The Nexus of Legal Institution with Child Trafficking From The Perspective of Experts and Policy Analysts of Peshawar

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Abstract

This study focuses on "The nexus of legal institution with child trafficking: From the perspective of experts and policy analysts of Peshawar". The main objective of the study is to analyze child trafficking with special emphasis on its legal aspects. Through this study it is attempted to find association between legal factors and child trafficking by using statistical techniques. For the study, data is collected from 392 respondents including 116 universities teachers, 103 journalists and 173 legal practitioners through a questionnaire. Statistical analysis is made through chi square and gamma tests to see the association between independent and dependent variable. The theory "Routine Activities" expounded by Cohen and Felson (1979) is utilized in the compilation of study design. It is observed that the law enforcement agencies are not performing their due role, and their lethargic attitude enhances the risk of trafficking. State law is perceived unimpressive and that is why victims' families do not look for any legal aid. It is also revealed that the menace can be decreased through increasing the risk of execution for the perpetrators. In nutshell, the study suggests for new legislation, conceptual and jurisdictional clarity of law enforcement agencies, their training, and policy of zero tolerance for corruption.

Keywords

Child Trafficking, Legal Institution, Association, Experts and Policy Analysts, Peshawar.

Introduction

Child trafficking is a modern day slavery which prevails in both developed and developing countries with variation in its magnitude and causes (ILO, 2002). The factors associated with and contributing towards this menace are numerous which has grounds in familial, economic, political, and legal institutions (Ali et al., 2014; Farr, 2005; Roby, 2005; and Scarpa, 2006). Human beings, as social animals, equipped with the sole ability of cognition, make them active to get their own needs satisfy. This nature of human beings mostly results in injustice and imbalance either deliberately or ignorantly in society. For maintaining justice, ensuring peace and balance, an institution emerged which is labeled as "Legal Institution". This institution is formally entrusted with the responsibility implementation and interpretation of law. Besides other factors, the overall law and order situation of the society depends upon this institution. Failure or flaws in legal institution produce negative effects for citizens both in short and long term. In this context the present study is designed to analyze the relationship of child trafficking with legal institution with the following research questions in consideration;

Are the law enforcement agents able to effectively control the menace of child trafficking?

Whether the law of the land can effectively deal with the issue of child trafficking?

Whether increase in the risk of execution for the perpetrator can decrease the commission of the crime?

Literature Review

The prevalence of child trafficking is associated with the involvement of corrupt law enforcement agents with the traffickers (Clawson, 2009; Tumlin, 2000; Carling, 2006; Van Impe, 2000; Zimmerman et al., 2008). Similarly, Bales (2007) derived from the application of multiple regression technique that a country which is engulfed by a civil unrest, war, or disaster could be the fertile region for the child trafficking. The reason of increase in the cases of child trafficking is reported by Salah (2004) and Noor Education Trust (NET, 2008) to be the corruption of officials that give rise to the involvement of criminals and intermediaries. Such situation further deteriorates with the ignorance and complicity of the parents. On the other hand, the profit of this illegal business is claimed to be high, accordingly, traffickers bribe and corrupt more government officials and local police (Ali and Muhammad, 2014; Kapstein, 2006).

The cases of child trafficking in Pakistan are rooted in legal flaws and officials' lack of interest (Mirza, 2010; Muhammad and Zafar, 2006). Anwar (2004) contended that the government official belonging to FIA, passport cell, immigration, and police officer are involved with the traffickers. It is their connivance and corruption that give rise to trafficking in Pakistan. He further, asserted that the law enforcement agents do not understand the issue in legal perspective. Limited knowledge along with frequent posting and ambiguities in role and responsibilities of different governmental departments and law enforcement agencies add fuel to the fire. It is reported while interviewing Zafrullah Khan (a lawyer in Peshawar) that the law enforcement agencies lack understanding of the crime of human trafficking. They treat the victims of trafficking as the perpetrators. The reasons for this misunderstanding are reported to be the lack of jurisdiction of police, definitional problems, and lack of training of the officials with respect to the laws and investigation procedures (Azam, 2009; Chung, 2006; Derks, 2000 and Klueber, 2003).

