced across two sectors in Pakistan, i.e. brickilns and mining. There are almost 20,000 brick kilns in Pakistan, and over 4.5 million persons work in this growing industry. On average, a person gets PKR 960 for producing 1,000 bricks, which is less than one rupee per brick (<https://nioc.pk/wp-content/uploads/2020/06>).

The other popular form of trafficking in Pakistan is domestic servitude. Children of poor people are held in the name of household assistants yet they are exploited badly by their employers. For instance, the US State Department Report (2020) pointed out, “that a member of the Punjab provincial assembly found guilty of exploitation of his 14 years old servant, including sexual abuse and torture. While the police could not arrest the parliamentarian due to political pressure and the convicts continued to harass the victim to drop his allegations.

Moreover, access to justice is not available on an equal basis, such as in a recent case, the Supreme Court set aside the extended three-year sentence imposed on a judge and his wife for cruelty and domestic bondage the 10-year-old girl”.

Likewise, Pakistani girls are trafficked under the guise of marriage and a report (2019) reveals that about 629 Pakistani girls were trafficked to China after their marriages with Chinese boys (<https://apnews.com/article/c586d0f73>). Similarly, existence of militant groups also a great cause of trafficking in persons in Pakistan. The militant groups kidnap children and abuse them sexually, forced them to do labor and to die as suicide bombers (FIA, 2020).

### **3. State Legislation to Overcome the Issue of Trafficking in Person**

As far as concerned the issue of state legislation with respect to human trafficking and bonded labor, the Constitution of Pakistan 1973 contains some important provisions in this regard. For instance, Article 9 of the Constitution provides security for each person by stating: “no person shall be deprived of life or liberty saved in accordance with law.”

In the same manners, Article 15 protects the right of freedom of movement of the entire citizen equally and in accordance with law. The most relevant article to bonded labor is Article 11 that provides protection from bonded labor and slavery categorically (Articles, 8-28). Likewise, sections 359 to 372 of Pakistan Penal Code 1860 deals with the issues of kidnapping, abduction, slavery, forced labor, and declared them as agencies and subjects for punishment.

Pakistan ratified “The Palermo Protocol” in 2010 and thus, became bound to legislate to meet the demands of UN convention and the Palermo protocol.

Accordingly, in 2018, the government of Pakistan passed “Prevention of Trafficking in Person Act 2018.” It consists of 16 sections. Section 3 (1) of the Act defines the human trafficking in the meaning of “obtaining, securing, selling, purchasing, recruiting, detaining, harboring or receiving a person by use of coercion, (deception/fraud), kidnapping, abduction, or by giving or receiving any payment or benefit for such person commits act of trafficking and shall be punished with imprisonment which may be extend to seven years or with fine which may extend to one million rupees or with both”. (<https://pakistanilaws.wordpress.com>).

In this way, the Act 2018, is the most comprehensive legislation of the state on the issue of human trafficking that covers almost all the aspects of the issue and prescribes a severe punishment for the culprit. Until 2002 Pakistan was counted in Tier 3 (lowest level) of the UN Convention.



However, Pakistan could not overcome the issue of trafficking in person and the current US State Report (2020) shows that the government of Pakistan does not fully comply with the minimum standards for the elimination of the trafficking in persons and hence, has lowered Pakistan from Tier 2 to Tier 2 watch list.

### **Conclusions**

This study thus, concludes that trafficking in person is an inhuman activity yet a widespread phenomenon around the globe.

It is also concluded that it was Islam, which led to abolish the system of slavery, bonded labor and trafficking in person by providing best practices by way of legislation, enforcement of law and by establishing a welfare state and a strong social security system.

It is also concluded that the issue of trafficking in person has become an irresolvable problem for Pakistan because of lack of government concern, law enforcing agencies and absence of access to speedy justice, .

### **Recommendations**

This research thus recommends bringing up substantial reforms in the existing sociocultural and legal system. It recommends reducing explosive growth of population, poverty, illiteracy on an emergency basis. Awareness campaign should be launched through electronic and print media and educational institutions. Enforcement of law should be accomplished by the law enforcing agencies and access to justice and speedy trial should be ensured to the victims of trafficking. It also recommends revival of the far reaching ethical policies of the Holy Prophet (pbuh) and Hadrat Umar to resolve the issues of trafficked persons. These policies should be practiced as the best practices to provide a guideline to all nations of the modern world.

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