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CHILD TRAFFICKING AND THE LAW: A COMPARATIVE ANALYSIS OF LEGISLATIVE APPROACHES ACROSS JURISDICTIONS

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Abstract

Child trafficking is among the gravest violations of human rights, affecting millions of children worldwide. Despite an expanding corpus of international instruments and domestic legislation, the problem persists with alarming intensity. This paper undertakes a comparative analysis of legislative frameworks governing child trafficking across four major jurisdictions — the United States, the United Kingdom, India, and the European Union. By examining the definitional scope, penal sanctions, victim protection mechanisms, and enforcement challenges in each system, the paper identifies critical gaps and convergences. The analysis proceeds against the backdrop of international law, particularly the Palermo Protocol and the Convention on the Rights of the Child. The paper concludes that while significant legislative progress has been made globally, fragmentation, under-enforcement, and inadequate victim-centred approaches continue to undermine the fight against child trafficking. Harmonisation of laws, robust inter-agency cooperation, and trauma-informed legal responses are essential for meaningful reform.

Keywords- Trafficking, Child, Rights, Legislation, Rehabilitation.

I. INTRODUCTION

Child trafficking is a phenomenon that strips children of their dignity, freedom, and futures. It is a crime that crosses national boundaries, exploits systemic inequalities, and thrives in the shadows of inadequate law enforcement. According to the United Nations Office on Drugs and Crime (UNODC), children account for approximately one-third of all detected trafficking victims worldwide, with girls disproportionately affected.¹ The Palermo Protocol of 2000 defines trafficking in persons as the recruitment, transportation, transfer, harbouring, or receipt of persons by means of coercion or deception for the purpose of exploitation.² When the victim is a child, the element of consent is entirely irrelevant — any recruitment or movement of a child for exploitative purposes constitutes trafficking per se. Despite this internationally agreed framework, scholarly literature reveals wide disparities in how states have incorporated anti-trafficking norms into domestic law.³ These disparities manifest in definitional inconsistencies, uneven criminalisation, and variable levels of victim protection. The International Labour Organization estimates that approximately 4.8 million people are trapped in forced sexual exploitation, with children forming a significant portion of this figure.⁴ Given the severity and scale of the problem, a comparative analysis of legislative approaches is not only academically valuable but essential for identifying best practices and systemic lacunae.

This paper is organised as follows. Part II contextualises the discussion within the framework of international law. Parts III through VI examine the legislative frameworks of the United States, the United Kingdom, India, and the European Union respectively. Part VII undertakes a comparative assessment, identifying shared challenges and divergent approaches. Part VIII offers conclusions and recommendations.

II. THE INTERNATIONAL LEGAL FRAMEWORK

The international legal architecture against child trafficking rests on several foundational instruments. The Palermo Protocol explicitly provides that the consent of a child victim to the

¹United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (UNODC, 2022) 10.

²Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Palermo Protocol), Art 3(a).

³Bela Hovy, 'Data and Research on Human Trafficking' (2014) 52(1) *International Migration* 1, 4.

⁴ILO, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (ILO, 2022) 7.

intended exploitation is irrelevant, recognising that children lack the legal capacity to consent to their own exploitation.⁵ The Convention on the Rights of the Child (CRC) obligates state parties to take all appropriate measures to prevent the abduction, sale, or trafficking of children for any purpose or in any form.⁶ ILO Convention No. 182 classifies trafficking as one of the worst forms of child labour and requires states to take immediate and effective measures for its elimination.⁷

These instruments, taken together, establish a minimum standard of legal protection against child trafficking. As Gallagher notes, the Palermo Protocol represents the first global legally binding instrument on trafficking and has been central to shaping national legislation across diverse legal systems.⁸ However, the Protocol functions primarily as a framework convention — it establishes definitions and obligations but leaves considerable discretion to states in terms of implementation. This has led to significant variation in how anti-trafficking norms are translated into domestic law, and it is to this variation that the paper now turns.

III. THE UNITED STATES: A COMPREHENSIVE FEDERAL FRAMEWORK

The United States has developed one of the most comprehensive legislative frameworks for combating human trafficking, anchored primarily by the Trafficking Victims Protection Act 2000 (TVPA).⁹ The TVPA defines 'severe forms of trafficking in persons' to include the recruitment, harbouring, transportation, provision, obtaining, or maintaining of a minor for the purpose of a commercial sex act, regardless of whether force, fraud, or coercion is used.¹⁰ This per se rule for minors aligns with the Palermo Protocol and reflects a strong victim-protective approach.