Similarly, Sajid (2010) reported that the usual rout of trafficking in Pakistan is Quetta, Tuftan (Iran), Turkey, and Greece. In the five stories narrated in the report of Human Rights Commission of Pakistan, *Human Trafficking through Quetta (2009),* all the victims confirmed that they had no problem crossing Pak-Iran boarder at night.

Lack of rule of law is one of the causes of child trafficking. Due to one or other reasons the people are treated differently by the same law with in most of the countries. Mostly social status and power determines the application of laws. "The rule of law refers to a principle of governance in which all parties (persons, institutions and entities, public and private, including the State itself) are accountable to the same laws of the state, evenly obligatory and without interference adjudicated, and which should be consistent with international human rights norms and standards. It requires to ensure obedience to the doctrines of supremacy of law, equality before the law, accountability to the law, transparency and fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency" (United Nations, 2004). ILO and UNICEF (2009), Nelson et al. (2004), and Ali and Muhammad (2014) reported that the factors responsible for child trafficking include poor governance, weakened rule of law in transition and post-conflict countries, and economic disruption resulted from natural disasters.

However, to resolve the issue, Bales (2007) and Tumlin (2000) proposed some of the most evident strategies for dawdling trafficking that includes activities to reduce 'push' factors, such as measures to reduce governmental corruption in both origin and destination countries, population control measures, especially poverty reduction, and tackling international inequalities in wealth. International financial institutions should give incentives to programs for land reform, education and training, and health care, rather than promulgate 'austerity' requirements that undermine such programs.

Methodology

Study Area

The study is conducted in Peshawar, cradle of Pakhtun culture. The incidents of various issues related to child trafficking are likely to be high in the city as it houses a large population of Afghan refugees (Azam, 2009). Moreover, it has also provided shelter to thousands of the internally displaced peoples (IDPs) as a result of ongoing military operations in Federally Administered Tribal Areas (FATA) of Pakistan in the wake of war against terrorism. Both of the mentioned groups are prone to child trafficking and other socio-cultural evils. The mentioned factors make District Peshawar a suitable place for carrying out this study.

Besides, the study area offers an opportunity to compile opinion of the people like social doctors, crime reporters, and lawyers whom have firsthand knowledge of the issue through direct dealing with victims. District Peshawar holds old, dynamic, and well established academic institutions like Islamia

College, Peshawar (ICP), University of Peshawar (UoP), University of Engineering and Technology (UET), University of Agriculture, Peshawar (UAP). Along with these established academic institutions, it hosts number of seats of diversified local, national, and international print and electronic media both public and private. Legal institution like Registry of Supreme Court of Pakistan, Peshawar High Court, Peshawar District Courts, and Special Courts are also established and functional in the study area. Due to these relevant and rich features, District Peshawar is selected to carry out the present investigation in it.

Sampling

For data collection, sampling method is used by selecting proportionate stratified random sample from membership list of local bar council, Peshawar press club, and teachers' associations. This technique is appropriate for consistent and reliable data. Hence, the population is trifurcated into strata like social scientists, crime reporters, and lawyers in Peshawar.

The total population is 453 where as data is collected from 392 respondents including 116 universities teachers, 103 journalists and 173 legal practitioners through a questionnaire. Statistical analysis is made through chi square and gamma tests to see the association between independent and dependent variable. The theory "Routine Activities" expounded by Cohen and Felson (1979) is utilized in the compilation of study design. The sample size for the present study is determined by using the formula given below;

$$n = \frac{K^2 V^2}{d^2} \qquad (1) \qquad \text{(Casley and Kumar, 1989)}$$

Analysis of the Nexus Between Legal Institution and Child Trafficking:

