

Criminal Justice Response to Trafficking in Person in Pakistan

Kamran Adil

Crime, violence and economy are interconnected. There have been attempts at international level to study the correlation between violence and peace through the Global Peace Indices that have been published for over a decade now. In quantitative terms, the latest Global Peace Index Report of 2021 (GPI) noted:

“The economic impact of violence to the global economy in 2020 was \$14.96 trillion in purchasing power parity (PPP) terms. This figure is equivalent to 11.6 per cent of the world’s economic activity (gross world product) or \$1,942 per person. The economic impact of violence increased by 0.2 per cent during 2020...”

In this global context, Pakistan is faring very low on the GPI and ranks at 150 out of 163 countries. How will this translate in terms of crime increase and lawlessness in the society is a question that must be explored in independent research. In absence of specific data, it is assessed that this positive peace deficit may result in increase in crime that may take many forms. One of such forms is the organized crime of Trafficking in Persons (TIP) that has attracted international attention. Owing to Pakistan’s low levels of peacefulness and its poor state of economy, it is likely that TIP may increase as people are likely to set for stable and assimilating jurisdictions for their economic future. This necessitates that the phenomenon of TIP be understood in its entirety from the viewpoint of law enforcement and justice sector response. In this connection, the following issues merit consideration:

1. Definitional Aspects

TIP has many a definition that bookend its scope and applicability. Conventional understanding shows that it is a crime that is deep rooted in history and is a modern form of slavery. However, the analysis of legal definitions shows that it has varying conceptions. From the viewpoint of international law, its definition is found in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000 (the Protocol). The Protocol is annexed as Annex II to the United Nations General Assembly Resolution 55/25 of 15 November, 2000 (UNGA Resolution 55/25) that spells out intention of the world body on the issue of transnational organized crime. In legal structure, the Protocol is tied to the Convention on the Transnational Organized Crime, 2000 (the Convention) by its article 37. The definition contained in article 3 of the Protocol defines ‘trafficking in persons’ as:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The bare text of the definition shows that it is very wide and inclusive in nature. Inspired by this definition and obliged by article 5 of the Protocol that requires states to criminalize the activity, Pakistan enacted its Prevention of Trafficking in Persons Act, 2018 (the Act) that reflects the position of the municipal law on the subject. It criminalized the act in section 3 that adopts almost verbatim definition with three separate penal caveats: (a) trafficking in persons of adult men (punishable with imprisonment for seven years), (b) trafficking in persons of children and women (punishable with imprisonment for ten years) and (c) aggravating circumstances of TIP that include recidivism and organized syndicates (punishable with imprisonment for fourteen years). Comparison of the two definitions show that Pakistan’s legislation is much more protective and wider in nature as compared to its legal obligation under the Protocol. However, this comparative definitional advantage is diluted due to other legislations on the subject. For example, the Chapter XVI-A of the Pakistan Penal Code, 1860 that contains offences related to kidnapping and abduction especially section 369-A that criminalized trafficking in person in 2016. The duplication of criminalization results in forum shopping and weak legal framework. Likewise, the legislation on labour protection overlaps the definition of TIP in section 3 of the Act. For example, in the province of the Punjab, the Punjab Restriction on Employment of Children Act, 2016 shares the field with the TIP. This is not without problems as it offers a sort of forum shopping to the offenders who get themselves processed under regulatory labour legislation and successfully avoid application of punitive TIP that is criminal in nature. Likewise, the offences related to labour laws are non-cognizable implying that police cannot register a criminal case straight away whereas the federal TIP law is cognizable by police and is more efficient in enabling state to use coercive legal measures against offenders.

2. Reporting and Investigation

The second point is regarding reporting and investigation of the TIP cases. As noted above, the reporting of TIP cases has been made cognizable by section 9 of the Act. While under section 154 of the Code of Criminal Procedure, 1898, a police officer is duty bound to register a case in TIP cases, Rule 3(5) of the newly enacted the Prevention of Trafficking in Persons Rules, 2020 (the Rules) under section 15 of the TIP provide that omission to register a case of TIP shall be treated as 'misconduct'. It requires that the officer failing to do so shall be proceeded against under departmental law. After registration of a case of TIP, as per section 8 of the Act, the investigation has to be carried out by police for inter-province trafficking; however, for trafficking that is intra-provincial or transnational, the Federal Investigation Agency (FIA) can investigate the case. Rule 12 of the Rules state that all investigations under the Act are to be human rights compliant and victim centric. Like the cases of money laundering and terrorism, special investigation techniques of controlled delivery, covert surveillance and decoy operations have been made permissible by Rule 20 of the Rules. In order to discourage linear investigations that focus on perpetrators apprehended on the crime scene, Rule 19 of the Rules obligate police to expand the dragnet of investigation to conduct more triangular investigation that must unearth the organizers, financiers and beneficiaries of the offences of TIP.

3. Victim-Centric Regime

As an additional measure of protection, section 7 of the Act states that the consent of a child victim of a TIP offence shall not be treated as a defence during a trial. Sections 11 and 12 of the Act also require that victims and witnesses must be protected. Detailed rules and proforma for interviewing victims have been drawn in the Rules. Legal assistance to victims, support, repatriation and rehabilitation of victims has been regulated by the Rules that provide detailed procedure for registration of non-governmental organizations that must be entrusted with support of the victims.

4. Prosecution and Trial

The confidentiality of victims must be preserved during prosecution and trial. The Rules provide for recording of statement under section 164 Code of Criminal Procedure, 1898 to preserve evidence or to record confession. They also enable the court to hold criminal proceedings on video link (online trial) and to appoint interpreters for foreigners and for in camera trial for children and women. Media coverage affecting identity of children and women has been prohibited under the Rules.

5. International Cooperation and Database

Due to international linkage of the offences of the TIP especially in the cases where there are transnational elements, the Rules enable the law enforcement officers to conduct international cooperation particularly with the INTERPOL. The National Police Bureau (NPB) under the Ministry of Interior, the Government of Pakistan has been declared as a repository for maintaining a database of all the cases. In practice, however, the FIA is keeping the data of all these cases in coordination with provincial police organizations through the office of the Director INTERPOL, FIA.

The Global Report on Trafficking in Persons, 2021 offers lot of insights into the state of TIP; it dedicates a portion to the criminal justice response to TIP. Globally, there is need to strengthen the criminal justice response. The latest Global Report posts 27% drop in number of individuals convicted and 44% drop in number of convictions (since 2017). It also notes that probability of conviction of females investigated for TIP are more as compared to males investigated. Anyhow, in the context of Pakistan, as discussed above, the legal framework for the criminal justice response has improved considerably. With better legal framework and improvement in training regimes of the police organizations where now TIP is being included in curricula, it is a must that the police leadership accord TIP operationally priority. As the criminal justice response in Pakistan is essentially detection based in nature, there is need to work on preventive side as well by engaging the community after mapping the hotspots of TIP. The preventive strategies must cater separately for children and women and through capacity building of the law enforcement, the referral regime, in which alternatives to criminal justice response are situated, may be encouraged.