The TVPA has been reauthorised and strengthened multiple times. The Justice for Victims of Trafficking Act 2015 expanded victim support services and created new offences targeting demand-side participants such as buyers of commercial sex.¹¹ Federal law provides for significant penalties including life imprisonment in cases involving child victims, and mandates restitution to

⁵Palermo Protocol (n 2) Art 3(c)-(d).

⁶UN Convention on the Rights of the Child 1989, Art 35; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000, Art 1.

⁷ILO Convention No 182 on the Worst Forms of Child Labour 1999, Art 3(a).

⁸Anne Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010) 69.

⁹Trafficking Victims Protection Act 2000 (USA), 22 USC section 7101.

¹⁰Trafficking Victims Protection Act 2000 (USA), 22 USC sec. 7102(9)(A).

¹¹Justice for Victims of Trafficking Act 2015 (USA), Pub L 114-22.

survivors. The US Department of State's annual Trafficking in Persons Report serves as a global monitoring mechanism, assessing the anti-trafficking efforts of countries worldwide and applying diplomatic pressure through a tiered ranking system.¹²

Despite these strengths, the US framework has been criticised on several grounds. The federal structure of American governance means that anti-trafficking enforcement varies considerably across states, with some jurisdictions maintaining laws that criminalise minors involved in commercial sex rather than treating them unequivocally as victims. Critics have also pointed to the inadequacy of services for male trafficking victims and the marginalisation of indigenous communities, who face disproportionate trafficking risk yet receive insufficient targeted support. The conflation of trafficking with illegal migration in enforcement practices has further resulted in the prosecution of trafficking victims, undermining the protective intent of the legislation.

IV. THE UNITED KINGDOM: THE MODERN SLAVERY ACT 2015

The United Kingdom consolidated its legislative response to human trafficking through the Modern Slavery Act 2015 (MSA), which brought together previously fragmented statutory provisions into a single comprehensive framework. Section 2 of the MSA creates the offence of human trafficking, penalising the arrangement or facilitation of travel for exploitation with a maximum sentence of life imprisonment.¹³ The Act adopts a broad definition of exploitation that encompasses sexual exploitation, forced labour, organ harvesting, and child-specific forms of exploitation.

A notable innovation of the MSA is the transparency in supply chains provision under Section 54, which requires commercial organisations with an annual turnover exceeding £36 million to publish an annual slavery and trafficking statement.¹⁴ This corporate accountability mechanism has been praised as a model for extending anti-trafficking obligations beyond the state to the private sector. However, Gadd and Broad have criticised the provision for its lack of enforcement teeth — organisations that fail to comply face no financial penalty.¹⁵ The Independent Review of the MSA

¹²US Department of State, Trafficking in Persons Report (US Department of State, 2023) 35.

¹³Modern Slavery Act 2015 (UK), s 2.

¹⁴Modern Slavery Act 2015 (UK), s 54.

¹⁵David Gadd and Rose Broad, 'Troubling Recognitions in British Responses to Modern Slavery' (2018) 58(6) British Journal of Criminology 1440, 1442.

concluded that while the Act had made significant progress in raising awareness and securing convictions, gaps remained in the identification and support of child victims.¹⁶ In particular, the review highlighted that unaccompanied asylum-seeking children remain especially vulnerable to trafficking and exploitation, and that existing child protection systems are insufficiently integrated with anti-trafficking responses. The National Referral Mechanism, which is the formal process for identifying and referring potential victims of modern slavery, has been criticised for its slow processing times and high rates of negative conclusive grounds decisions for child referrals.

V. INDIA: FRAGMENTED LEGISLATION AND JUDICIAL ACTIVISM

India's legislative response to child trafficking is characterised by plurality and fragmentation. Multiple statutes address different dimensions of trafficking, including the Immoral Traffic (Prevention) Act 1956 and the Bonded Labour System (Abolition) Act 1976.¹⁷ The Protection of Children from Sexual Offences Act 2012 (POCSO) provides enhanced protections for child victims of sexual exploitation, including child trafficking for sexual purposes, with mandatory minimum sentences.¹⁸

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 represented an attempt to consolidate India's anti-trafficking framework into a single comprehensive statute.¹⁹ The Bill proposed stringent penalties, a tiered institutional response mechanism, and dedicated rehabilitation provisions for victims. However, the Bill lapsed with the dissolution of the Lok Sabha in 2019 and had not been reintroduced as of the time of writing, leaving India without a unified anti-trafficking law.

India's judiciary has played a significant compensatory role in the absence of comprehensive legislation. The Supreme Court in *Laxmi Kant Pandey v Union of India* laid down regulatory guidelines for intercountry adoption to prevent trafficking,²⁰ while *Gaurav Jain v Union of India* addressed the rehabilitation of children of sex workers, directing the state to establish homes for

¹⁶Home Office, Independent Review of the Modern Slavery Act 2015: Final Report (Her Majesty's Stationery Office, 2019) 12.