This table tries to investigate the nexus between legal institution and child trafficking and its research questions. According to the table a positive ($\gamma=0.284$) and significant ($p<0.05$) relationship is found between the role of law enforcement agents and child trafficking. It could be interpreted as collusion between law enforcement agencies and trafficker. The findings of the study reflect the understanding of society regarding the collusion of police (capable guardian) with criminals. It could be deduced from the study findings that the criminals cannot run their business unless supported by law enforcement agencies. The findings suggest that corruption of the custodians of the law and child trafficking are associated phenomena. Of such a society where police and other agencies become corrupt and unable to deal effectively with crime, it may indicate the failure of its formal system

of social control. Hence the moral standard declines, the weak members of society turn into suitable targets and offender gets motivated. The corruption and involvement of officials along with silence from the state regarding the punishment of the offenders contributes to the criminalization of the world economy and resultantly, the world economic system erodes. Such a situation could be devastating for the whole society and people would fell in the dark dungeon of hopelessness and chaos. Result could be the commission and prevalence of crime. The findings are in line with Ali & Muhammad (2014); Van Impe (2000); Tumlin (2000); Carling (2006); Bales (2007); and Kapstein (2006).

Although, a non significant but positive ($\gamma=0.237$) relationship is explored between lack of rule of law and child trafficking. This could be due to people believing in law as major tool of containment of trafficking, and if anything wrong happen, is not due to law rather custodian of the law. The findings suggest that the law enforcement agents do not follow the spirit of the law, hence treat citizens differently which turns good governance into poor and bad governance. This could be due to the inability, corruption, and/or lack of understanding of the law by the implementers. The lack of rule of law facilitates criminal activities and creates an environment where human trafficking can thrive. This is particularly apparent in a post-conflict environment, where law and order and the lack of rule of law pushes the already vulnerable populations, such as women, children, internally displaced people, and war refugees, into situations where they are even more at risk of becoming victims of human trafficking. The findings of the present study are in consonance with ILO & UNICEF (2009); Nelson et al., (2004); Ali & Muhammad (2014).

Contrary to the above findings, a significant ($p<0.05$) and positive ($\gamma=0.390$) association is observed between victims of trafficking are mostly misunderstood as criminals and child trafficking. This shows lack of precise and clear understanding of the laws (PACHTO 2002) pertaining to trafficking. This ambiguity results in arrest of trafficking victims where government agencies treat them as criminals and perpetrators. Such acts of misunderstanding mostly results in the re-victimization which further boost up trafficking business. This lack of understanding could be due to lack of training and education of the police along with definitional ambiguity. The findings of the present study are in accordance with Azam (2009). Thereby, the results suggest that the law enforcement agents are not able to effectively control the worst form of human slavery. The findings are in line with Anwar (2004).

Moreover, a positive ($\gamma=0.208$) but not significant relationship is detected between cases of trafficking and its settlement outside legal framework through social influence. Similarly, a positive ($\gamma=0.225$) but not significant relationship is observed between settlement through ransom and child trafficking. Likewise, a

positive (γ=0.283) but not significant relationship is delineated between lacking of justice based disposition of cases and child trafficking. These inferences suggest that people had little faith in legal framework thus by owning to other ways and means for dealing with the issue, which are considered more suitable than law. It is probably due to poor enforcement and implementation of laws, little interest on part of executives to handle this issue, and cumbersome and lengthy legislative and judicial mode prevalent in the country. It is observed that most of the cases of kidnapping, bondage labour, trafficking etc. are settled through informal social networks than recourse to legal system. It may be that people consider informal social network safer than formal legal system. Other side of the picture could be that formal system is not effective to deal efficiently with the offence of child trafficking. The findings suggest that the judicial system of Pakistan may not be pro-human where once a citizen struck could not come out with dignity and hope. The reflection of this understanding and belief of the respondents could be due to the existence of corrupt elements in the system and lack of understanding and awareness of the law enforcement agents about the issue. Further, literature reveals that judicial system of Pakistan is expensive, unpredictable, and corrupt. The findings are in line with Ahmad (2012); and Klueber (2003).

Similarly, a positive (γ=0.203) and significant (p<0.05) relationship is found between trafficked victims often involved in criminal activities and child trafficking. Findings of the present study suggest that society perceive the involvement of victims in crimes which could be attributed to a long period of socialization of victims with traffickers and could also be due to non-acceptance of these victims by society. Similar inferences could also be associated to victims who remained for a longer period of time with traffickers develop adoptability and accordingly socialized in a criminal environment and become member to gangs or start its own business of the type where they get experienced. Studies also revealed that the most vulnerable places are the shelter homes or group homes, from where the psychologically conditioned minors and prostituted may help their traffickers acquire new recruits and thus the victims become criminals. These findings are in line with Clawson & Grace (2007); Farr (2005); and Sethi (2010).

