

Human Trafficking in the United Kingdom: A Critical Analysis of the United Kingdom's Legislation to Combat Human Trafficking

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Abstract:

Human Trafficking (HT) in the United Kingdom (UK) is a controversial topic. Due to its evolving nature, many pieces of legislation have been introduced, including the Modern Slavery Act 2015, inspired by international law. Current evidence indicates that there are gaps and weaknesses in the existing legal framework. This project critically evaluates the effectiveness of the current legal framework in the UK to combat HT and its consonance with international obligations to determine whether it requires amendments. To accomplish this, major attention was drawn to the Modern Slavery Act 2015 as the primary legislation addressing this issue.

Additionally, this project will critically discuss the role of the judiciary in the interpretation of legislation and international obligations. To analyse domestic and international laws, the doctrinal methodology has been used alongside the comparative methodology to identify the consonance and gaps in the UK legal framework. Accordingly, primary and secondary sources were critically analysed to assess the effectiveness and determine whether reforms are needed. It is concluded that the legislation addressing HT has considerable challenges and issues in the UK, and more effective reforms are essential for victim protection.

Keywords: Human Trafficking; UK Legislation; International Law.

1. Introduction

Human trafficking (hereinafter referred to as HT) is a dark shadow that looms over society. It leads to more “crime, corruption, and violence.”¹ It harms economies and mistreats workers. Most importantly, it violates human rights. Therefore, HT is acknowledged as a significant issue that requires legislative attention and policy formulations globally.

HT is considered as “a national priority threat”² in the United Kingdom (hereinafter referred to as the UK). International instruments and mechanisms, such as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) and many more, have significantly influenced the UK's approach to combating HT. These instruments provide comprehensive frameworks and standards that the UK has integrated into its national policies and leading to the enactment of the Modern Slavery Act 2015. The international emphasis on victim protection, prosecution of traffickers, and prevention strategies has been mirrored in UK legislation.

However, despite these advancements, the implementation of international standards in the UK faces challenges. There are gaps in victim identification and support, inconsistencies in law enforcement practices, and difficulties in adapting to the evolving nature of HT such as “online exploitation.” With the development of technology, traffickers use dating apps, online ads, and encrypted messages to recruit victims and sell illegal content, making it harder to catch them. There has been a major increase in child rapists, people who threaten national security, and failed asylum seekers overwhelming the Modern Slavery (hereinafter referred to as MS) system in the UK.³ Further, there is a tendency for illegal immigrants to misuse HT and MS laws to avoid deportation. Illegal immigrants hesitate to come forward as victims of exploitation as the

Illegal Migration Bill made them fear deportation. This bill received Royal Assent in July 2023, and is now known as the “Illegal Migration Act 2023.” Thus, a necessity has arisen to include HT concerns in immigration discussions in the UK. The rise of “county lines” exploitation in the UK highlights a critical and growing national issue, where vulnerable children and young people are increasingly manipulated. Further, there are more UK nationals who are victims of HT than transnational victims. This investigation revealed that the prosecution and conviction rates for HT in the UK remain comparatively very low relative to the identification of victims. These issues are unacceptable and highlight the urgent need for improvements in the justice system.

Additionally, the UK’s departure from the European Union (EU) raises concerns about continued alignment with EU directives and cooperation in transnational HT cases. Thus, while international instruments have driven substantial legislative progress, their practical impact is hindered by operational and geopolitical complexities.

Therefore, this research study seeks to identify those challenges and suggest areas for improvement by evaluating the effectiveness of the legal framework in reducing HT and supporting victims while highlighting both strengths and weaknesses in the UK’s approach. The significance of this topic lies in the persistent and evolving nature of HT, which necessitates strong legal and judicial responses. Ultimately, this research will provide a clearer understanding of the current state of the UK anti-trafficking legal framework and its consonance with international law, offering insights for future improvements. This ensures better protection and support for victims based on a human rights approach.

1.1 Main Research Question And Sub Questions

The primary focus of this research is to examine the effectiveness of current UK law in addressing the issue of HT. By addressing the main question, “To what extent does current UK law effectively address the issue of HT?”, this research will explore several sub-questions to provide a comprehensive analysis:

1. Is the UK’s present legal structure sufficient to handle the issue of HT?
2. What is the international legal framework for HT?
3. Does UK legislation comply with international law?
4. In what ways does international law help to improve the UK’s domestic legal system by addressing shortcomings and reinforcing the existing framework?

The research hypothesis is that while current UK law effectively tackles the issue of HT through comprehensive laws and enforcement mechanisms, significant gaps in implementation and victim support diminish its overall effectiveness.