¹⁷Immoral Traffic (Prevention) Act 1956 (India); The Bonded Labour System (Abolition) Act 1976 (India).

¹⁸Protection of Children from Sexual Offences Act 2012 (India), s 4.

¹⁹The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 (India), Statement of Objects and Reasons.

²⁰*Laxmi Kant Pandey v Union of India* AIR 1984 SC 469.

their care and education.²¹ Despite these judicial interventions, the National Crime Records Bureau reported 2,250 cases of human trafficking in 2022, likely a significant undercount given widespread underreporting.²²

VI. THE EUROPEAN UNION: SUPRANATIONAL HARMONISATION

The European Union has pursued a supranational approach to anti-trafficking law through Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims. The Directive establishes a comprehensive framework applicable across all EU member states and adopts a victim-centred, gender-sensitive approach, explicitly recognising that children require special protection by reason of their vulnerability.²³ Importantly, it mandates that member states prosecute trafficking offences where the victim is a child as an aggravated offence carrying higher penalties.²⁴

The EU framework is notable for its harmonisation of minimum standards across diverse national legal systems. As Konrad observes, the challenge of trafficking in Europe is compounded by the free movement of persons within the Schengen Area, which, while beneficial for legitimate travel, can be exploited by traffickers to move victims across borders rapidly.²⁵ The Directive addresses this by emphasising cross-border judicial cooperation, mutual recognition of judgments, and the exchange of intelligence through Europol and Eurojust.

Critics have noted, however, that implementation across member states remains uneven. Some states have been slow to transpose the Directive fully, and there are significant disparities in the number of prosecutions and convictions achieved. The conflation of trafficking with irregular migration in border enforcement policies has drawn particular criticism, with civil society organisations arguing that securitisation approaches can further victimise trafficking survivors by subjecting them to detention or deportation.

²¹Gaurav Jain v Union of India (1997) 8 SCC 114.

²²National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, 2023) 156.

²³EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims [2011] OJ L 101/1, Recital 23.

²⁴EU Directive 2011/36/EU (n 23) Art 4.

²⁵Helga Konrad, 'Trafficking in Human Beings: The Ugly Face of Europe' (2002) 9(1) Helsinki Monitor 26, 31.

VII. COMPARATIVE ANALYSIS: CONVERGENCES AND DIVERGENCES

A comparative analysis of the four jurisdictions examined reveals both significant convergences and important divergences. In terms of convergences, all four systems have broadly adopted the definitional framework of the Palermo Protocol, recognising child trafficking as a serious criminal offence requiring enhanced penalties. All systems formally reject consent as a defence where the victim is a child, consistent with international legal norms. However, the divergences are equally instructive. First, there is significant variation in the breadth of conduct criminalised. The US TVPA and the EU Directive adopt expansive definitions that encompass a wide range of exploitative purposes, whereas India's fragmented statutory framework results in gaps in coverage, particularly for labour trafficking and domestic servitude. Second, the mechanisms for victim identification and support differ markedly. The UK's National Referral Mechanism and the EU's requirement for specialised assistance and support for child victims contrast with the relatively underdeveloped victim support infrastructure in India.²⁶ Third, there is notable divergence in the treatment of demand-side actors. The US has increasingly focused on prosecuting buyers of commercial sex involving minors, while other jurisdictions have been slower to address demand.

A recurring challenge across all jurisdictions is the tension between anti-trafficking law and immigration enforcement. Chuang has documented how in multiple countries, including the US and EU member states, anti-trafficking measures have been captured by immigration control agendas, resulting in the deportation of trafficking victims and the prosecution of survivors for immigration offences.²⁷ This tension fundamentally undermines the victim-protective intent of anti-trafficking legislation.

A further divergence concerns the integration of child protection systems with anti-trafficking responses. Research consistently shows that children in care, unaccompanied asylum seekers, and children of trafficked parents face elevated trafficking risk. Yet in all jurisdictions examined, the interface between child welfare systems and anti-trafficking law enforcement remains inadequately developed. The CRC's mandate that the best interests of the child shall be a primary

²⁶ECPAT International, *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism* (ECPAT, 2016) 20.

²⁷Janie Chuang, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy' (2010) 158(6) *University of Pennsylvania Law Review* 1655, 1699.

consideration in all actions concerning children²⁸ is insufficiently operationalised in the anti-trafficking frameworks of even the most advanced jurisdictions.