In addition, a positive (γ=0.403) and significant (p<0.05) relationship is observed between absence of sound legal system and child trafficking. A positive (γ=0.295) and non significant relationship is found between updating legal system can control the menace and child trafficking. However, a highly positive (γ=0.663) and highly significant (p<0.05) relationship is delineated between efficient law enforcement agents and child trafficking. The above results reflect the understanding of respondents about the issue of child trafficking. This reveals that there is lack of legal frameworks for curbing criminal activities like trafficking and if exists like PACHTO, (2002) however, still there is a room for making amendments

for curtailing trafficking in effective way. In addition, law enforcement agencies are also unable to implement the existing law due to lack of clear understanding, presence of pressure groups and gang mafias involved in this inhuman but lucrative business. It is revealed from literature and respondents view that law of the land on human trafficking does not declare forced marriage, child marriage, bride price marriage, and *swara* marriage as forms of human trafficking. Further, internal trafficking is not declared as offence. Child trafficking is not specifically focused and separately dealt with in the law. Police has also been not given jurisdiction to deal with the cases of child trafficking. These gaps show the weakness and limitations in the law of the land on child trafficking. The findings are in line with Salah (2004); Tumlin (2000); NET (2008); Mirza (2010); and Muhammad & Zafar (2006). Hence the results suggest that the law of the land is not effective to prevent nexus between law enforcement agencies and criminals and hence laws are not effective to curtail child trafficking. The results also support the assumption that the custodians of the law are not performing their due role to control the menace of child trafficking in the society.

Similarly, a positive ($\gamma=0.398$) and significant ($p<0.05$) relationship is detected between increase risk of execution and child trafficking. Studies reveal that increase risk of execution in child trafficking, as a matter of fact, lowers down the rate of the crime. From the statistical results it is evident that society agrees that formal mechanism of social control and child trafficking is significantly and positively contributing to each other. Findings of the present study suggest that improvement in the existing mechanism of social control by incorporating clear definition of child trafficking, expansion of police jurisdiction to the crime, training of law enforcement agents and judiciary on the issue, and provision of rigorous surveillance can increase the risks of execution. Alongside, the findings also suggest a wide publicity to these punishments could bring deterrence to others, who could opt for such activities. The findings of this analysis are in congruent with that of Kapstein (2006); Chung (2006); Klueber (2003); and Derks (2000); Mirza (2010); and NET (2008). The results suggest that increase in the risks of execution for the traffickers has positive and significant relationship. It means that increasing the risk of execution and punishment for the criminals could lower down the rate of the commission of crime. In other words the results confirm that more the deterrence for the perpetrator more would be the chances of control of the crime.

