



OPEN ACCESS

Al-Azva الاضواء

ISSN 2415-0444 ;E 1995-7904

Volume 37, Issue, 58, 2022

www.aladwajournal.com

Revisiting Human Trafficking, an Emerging Phenomenon from an Islamic Perspective

Haleema Sadia (corresponding author)

Lecturer, Department of Law, Mirpur University of Science and Technology (MUST) Mirpur, AJ&K

Hafsa Abbasi, Lecturer

Department of Law, Allama Iqbal Open University Islamabad

Abstract

The economic constraints of the developing states compel their citizens to expatriate somewhere else. However, they face problems due to the closure of state boundaries. In most cases, Individuals, as well as a group of Countries like the European Union, have strict visa restrictions and rules. This situation, eventually, introduced the practices of human trafficking from developing countries to developed Countries. From the perspective of international law and human rights, most states consider human trafficking as a serious crime and violation of Human Rights. It has affected all the countries and regions of the world including Muslim Countries because it has no geographical, cultural, political, or religious limits. Human trafficking is prevalent in different types of exploitation and abuse in industries worldwide. Human trafficking has affected the world globally and Islamic states are not an exception to it as it has introduced an emerging debate in contemporary legal issues, therefore, it is necessary to revisit the concept in light of Islamic law. This study will look at the concept of human trafficking from an Islamic law perspective. The purpose of this study is to examine how Islamic law addresses the issue of human trafficking. Does it prohibit human trafficking by penalizing the traffickers? As far as Islamic law is concerned the term human trafficking is not expressly mentioned but crime can be construed from the

KEYWORDS

Human trafficking;
Islamic law;
Muslim World;
Crime;
Exploitation.



Date of Publication:
30-12-2022



basic rulings of jurisprudence because trafficking is based on different types of exploitation and abuses which are strictly prohibited in Islam. This research will focus on different types of exploitation and abuses that lead to trafficking. This article will also discuss the prohibition of trafficking children and women to exploit and abuse them. The various forms of trafficking which are most significant in the Muslim world are examined in this discourse. Human trafficking has been prohibited by Islamic law due to contradiction with the basic principles of jurisprudence, and the notion that the state is empowered to control the practices in contradiction with the teachings of Islam and the basic objectives of shariah.

Introduction

Human trafficking is a contemporary issue that has affected the world globally and Islamic countries are no exception to it. Multidisciplinary approaches have been used to tackle the issue keeping in view the perspectives of various stakeholders and one of them is the Islamic perspective which will be dealt with in this research.¹

In Europe, it is in existence for the last six thousand years ago and is also found in the Roman regime/law. Ancient Greeks and Romans recognized the practice of enslavement of their captives to extend their empires. In the Roman, Asian, African, and Byzantine empires, most slaves were exploited in large-scale agriculture, construction, mining, and military enterprises.² According to an estimate by the International Labour Organization (“ILO”)³ 40.3 million people are victims of trafficking globally.⁴ Asian women had been exploited throughout World War II, by the armed forces of Japan. Mostly Chinese, Korean, Malaysian, Indonesian, and Philippines women were abused for sexual exploitation. During the Greeks, most of the slaves were outsiders but they did not revolt because the slaves were given opportunities for upgrading their skills and used to work as skilled craftsmen in supervisory positions.⁵ The movement of rebellion was started in the 18th century individually and collectively by groups for freedom and equality due to oppression.⁶ However, it was not successful, as a legal framework was introduced to abolish trafficking. French enacted the first law “The Declaration of the Rights of Man and of the Citizen 1789” which brought the notion of equality.⁷

International law has come out with two main written documents on the prohibition of trafficking. The first is the United Nations Universal Declaration of Human Rights 1948 and the second is a protocol on Trafficking in Persons.⁸ As international law is concerned human trafficking is prohibited. There are various root causes of human

trafficking including lack of employment opportunities, poverty, economic imbalances, corruption, a decline in border controls, discrimination, political instability, and conflict.⁹ “Trafficking has increased with globalization, there were many other factors in the increase of human trafficking. Including the revolutions, political instability, and the rise of illicit trade.¹⁰ Most affluent countries create barriers for migrants. Due to this, many seek illicit means to enter those Countries. In the early 1990s, conflicts left millions of individuals vulnerable to exploitation by human traffickers due to a lack of assistance programs to respond the natural disasters, tsunamis, and earthquakes.¹¹ By the mid-1990s, the illicit economy also acted as an aid for the expansion of human trafficking.”¹² The crime of human trafficking is considered an international crime because it represents an assault on the fundamental interests of concern to the international community and its impact goes beyond the borders of a particular society due to the breach and damage it causes to the rules of international law.