1.2 Aim and objectives.

The main aim of this project is to critically evaluate the effectiveness of the current law in the UK to combat HT to conclude whether it requires amendments. The research objectives are as follows:

1. To determine the scope of HT in the UK, examine applicable international laws, and review the UK’s corresponding legal framework.
2. To utilize the findings from (1) to investigate, compare, and evaluate the strengths and weaknesses of the current legal framework, and to determine whether the domestic legislation aligns with international law.
3. To propose advanced recommendations to strengthen the existing UK legal system to eradicate HT.

The above aims and objectives will be accomplished by critically reviewing and analysing the relevant international laws and the legal structure in the UK for combating HT in the UK.

1.3 Methodology

This research employs the doctrinal methodology, often referred to as the black-letter methodology, to assess the adequacy and effectiveness of laws pertaining to achieving the research aim. This methodology involves identifying, analysing, and synthesizing primary and secondary sources such as conventions, statutes, books, journal articles, case laws, and reports related to HT.

The doctrinal perspective is vital as it allows for a comprehensive examination and analysis of both domestic and international laws concerning HT. This method critically examines the current UK legal system to highlight deficiencies and propose recommendations.

Additionally, to enhance the effectiveness of this thesis, the comparative methodology is utilized alongside the doctrinal approach. The comparative methodology facilitates a comparative analysis between

UK laws and international standards to identify the consonance, gaps, weaknesses, and inconsistencies, and to formulate recommendations accordingly.

1.4 Structure

This research is divided into five chapters. The first chapter serves as the introduction, outlining the background, main research question, sub-questions, hypothesis, aims, objectives, methodology and the structure of this project. Chapter 2 explores the HT issue in the UK by examining HT trends, with a special focus on the National Referral Mechanism. It provides insights into the nature and evolution of this issue over the last 15 years to conclude the current state. Chapter 3 assesses how the global legal framework has been implemented and whether it has effectively enhanced international cooperation in tackling HT. It examines international law's impact on law enforcement and evaluates whether it has genuinely helped to prevent and control HT, with a focus on international and European legal instruments and mechanisms. Chapter 4 evaluates the effectiveness of UK legislation to eradicate HT. Furthermore, this chapter analyses whether the international instruments and mechanisms discussed in Chapter 3 align with the UK's legal framework to eradicate HT. Chapter 5 brings together and synthesizes all the findings from the research as conclusions along with recommendations to answer the main research question.

2. Exploring human trafficking in the United Kingdom: An overview

2.1 Introduction

The UK is witnessing a significant and complex rise in HT cases. The concealed nature of HT complicates accurate determination of its true extent. This chapter provides an overview of this issue by examining statistics from different mechanisms, prioritizing the National Referral Mechanism (NRM), and offering insights into the nature and evolution of this issue over the last 15 years. Thus, an attempt is made to offer an overview of HT and Modern Slavery (MS) by assessing the statistics and key factors driving the increase in HT cases. Statistics will be analysed and evaluated collectively based on means of exploitation, age, gender, nationality and locations. Hence, this chapter specifically addresses issues related to HT, recognizing HT as a manifestation of MS, and thus, the term "MS" may occasionally encompass HT (the distinction between HT and MS and Human Smuggling is analysed in the 3rd chapter).

2.2 Reporting mechanisms of human trafficking trends

Identifying the full extent of HT in the UK is difficult because, it operates in the shadows. Many cases go unreported due to the secretive nature of this crime and the fear and coercion experienced by victims. However, a clearer understanding of the extent and severity of the issue can be determined by analysing data presented by reliable mechanisms. The UK Home Office, National Crime Agency (NCA) and the Office for National Statistics (ONS) regularly publish detailed reports on MS, including NRM statistics, law enforcement efforts, and conviction data within the UK.

The NRM has been established in 2009 as a performance of obligation imposed upon the UK under the Article 10 of the Council of Europe's Convention on Action against Trafficking in Human Beings to investigate and identify potential victims of trafficking. It provides an indication of the nature, shifting dynamics and prevalence of this crime since 2009 within the UK. The NRM is a system that facilitates to identify the victims and create statistics on potential victims of HT and MS which are published quarterly while NCA conducts strategic assessments to understand the statistics and the nature of them.

Additionally, international organizations such as the United Nations Office on Drugs and Crime (UNODC), United States Department of State and the International Labour Organization (ILO) provide comprehensive data on global HT. The European Commission and Eurostat also offer detailed information on HT across EU countries, including statistics on victims, prosecutions, and convictions.