Table No.1 Relationship Between Legal Aspects and Child Trafficking

Factors	Attitude	Child Trafficking			Total	Statistics
		Agree	Disagree	Not Sure		
Law enforcement often agents collude with traffickers	Agree	215(54.8)	30(7.7)	1(0.3)	246(62.8)	=9.494 (.05) γ =.284
	Disagree	47(12.0)	6(1.5)	0(0.00)	53(13.5)	
	Not Sure	70(17.9)	23(5.90)	0(0.0)	93(23.7)	
Absence of sound legal system upon trafficking	Agree	261(66.6)	35(8.9)	1(0.3)	297(75.8)	=11.21 (.024) γ =.403
	Disagree	58(14.8)	18(4.6)	0(0.0)	76(19.4)	
	Not Sure	13(3.9)	6(10.2)	0(0.0)	19(4.8)	
Victims are misunderstood as criminals	Agree	188(48.0)	21(5.4)	0(0.0)	209(53.3)	=16.28 (.003) γ =.390
	Disagree	85(21.7)	16(4.1)	1(0.3)	102(26.0)	
	Not Sure	59(15.1)	22(5.6)	0(0.0)	81(20.7)	
Improvement in legal system	Agree	288(73.5)	46(11.7)	1(0.3)	335(85.5)	=6.873 (.143) γ =.295
	Disagree	28(7.1)	5(1.3)	0(0.0)	35(8.4)	
	Not Sure	16(4.1)	8(2.0)	0(0.0)	24(6.1)	
Efficient law enforcement agencies	Agree	314(80.1)	45(11.5)	1(0.3)	360(91.8)	=24.39 (.000) γ =.663
	Disagree	11(2.8)	8(2.0)	0(0.0)	19(4.8)	
	Not Sure	7(1.9)	6(1.5)	0(0.0)	13(3.4)	
Lack of Rule of law Efficient	Agree	292(74.5)	48(12.2)	1(0.3)	341(87.0)	=2.493 (.646) γ =.237
	Disagree	22(5.6)	5(1.3)	0(0.0)	27(6.9)	
	Not Sure	18(4.6)	6(1.5)	0(0.0)	24(6.1)	
Trafficked victims	Agree	232(59.2)	36(9.2)	0(0.0)	268(68.4)	=9.919 (.042) γ =.203
	Disagree	38(9.7)	7(1.8)	1(0.3)	46(11.7)	
	Not Sure	62(15.8)	16(4.1)	0(0.0)	78(19.9)	
Settlement of cases through social influence	Agree	201(51.3)	26(6.6)	1(0.3)	228(58.2)	=8.243 (.221) γ =.208
	Disagree	49(12.5)	16(4.1)	0(0.0)	65(16.6)	
	Not Sure	81(20.7)	18(4.5)	0(0.0)	99(25.2)	
Trafficking cases are mostly settled through ransom	Agree	214(54.6)	31(7.9)	1(0.3)	246(62.8)	=5.029 (.284) γ =.225
	Disagree	51(13.0)	9(2.3)	0(0.0)	60(15.3)	
	Not Sure	67(17.1)	19(4.8)	0(0.0)	86(21.9)	
Lacking of justice-based disposition of cases	Agree	235(59.9)	32(8.2)	1(0.3)	268(68.4)	=6.860 (.143) γ =.283
	Disagree	59(15.1)	17(4.3)	0(0.0)	76(19.4)	
	Not Sure	38(9.7)	10(2.6)	0(0.0)	48(12.2)	
Increased risk of execution for traffickers	Agree	213(54.3)	24(6.1)	1(0.3)	238(60.7)	=14.54 (.006) γ =.398
	Disagree	52(13.3)	11(2.8)	0(0.0)	63(16.1)	
	Not Sure	67(17.1)	24(6.1)	0(0.0)	91(23.2)	

Source: Field Survey, 2012

Note* Values presented in the above table indicate frequency while values in the parenthesis represent percentage

Conclusion

It is concluded that there is a relationship of child trafficking and legal institution as derived from the result. It is found that law enforcement agents are supporting the criminal syndicates of traffickers and do not play their role to ensure the rule of law. Instead, victims of trafficking are considered criminals as perceived by the respondents. Absence of people-friendly legal system and lack of trust in the legal framework compel victims' family to settle the issue without asking for legal aid. The problem can be encountered by improving legal system, equipping the law enforcement agents with training and resources along with increased risk of execution for lowering down the rate of trafficking, for discouraging offenders, and for making guardians capable to protect their children.

Recommendations

- For conceptual and jurisdictional clarity regarding child trafficking, amendments in existing laws and some new legislation is inevitable to cope with the issue.

- Apart from FIA other agencies may be involved in curtailing child trafficking. A very focused and state of the art training along with equipments need to be provided to the law enforcement agents dealing with the issue.

- In addition, exemplary punishment to child traffickers deems inevitable.

- The government should increase the salaries of the immigration, human trafficking unit and police officials who are particularly working on human trafficking cases, however, along with this government should issue a policy of zero-tolerance for corruption. If any official is convicted severe punishment is needed to be inflicted.

- Another strategy to adopt is the naming and shaming policy. Government should publish and public the names of all the involved people in the trafficking chain whether government officials, private citizens, politicians, or other powerful people. Media should give proper time and place for publishing and disseminating the name and cases. After all reputation matters!

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