Human Trafficking; An Overview

There is no conclusive definition of human trafficking that may be accepted globally, regionally, or at least nationally as it is a phenomenon that is identical to migration, human smuggling, and prostitution. It has been defined in numerous ways by different scholars since the beginning of human social activities. It is challenging to study any one of the processes in isolation from the others however, it is also true that mixing them while doing so helps in the accomplishment of the desired goal.¹³ Human trafficking has several definitions, and every state has defined it differently. However, these definitions include all illegal activities that limit a person's freedom and regard their status as a mere commodity. it is an organized crime, which includes human trafficking. The United Nations General Assembly (UNGA) defined trafficking in person in these words:

“The illicit and clandestine movement of persons across national and international borders, mostly from developing countries with transitional economies, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations, for the profit of recruiters, traffickers and crime syndicates, as well as other illegal actions related to traffickings, such as forced domestic labour, false marriages, clandestine employment, and false/illicit adoption.”¹⁴

Due to the focus of the definition on the migration of people from developing countries to states with stronger economies, the definition has been criticized as being too specific. In the same year, the Inter-American

Convention against International Trafficking in Minors provided the following definition of human trafficking: *'The abduction, removal or retention, or attempted abduction, removal, or retention, of a minor for unlawful purposes or by unlawful means.'*¹⁵ Remarkably, this definition has a solid influence on the definition of Trafficking in Person that was accepted by the United Nations in 2000.¹⁶ This definition used terminologies such as 'unlawful purpose and means that include the objective, sources, and essential elements of trafficking in person, and that was merged in the definition of 2000.'¹⁷ In 1996, the PAC in the following statement suggested a definition of trafficking."¹⁸

There is trafficking when a woman is exploited in a country other than her own by another person for financial gain, the traffic consists of organizing (the stay or) the legal or illegal emigration of a woman, even with her consent, from her country of origin to the country of destination and luring her by whatever means into prostitution or any form of sexual exploitation."¹⁹

The above definition received criticism due to ambiguous terminology as to whether the idea of human trafficking would be effective for the method and effects of the trafficking it has also been criticized for having a limited scope due to the inclusion of just one component i.e., females. Moreover, the Council of the European Union in 1997 defined human trafficking:

Any behavior which facilitates the entry into, transit through, residence in, or exit from any territory of a Member State for... (a) sexually exploiting a person other than a child for gainful purposes where use is made of coercion, in particular violence or threats, or deceit is used, or there is an abuse of authority or other pressure which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved; (b) trafficking in persons other than children for gainful purposes with a view to their sexual exploitation.²⁰

The above definition was also criticized for being limited to migration factors and exclusion of all other factors. The universally accepted definition of human trafficking in international law is declared in Articles 3 a & b of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2000.

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, using a threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation.²¹

This definition comprises three main elements that identify the crime of trafficking in persons which differentiates it from similar crimes, especially the smuggling of migrants. These main elements are an act (what is done), This means (how it is done): and an exploitative purpose (why it is done). Exploitation means to contain, at a minimum, the misuse of the person for sexual exploitation, compulsory labour, other human services, or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant. The UN Protocol on Trafficking is the first comprehensive international legal tool in the realm of trafficking in persons, and it covers all aspects of the crime and provides the internationally accepted definition of trafficking in persons.

Human Trafficking in Islamic Law

Human trafficking has been prohibited by Islamic law due to contradiction with the basic principles of jurisprudence. Any act done in furtherance of public interest and for prevention of harm is recommended. Human trafficking is considered a violation of the basic rights of human beings and the rights of Allah under Islamic law. A man endangering another human being is equivalent to positioning himself as God”²² “Additionally, if we look at Islamic law, one of the strategies devised by *Usūl al-Fiqh*²³ in the books is *Maṣlahah Al-Mursalah*²⁴ and a significant number of Quranic verses, reinforce the benefits of Masalah Al-Mursalah,”²⁵

Islam came to prohibit and punish all forms of human trafficking in its various forms, including selling human organs, exploiting workers and maids, adopting children for selling, and exploiting them, exploiting women for begging, and the illegal exploitation of immigrants. The following prohibitions are more relevant to the crime of human trafficking.

The prohibition and criminalization of the sale of the free people:

Islam has prohibited and criminalized the selling of people. The Holy Prophet (PBUH) said: “Allah Almighty said: Three people I will be against them on the day of resurrection A man gave me money and then betrayed it, and a man sold a free man and took his price a man who hires an employee and does not give him his wages.”²⁶

The prohibition and criminalization of the sale of human organs:

Islam forbade the sale of human organs and made it a crime to do so. Islam also forbade coercing someone into accepting an organ transplant by

using threats or other forms of coercion. According to a ruling of the International Islamic Fiqh Academy²⁷, It is forbidden to sell organs no matter what the situation is.

Prohibition and criminalization of immorality and sexual exploitation of women, and sodomy with men, young and old:

Islam prohibits and criminalizes immorality sexual exploitation of women, and sodomy with men, Islam has prohibited adultery and sodomy and has criminalized its perpetrator who earns through it. As Allah Almighty says:

وَلَا تَقْرَبُوا الزَّيْنَةَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا²⁸

As a result, the Islamic Sharia has closed all doors leading to the trade in women and children.