At the judicial level, international human rights courts have played an important supplementary role. The European Court of Human Rights in *Rantsev v Cyprus and Russia* held that trafficking engages Article 4 of the European Convention on Human Rights (prohibition of slavery) and imposes positive obligations on states to take operational measures to protect victims.²⁹ The Inter-American Court of Human Rights has similarly emphasised the heightened vulnerability of children and the obligation of states to adopt special measures for their protection.³⁰

Finally, it is worth noting a structural challenge that pervades all jurisdictions: the persistent under-prosecution of child trafficking offences. Becker documents how political will, institutional capacity, and socio-cultural factors significantly affect the rate of prosecutions in all systems.³¹ Kotiswaran has further argued that the dominant criminal law approach to trafficking, focused on prosecution and incarceration, fails to address the structural conditions of poverty, gender inequality, and migration that make children vulnerable to exploitation in the first place.³²

VIII. RECOMMENDATIONS AND CONCLUSION

Drawing on the comparative analysis above, several recommendations emerge for strengthening legislative frameworks against child trafficking. First, jurisdictions with fragmented legislative frameworks, most notably India, should urgently enact a consolidated anti-trafficking statute that addresses all forms of child trafficking, provides robust victim protections, and establishes clear institutional responsibilities for investigation, prosecution, and rehabilitation.³³

Second, all jurisdictions must strengthen the interface between child protection systems and anti-trafficking responses. This requires statutory mandates for inter-agency coordination, specialised

²⁸Convention on the Rights of the Child (n 6) Art 35.

²⁹*Rantsev v Cyprus and Russia* App No 25965/04 (ECtHR, 7 January 2010) [282].

³⁰Inter-American Court of Human Rights, *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02 (28 August 2002) [91].

³¹Jo Becker, *Campaigning for Justice: Human Rights Advocacy in Practice* (Stanford University Press, 2013) 112.

³²Prabha Kotiswaran, 'Beyond Sexual Humanitarianism: A Postcolonial Approach to Anti-Trafficking Law' (2014) 4(1) *UC Irvine Law Review* 353, 361.

³³Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (Columbia University Press, 2009) 17.

training for child protection officers, and the adoption of child-specific identification and referral procedures that are trauma-informed and culturally sensitive. UNODC data consistently demonstrates that child victims are disproportionately identified through child protection systems rather than law enforcement channels, and legal frameworks must reflect this reality.³⁴

Third, the tension between anti-trafficking enforcement and immigration control must be addressed through clear statutory provisions guaranteeing non-prosecution immunity for trafficking victims in respect of offences committed as a direct consequence of their trafficking. The UK's statutory defence under Section 45 of the MSA represents a model worth emulating, though its implementation has been inconsistent.³⁵

Fourth, international legal cooperation must be deepened. As Gallagher argues, trafficking is an inherently transnational crime that cannot be effectively addressed through purely domestic legal responses.³⁶ Mutual legal assistance treaties should explicitly facilitate evidence-sharing in trafficking cases, and extradition arrangements should be strengthened to prevent traffickers from exploiting jurisdictional boundaries to evade prosecution.

Fifth, legislative frameworks must address not only the criminal dimensions of trafficking but also its structural determinants. Hamilton and Abu El-Haj observe that the criminal law, while essential, is an insufficient response to crimes rooted in systemic inequality.³⁷ Anti-trafficking laws must therefore be complemented by robust social protection systems, access to education, and programmes addressing gender inequality and child poverty — the conditions in which trafficking flourishes.

In conclusion, the comparative analysis undertaken in this paper reveals that while international law has provided a broadly accepted normative framework for combating child trafficking, its translation into domestic law remains uneven and incomplete. The United States and the European Union have developed relatively comprehensive frameworks, though significant enforcement challenges persist. The United Kingdom's Modern Slavery Act represents an innovative approach

³⁴UNODC (n 1) 45.

³⁵Kevin Hyland, 'A Modern Response to Modern Slavery' (2016) 10 *Journal of Modern Slavery* 1, 9.

³⁶Gallagher (n 8) 201.

³⁷Carolyn Hamilton and Tabitha Abu El-Haj, 'Child Protection: The Role of the Criminal Law' (1999) 17 *Law and Policy* 47, 52.

with important corporate accountability dimensions, though implementation gaps remain. India, despite its vibrant judiciary, continues to lack a unified legislative response. Across all jurisdictions, the treatment of child trafficking victims as subjects of welfare and protection rather than as offenders or migrants remains an aspirational goal insufficiently realised in practice. The eradication of child trafficking demands not only well-crafted legislation but sustained political will, institutional capacity, and a commitment to addressing the underlying conditions of vulnerability.³⁸

³⁸UNICEF, *Child Trafficking in East and South-East Asia: Reversing the Trend* (UNICEF, 2009) 34.