Prohibition of forced labour, compulsory service, and exploitation of the worker and domestic servants:

Islam prohibited forced labour, compulsory service, and exploitation of workers and domestic servants. As the Holy Prophet (PBUH) said “Allah Almighty said:

ثَلَاثَةٌ أَنَا حَصْمُهُمْ يَوْمَ الْقِيَامَةِ " وَذَكَرَ مِنْهُمْ: " وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوَى مِنْهُ وَلَمْ يُعْطِهِ أَجْرَهُ"²⁹.

This hadith emphasis on the protection of the employee and prohibited oppression, trading of forced labour, and exploitation.

Islam prohibits the adoption of children for trafficking and abuse:

Islam protects the rights of children as fetuses and then how it can allow children to be abused in any form of sexual abuse, labour, or exploitation of children and women in the act of begging, and the illegal exploitation of immigrants Islam has come to prohibit and criminalize all forms of human trafficking in various forms, as it is evident that adoption is not allowed in Islam as Allah Almighty has narrated in Quran:

ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ³⁰

Islam protects the rights of children as fetuses and then how it can allow children to be abused in any form of sexual abuse, labour, or exploitation.

There are different types of crimes against humanity involved in the crime of trafficking. Keeping in view these practices it can be construed that it is not by the principles of Shariah. Islamic law prohibits inflicting danger on himself and others. Trafficking in human beings is considered one of the forms of exploitation and gross violation of human rights and basic freedoms due to the existence of harm which is prohibited by the tradition of the Prophet

لا ضرر ولا ضرار³¹

Human trafficking is prohibited due to the element of harm. This regulation emphasizes putting people at risk and tarnishing their reputation is forbidden. As a result, the Government is empowered to forbid the criminal behaviour of traffickers and impose reasonable punishments.³² Islamic law categorizes punishment into many categories based on how each one relates to the others. According to the moral and legal precepts of justice, Islamic law mandates the prosperity and happiness of humanity.

Regarding *ta'zir*³³ punishments there is no clear provision in the Qur'an and Hadith, the judge is empowered to decide the cases according to his Ijtihad keeping in view the nature and severity of the crime. Ta'zir's penalties include exile, crucifixion, flagellation, isolation, and threats. implementation of *ta'zir* will be by a ruler or judge.³⁴ Ta'zir can be used by rulers to maintain order in society and to foresee potential ways to organize it.³⁵ The Islamic legal framework prohibits trafficking by eliminating exploitation and oppression promoting good and prohibiting evil. The prohibition of exploitation ensures the protection of victims of trafficking, which destroys people's security and is an offence against the state and society.

Human trafficking is linked with different types of exploitation and its prohibition can be found in four main Islamic sources of law.”³⁶ Islamic law has highlighted the issue of human trafficking and considers it a crime due to the existence of some contradiction with Islamic jurisprudence and violation of certain human rights. As it is clear through these verses:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَيْرِ وَالْبَحْرِ³⁷

Human dignity is considered important in the Holy Qur'an. Islamic teachings condemn and prohibit all types of behaviour or actions that contradict human dignity. Human trafficking is prohibited due to the element of harm, exploitation, and abuse, whether physical, mental, or spiritual. Although the term human trafficking is not expressly used in Islamic law, however, Islam discusses all the factors of human trafficking and forbids it. Therefore, it can be rightly said that in Islam, the concept of the prohibition of factors of human trafficking, is dealt with on the basis that Trafficking is a crime against humanity that violates the fundamental rights of Islam, and endangers the religious norms of justice, equality, and welfare.

Trafficking for Exploitation:

Human exploitation is prohibited by Islam. The Holy Prophet Muhammad (PBUH) was reinforced by several measures before his sad demise. The Islamic legal framework has advanced its ruling in the

Charter of Medina which concerned the relationship between the Quraish and Yathrib. The Charter has outlined the spiritual and political rights of Muslims and non-Muslims and provided safety to people and society.³⁸

Manzoor Uddin Ahmed in his Article Umma: The Idea of a Universal Community states that “People are regarded as one “*ummah*” and shall not enslave another Muslim. The umma was founded based on brotherhood, equality, and social justice at Madina was to become a model to be followed, Islam assures safety, fairness, liberty, and equality.”³⁹ The United Nations Protocol on Human Trafficking includes in its definition, the following forms of exploitation e.g., forced labour or services for prostitution, and sexual abuse. The protocol listed minimum types of exploitation and kept room for the incorporation of other forms. The Republic of Azerbaijan in its law on the Fight against Human Trafficking has included other forms of exploitation in its legislation”⁴⁰ Islamic law prohibits all forms of exploitation including financial exploitation.⁴¹

Trafficking for Labour Exploitation:

Labour exploitation is the most common issue of today which eventually leads to human trafficking. Islamic norms have always secured the dignity and rights of workers and forbid their exploitation. According to a Hadith of the Holy Prophet Muhammad (PBUH), a worker should be remunerated in time: “Pay the worker his wages before the drying of his perspiration”⁴² Qur’ān equally entitles the men and women for their earnings as men are allotted what they earn, and to women what they earn.”⁴³

Islam has introduced a set of labour regulations that strictly prohibits the exploitation of labourers and provides guidelines for them. Firstly, the boss is responsible for paying the salaries of the workers on time. Secondly, the compensation must be fixed through an agreement and the employer should notify the remuneration before starting work and have a kind relationship with them based on the Islamic concept of equality and brotherhood as mentioned in the Holy Qur’ān: Your workers and slaves are your brothers whom Allah has placed under you. Whosoever has one under him he should feed him of what he eats, clothe him of what he clothes himself, and must not burden them over their ability. But if you do burden them, then help them.⁴⁴ Moreover, Islam supports the honour and self-respect of the labourers. As the Holy Prophet Muhammad (PBUH) has held: The best income is that which results from honest labour

The main issue that labour faces is discrimination in paying wages when an employer refuses to pay a salary or pays less than the fixed amount. In this regard, the Holy Prophet Muhammad (PBUH) ordered the

employer to give the workers appropriate wages. This can also be found in various verses of the Holy Qur’ān and the sayings of the Holy Prophet Muhammad (PBUH). Islam ordained the Muslims to fulfil their contracts and pay their salaries according to fixed terms and conditions agreed upon. Imposing any hardship deliberately is forbidden in Islam. Islam prohibits taking extra hard work beyond the capacity of any individual. As clarified in the Quran: Allah desires for you ease desires not hardship for you.⁴⁵

Trafficking for Forced Labour:

Compulsory labour is also prevalent around the globe, which is another form of exploitation leading to the unlawful trafficking of persons. Compelling any person to beg and dishonesty in paying wages would also come under the type of forced labour that is prohibited by Islamic law. Islamic law is harmonious with international law on the prohibition of trafficking forced labour, consequently prohibiting significant factors and illegal methods used for human trafficking.

Prohibition of Trafficking for Sexual Exploitation:

Sexual exploitation is defined in Black’s Law Dictionary as “the use of a person, especially a child, in prostitution, pornography, or other sexually manipulative activity”.⁴⁶ It is also used for profiting monetarily, socially, or politically from the sexual exploitation of another.⁴⁷ Nur Zulaikha and others in Factors Contributing to Women Trafficking in Malaysia present that: “In Malaysia, most victims come from Indonesia, China, Sri Lanka, and the Philippines which have been exploited mostly for sexual purposes and domestic servitude. Local citizens of Malaysia are also a victim of trafficking. They are normally brought to Singapore, Hong Kong, France, and the United Kingdom for profitable sexual exploitation.”⁴⁸

During the *jāhiliyyah* period, women were abused. They were buried alive, compelled to work for sexual abuse. Women were the victims of cruelty and were treated as cattle or horses that could be purchased and sold. Islam forbids exploiting and burying them alive and obligates the husband to safeguard his wife. Islamic criminal law has strictly prohibited adultery, homosexuality, and other practices that may become the reason for committing this crime. Prostitution is strictly forbidden in Islam. Holy Prophet Muhammad (PBUH) prohibited earning profit from sexual abuse which is illegal. Quran says: “And do not go near adultery. It is immoral, and an evil way.”⁴⁹ And force not your maids to prostitution”⁵⁰ This *ayah* denotes that Islam will punish the act of forceful prostitution. It is an exemption from the common punishment of adultery.”⁵¹

Trafficking Through *Kafāla* (Sponsorship System):

*The Kafala*⁵² System was introduced in the 1950s to regulate the relationship between employers and migrant workers in many countries in West Asia and the Gulf Cooperation Council. The migrant worker is bound to his employer or sponsor for their contract period this is an encroachment on the legal rights of the employee which is against the principles of Islam and in conflict with the freedom of profession granted by Islam. Mohamed Y. Mattar, in his research combating trafficking in persons by the principles of Islamic states that:

Sponsorship rule is common in the Middle East and is considered an element of control and mistreatment. Under the rule, companies suspend foreign workers' travel documents, and a worker was not allowed to seek another service without his consent. This system is used to limit the liberty of workers and their movement. However, Sheikh Youssef al Qardāwī gave a fatwa in March 2008 that the sponsorship rule was in contradiction with the teachings of Islam and should be eliminated. The sponsorship scheme formed a business, which compels the workers to live in inhuman conditions, as labourers are kept in low-standard areas. It is a humiliation of persons and against the principles of Islam.⁵³

The grand mufti an expert scholar of Islamic law gave a fatwa in 2002, on the issue of mistreatment of overseas employees by Saudi companies, asserting in the following statement: In cases of breach of contract by the employer blackmailing and threatening foreign labourers and deporting is not allowed. Saudi Council of Ministers issued a decree that foreign employees be permitted to keep travel documents of their family. They can train in Saudi Arabia without showing documents.⁵⁴ Bahrain eradicated the sponsorship system in 2009.

“Granted the right to freely transfer from one employer to another. Moreover, they will not lose their residency permits, and are permitted to receive unemployment benefits if necessary while securing a new place of employment.”⁵⁵

Islamic law prohibits the *kafala* system because it is the main tool for exploitation and the trafficking of workers.

Trafficking of Children through Adoption:

Adoption is a complex social, legal, and economic phenomenon that existed in one form or another in all societies since ancient history. Islam plays an important role in family law generally and adoption law particularly classical Sunni jurists consensually opposed that adoption, as commonly understood today in the West and practised in pre-Islamic Arabia known as *al-tabanni*, is prohibited or *haram*.⁵⁶ Some religions have encouraged adoption and allowed it while others have restricted it

and suggested alternative arrangements.⁵⁷ Adoption is permitted in Islam with the condition that the lineage of a kid must not be changed. Allah Almighty says in the Quran: “Nor has he made your adopted sons of your sons. Call them by (the names of their fathers). That is justice in the sight of God”⁵⁸

This verse is related to the adoption of the Holy Prophet Muhammad (PBUH) of Zaid bin Haritha, It does not change the relationship between the child and their parents, and adoption will not establish a real relationship between the adopted child and his adoptive parents and their children. The practical approach of this opinion is that all the principle which governs the rights and duties of the family are still obligatory. The adoptive child will have fulfilled responsibilities and is entitled to get his due right from his real parents, for instance, the rule of *mahram* will apply. Only in one case, a child can be a *mahram* for the adopted family if he was suckled by the adopted mother for a minimum of one day and a night (or fifteen times), then he will become the *mahram* to them. The right of inheritance is granted to blood relations according to their share. The blood relatives are more entitled. to inherit from one another in the Book of Allah”⁵⁹ The adoptive family can give one-third of their wealth through a will. The reason for forbidding adoption and introducing *Kafala* in Islam is to protect the rights of the genetic parents. Middle Eastern countries have introduced the unique *kafala* system in light of Islamic law, where the children can be handed over to foster families. This system has contributed to the abolition of baby trading and illegal adoption.⁶⁰

Trafficking for Compulsory, Temporary and Early Age Marriage:

The institution of marriage is the central concept of all human societies. Marriage is the most complex of all human relations. It is imperative to distinguish between Islamic principles and the prevalent customs and practices in Islamic societies that are associated with the crime of human trafficking and are opposed to the principle of Islamic law. It will be done by exploring the practices of forced temporary, and early-age marriages that lead to human trafficking. We can draw the attention of the public and prove the incompatibility of these customs with Islamic law, this method will help combat human trafficking. There is a misconception that Islam permits such practices. This view distorts Islamic family law.

Universal Declaration of Human Rights 1948 awards some important rights related to marriage: “Men and women have the right to marry, are entitled to equal rights as to marriage with free and full consent.”⁶¹ “State Parties prescribes a minimum age for marriage and

ensures free consent of parties.⁶² The nationality of a wife does not automatically change by marriage or dissolution of marriage.”⁶³ “A wife has the right to acquire the nationality of her husband.”⁶⁴

Compulsory, Temporary, and Early Age Marriage in Islamic Law:

Forced marriage affects many communities of the world. According to Islamic law, coercion is prohibited in Islam as the consent of both parties is an essential element of the marriage contract. Islam also recognized the right of choice (*Ikhtyār*) for couples whose marriage is consummated then they have the right of choice to validate or cancel the contract. Marriage without consent is not compatible with the purposes of *Shariah*. It is recommended that victims who were forced to get married without consent have the option to get a decree of termination through the courts. This right is also granted under Islamic law.⁶⁵

Mohamed Mattar⁶⁶, in *Comprehensive Legal Approaches to Combating Trafficking in Persons*, highlights that: “Islamic law provides the right to choose a spouse. Hanafī school of Islamic jurisprudence grants women such a right direction, while the other three schools are pro-woman, with a guardian who must accomplish the marriage contract on their behalf. Consent, however, is the basis of the marriage, and while these schools contend that, the marriage contract is to be performed through a guardian with the force is forbidden. The consensus of all parties must be available for the marriage contract to be effective. Similarly, arranged marriages do not establish an illegal form of marriage under Islamic law if consent is not acquired from the parties to the contract.”⁶⁷

According to Aisha K. Gill in his article *Muslim Women and Forced Marriages in the UK* All scholars of Islamic law unanimously forbid marriage without consent. The guardian's job is to safeguard the benefits of the ward; however, the institution of guardianship may misuse its authority and be involved in illegal practices leading to forced marriages.⁶⁸ “In some Muslim countries institution of marriage is abused due to the practice of compensatory marriage. where girls are compelled to marry as compensation for a crime committed by their family or the settlement of debts or family disputes. This practice is known as sawara or Vanni.”⁶⁹ However, this practice is contradictory to Islamic International law due to missing consent.

Mut‘ah⁷⁰ was prevalent in some pre-Islamic Arab and Persian tribes before the seventh century AD and was allowed at the beginning of Islam. Then The Holy Prophet Muhammad (PBUH) banned it. According to the view of Sunni Muslims, temporary marriage is strictly prohibited. 71“Early-age marriages are challenged in some countries because there is

no agreement among Islamic scholars regarding the age of adulthood, and Qur'ān does not prohibit marriage. Islamic law terminates minorities with puberty. Furthermore, the marriage of my children and psychologically disturbed persons can be conducted by their guardians if it could be considered in their best interests. And on attaining puberty has the right to cancel the marriage.⁷²

Conclusion & Recommendations:

This study looks at an emerging subject of human trafficking which attracted considerable attention from academia in a short period. The origin of human trafficking started with the emergence of the national state and strict visa restrictions. There are many factors of human trafficking including political, economic, and social. One of the important factors that has risen in human trafficking is the imbalance in the economy of poor nations. Economic imbalances, natural disasters, and wars are also the major causes of human trafficking and problems.

After the Second World War, many people were affected by the war and migrated to different countries and parts of the world for better opportunities. However, due to visa restrictions and other strict requirements of host countries, people faced difficulties entering other countries legally. Falling into the hands of human traffickers as they promised better job opportunities in return for illegal migration. The people suffered various immigration problems due to their illegal status. These traffickers exploited them on the pretext of jobs and futures, taking advantage of their compulsions. They could not raise their voice for their rights in any forum and were abused by these traffickers.

This article explains Islamic and international law views on human trafficking. International law is preceded by Islamic law in addressing this issue. This article aims to remove the misconception of the West that Islam does not believe in personal freedom. Efforts have been made to explain various factors and types of human trafficking in light of Islamic law. Its prohibition has also been clarified in light of the Qur'an and Sunnah. The different forms of exploitation have been explained related to human trafficking. The prohibition of human trafficking was ensured by prohibiting its factors in the light of the Quran and Sunnah. It is hoped that seasoned researchers and academia will also look at some unattended aspects of the discourse.

Establishing an Islamic legal system that is compatible and cooperative with the global legal system fighting human trafficking can be a significant development in this area. The establishment of such a legislative framework is required for Islamic countries because human trafficking is a significant global issue that has also adversely impacted

them. Discussing the Islamic perspective on many aspects of human trafficking is crucial, as educating Muslims about the severity of the crime and new strategies for combating it. Islamic scholars have a responsibility to be aware of and outlaw harmful and criminal behaviors that serve as the foundation for human trafficking and smuggling. Islamic academics should also forbid practices that are against Islamic law's fundamental tenets, such as the practice of forced marriages, the mistreatment of local labourers, or any other form of employment or sexual exploitation of people that is against Islam's core beliefs.

This study has discussed how Islamic law gradually forbids all forms of exploitation, including forced labour and sexual abuse resulting from human trafficking. Islamic criminal law divides crimes into various categories and imposes severe penalties on them. All Islamic nations should categorize human trafficking as a serious crime, punish it severely, and place stringent legal restrictions on it. This crime might be added to the list of ta'zir crimes and should only be carried out in conformity with Islamic law. Human trafficking is forbidden in Islamic law, and Islam also takes action to protect victims.

Incorporating a reporting procedure under articles 9 and 10 of the Arab Charter of Human Rights of 2004, which is acknowledged as a human rights instrument adopted throughout the Islamic world, is a step in the right direction in this regard. To advance the position of human rights, this methodology needs to be fully and effectively implemented throughout the Muslim world. Theoretically, international law and the teachings of Islamic law are consistent with one another, making them effective tools for preventing human trafficking.

Recommendations:

This article highlights the following recommendations for addressing the crime of human Trafficking in Islamic law. For the following reasons, this article suggested that the Islamic perspective must be incorporated into the fight against human trafficking in certain areas. Firstly, adoption can be considered a universal issue as a universal mechanism can be adopted to solve this problem, it should not be used as a tool for the offence of human trafficking. Secondly, the Islamic legal system is mostly based on religious beliefs and such kind of universal approach will help them perform their religious duties. Thirdly, the measures adopted for the documentation of victims of trafficking are insufficient. Therefore, it is suggested that these proper measures should be improved to enhance additional operative documentation of victims of trafficking. Moreover, this process should be used in the trial and investigation phases.

It is also suggested that Islamic law should incorporate the right of counselling at the stage of inquiry or the trial. Remarkably, a parallel method has been adopted in Egyptian Law for eradicating human trafficking. It is recommended that specialized training be arranged for those involved in combating human trafficking. The training should be for officers, judges, public prosecutors, solicitors, lawyers, and personnel working for combating trafficking, and authorities involved in the process of implementing the law and personnel from the media and press, recruiting authorities' office and factory owners to raise consciousness in the public. Islam gives Muslims a complete set of laws for living, and it also has an impact on people in civilizations where Islam is the basis for their legal system. Consequently, for the sake of combatting this crime, the prosecution of people trafficking cases must increase. Therefore, it is recommended that probes into charges of trafficking be treated more seriously. Government oversight of all offshore factories is necessary.

References

- 1 Maggy Lee, *Human Trafficking* (Routledge 2007). p.1.
- 2 Johannes Postma, *Slave Revolts* (Greenwood Press 2008). p. 4.
- 3 International Labour Organization (ILO)
- 4 Trafficking in Persons Report, 20th Edition," Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, June 2020, "Global Estimates of Modern Slavery," ILO and Walk Free, Sept. 19, 2017.
- 5 Louise I. Shelley. *Human Trafficking: A Global Perspective*. Cambridge, USA; New York: (Cambridge University Press, 2010). p.147.
- 6 Postma, *Slave Revolts*, p. 4.
- 7 Maximilien Robespierre, *Declaration of The Rights of Man and The Citizen* (Open Book Publishers 1850), pp.11-13.
- 8 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2000.
- 9 Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Westport, CT: Praeger, 2009), p.11–12.
- 10 Louise Shelley, Chris Corpora, and John Picarelli, "Global Crime Inc," "Beyond Sovereignty: Issues for a Global Agenda," 2nd ed., Maryann Cusimano Love, ed. (Belmont, CA: Wadsworth, 2003), pp. 143–66.
- 11 Asian Development Bank, *Combating Trafficking of Women and Children in South Asia Manila (Philippines: Asian Development Bank, 2003)*, p. 40.
- 12 Louise Shelley, and Christina Bain. "Human Trafficking: Fighting the Illicit Economy with the Legitimate Economy." *Social Inclusion* 3, no. 1 (February 23, 2015), pp. 140–44.

- 13 Frank Laczko and Elzbieta Gozdzia, *Data and Research on Human Trafficking* (International Organization for Migration 2005). p. 11.
- 14 UN resolution on Trafficking in women and girls 2008., Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2012). pp.17-18
- 15 Gallagher AT, Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010). p. 12.
- 16 Ibid.p.22.
- 17 Ibid.p.20
- 18 It should be stressed that ‘the Council’ here refers to the Council of Europe
- 19 Michèle Hirsch, *Plan of Action Against Traffic In Women And Forced Prostitution* (Council of Europe 1996). pp.2, 11.
- 20 Ibid.p.21.
- 21 Article 3 a & b of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (200).
- 22 Ahmad, Sayuti, *Perbudakan Dala Hukum Islam, Ahkam*, vol. 15, no. 1, (January 2015). p.1.
- 23 Principles of Islamic jurisprudence, also known as Usūl al-fiqh, are traditional methodological principles used in Islamic jurisprudence for deriving the rulings of Islamic law.
- 24 Literal meaning of Maṣlaḥa Marsalah is cause or source of something beneficial. It is frequently used in the meaning of public interest. It is also used in terms as well, being social weal. Technically, it refers to the meaning of embodiment of the purpose of the law. It presents the jurists with the framework to tackle the problem inherent in a legal system. That is based on finite text i.e. Quran and Hadith.
- 25 Ruslan Abdul Gani, *Tinda Pidana Traficking Menurut Hukum Positif dan Hukum Islam (Suatu Analisis Perbandingan Hukum)*, *Jurnal Ilmiah Universitas Batanghari*, vol. 17, no. 1, (2017). p.5.
- 26 Muhamad ibn Ismā‘īl Bukhārī and Muhammad Muhsin Khan, *The English Translation of Ṣaḥīḥ al Bukhārī with the Arabic Text* (Alexandria, Va.: Al-Saadawi Publications, 1996). *Kitab al Ijarah*, Vol. 3, Hadith 470.
- 27 The International Islamic fiqh Academy (IIFA) was first established in January 1981. It is an organization of Islamic cooperation (OIC). This Academy has members having high scholarly and intellectual specializations in jurisprudence, culture, scientific and economic fields. It explores current issues performing ijtihad.
- 28 Al-Qur’ān, 17:32
- 29 Al-Bukhārī, 2227
- 30 Al-Qur’ān, 33: 5
- 31 Abū Abdullah Muḥammad bin Yazīd, Ibn Mājah Sunan Ibn Mājah. (Riyadh: Darussalam, 2007). Hadith 2341, *Ṣaḥīḥ al Bukhārī*, Hadith 7288.
- 32 Rusdaya Basri, *Human Trafficking dan Solusinya dalam Perspektif Hukum Islam*, vol.10, no.1, (January 2012). p.7.

- 33 corrective punishment), which means punishment, which is at the discretion of the judge when the offense relates to a private injury.
- 34 Yushinta Pramugarini Hak Restitusi Korban Tindak Pidana Perdagangan Orang Perspektif Hukum Pidana Islam, *Al-Jinayah*, vol. 2, no. 2, (December 2016). p. 5.
- 35 Ibid, p.,23.
- 36 Yusuf Al-Qaradawi, *Lawful and the Prohibited in Islam*. (Dar al Taqwa Ltd, 2011). p.33.
- 37 Al-Qur’ān, 17: 70
- 38 Guillaume A, *The Life of Muhammad: A Translation of Ishāqs Sīrat Rasūl Allāh* (Oxford University Press 2013), p.23.
- 39 Manzooruddin. Ahmed, Umma: The Idea of a Universal Community. *Islamic Studies*, 14(1), (1975), p.32.
- 40 Law of the Republic of Azerbaijan on Fight Against Human Trafficking (Law of Azerbaijan of 2005), Article 1,2.
- 41 Al-Qur’ān,2:275
- 42 Muḥammad ibn Yazīd Ibn Mājah et al., *English Translation of Sunan Ibn Mājah* (Riyadh: Darussalam, 2007). Vol. 2:817
- 43 Al-Qur’ān, 4:5
- 44 Al-Qur’ān, 7:85
- 45 Al-Qur’ān, 2:185
- 46 Garner, Bryan A, and Henry Campbell Black. *Black’s Law Dictionary*. Abridged 9th ed. St. Paul, MN: West, 2010.
- 47 Anne T. Gallagher, Gallagher, Anne. *The International Law of Human Trafficking*. New York: Cambridge University Press, (2010). p.39
- 48 Nur Zulaikha Afifah, Abd Rohim, Yarina, and Ahmad Yarina Ahmad. “Factors Contributing to Women Trafficking in Malaysia: Perspectives from Policy Maker, Implementers & Non-Governmental Organization.” *Journal of Administrative Science Special Edition*, Socio-Economic Issue, Vol.14, no. Issue 3 (2017). p.3.
- 49 Al-Qur’ān, 17:32.
- 50 Al-Qur’ān, 24: 33
- 51 Al-Qur’ān, 24: 2
- 52 The kafala system is a system used to monitor migrant laborers, working primarily in the construction and domestic sectors in Gulf Cooperation Council member states
- 53 Mohamed Y. Mattar, *Combating trafficking in persons by the principles of Islamic law*. New York: United Nations, (2010). p.28.
- 54 Ibid.,28, 29, Decision No. 1 of 1421 AH councils of Ministers
- 55 Bahrain to Halt Labour Sponsorship, *Al Jazeera*, May 7, 2009.
- 56 David S. POWERS “The Abolition of Adoption in Islam, Reconsidered,” *Droit et Religions Annuaire* 4 (2009-10) p.97

- 57 K. Jaishankar, *International Perspectives on Crime and Justice*. Newcastle: Cambridge Scholars, 2009.p.475.
- 58 Al-Qur’ān, 33: 4-5
- 59 Al-Qur’ān, 8:75
- 60 Mohamed Y. Mattar, *Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 Fordham Int'l L.J. 721 (2002).
- 61 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III). Art.16
- 62 UN General Assembly, *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 7 November 1962.Art. 3., UN General Assembly, *International Covenant on Social, Economic and Cultural Rights*, 1966. Art.16
- 63 UN General Assembly, *Convention of the Nationality of Married Women*, 29 January 1957. Art.2
- 64 Ibid. Art. 1
- 65 International Solidarity Network, ed. *Knowing Our Rights: Women, Family, Laws, and Customs in the Muslim World: Women Living Under Muslim Laws Femmes Sous Lois Musulmanes*. New Delhi: Zubaan, an Associate of Kali for Women, (2003). p.112
- 66 Dr. Mohamed Y. Mattar is a Senior Research Professor of International Law and Executive Director of The Protection Project at The Johns Hopkins University, School of Advanced International Studies (SAIS).
- 67 Mohamed Matter, *Comprehensive Legal Approaches to Combating Trafficking in Persons: An International and Comparative Perspective*, (2020) p.52.
- 68 Aisha K. Gill and Taher Hamed, “Muslim Women and Forced Marriages in the UK.” *Journal of Muslim Minority Affairs*, vol. 36, no. 4, (Oct. 2016). p. 540
- 69 **Vani** or **Swara** is a custom found in Pakistan and Afghanistan.
- 70 Mut’ah, literally "pleasure marriage"; is a temporary marriage contract that is practiced in Twelver Shia Islam in which the duration of the marriage and the mahr must be specified and agreed upon in advance.
- 71 Mohamed Y. Mattar, *Combating trafficking in persons*. 35, Murata, Sachiko. *Temporary Marriage in Islamic Law*. London: Feed books, (2013). p.101
- 72 Mulla, Dinshah Fardunji, and Mohammed Hidayatullah. *Principles of Mahomedan Law*. 19. ed., 18. Reprint. New Delhi: LexisNexis Butterworths, 2008, p. 118