2.3 Human trafficking trends in the United Kingdom

2.3.1 Human trafficking by number of referrals

According to the investigative analysis conducted in 2013 by Professor Bernard Silverman, it was estimated that "there were between 10,000 and 13,000 potential victims of HT and MS"⁴ in the UK. He has further indicated that the reported figure above provides only part of the overall picture due to several reasons. Those reasons include the hidden nature of MS, ongoing control over some victims, reluctance of escaped victims to draw attention to themselves, fear and shame preventing victims from coming forward, some victims not recognizing themselves as exploited, and incomplete coverage by the NCA.⁴ He has pinpointed that the above figure should be even higher. Therefore, he has used "Multiple Systems Estimation (MSE) approach" to ascertain the said dark figure and calculated the dark figure is around 7000 to 10,000.⁴

The chart below, sourced from recent research conducted by Ella Cockbain and three other researchers, provides an overview of the number of referrals to the UK's NRM, serving as a foundation for examining significant geographic and demographic patterns in the UK.⁵

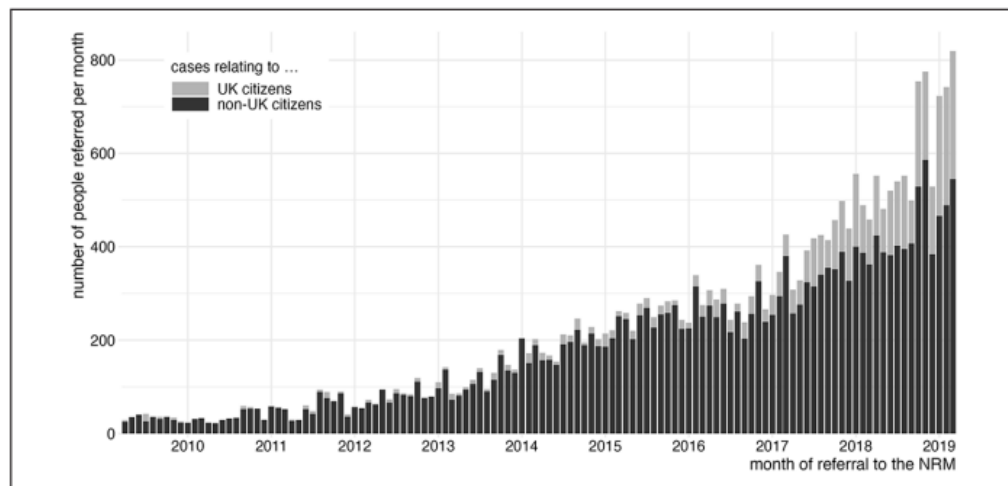


Figure 1. Monthly number of people referred into the UK's NRM

Analysing the data highlights a notable trend in the number of referrals to the NRM from 2009-2019. In 2010, there were approximately 36 referrals per month, which escalated significantly to 559 per month by 2018.⁵ This substantial increase represents heightened public awareness of reporting of trafficking incidents across the UK.

When examining the latter period, in 2020, 10,613 potential victims of MS were referred to the NRM.⁶ This is very close to the number reported in 2019, which was 10,616.⁶ It's the first time there was no increase in referrals from one year to the next. This is mainly due to COVID-19 and its restrictions. During the first half of 2020, referrals dropped sharply due to lockdowns but increased later in the year as restrictions eased. The number of referrals might have also been affected because potential victims had less contact with authorities during lockdowns and there was less travel to the UK. In 2020, 48% of all referrals were adults (5,087), which is a decrease compared to 55% in 2019 (5,852).⁶ On the other hand, referrals for child potential victims increased from 43% in 2019 to 47% in 2020 (4,946). The number of male potential victims also increased as a percentage of all referrals, from 68% in 2019 to 74% in 2020.⁶

In 2023, 17,004 potential victims of MS were reported to the Home Office.⁷ This number is similar to the previous year (16,921)⁷ but is the highest since the NRM started in 2009. The number of referrals for females reached their highest recorded level, accounting for 24% (4,088) of all referrals.⁷ In contrast, the number of referrals for males decreased to 76% (12,903) compared to the previous year.⁷ Between January and March 2024, the Home Office has received "4,524 referrals for potential victims of modern slavery"⁸, representing a 42-fold increase compared to the number of referrals in 2010.

There is a notable uptick in the proportion of UK nationals identified as victims, rising from 3.3% in 2010 to 24.7% in 2018.⁹ Similarly, by the end of 2023, the most common nationality among referrals was UK nationals, making up 25% (4,299) of all referrals, which was the highest number recorded for any year since the NRM began.⁸ The second most common were Albanian (24%; 4,052) and Vietnamese (6%; 991) nationals.⁸

Referrals for potential child victims reached a record high of 7,432, accounting for 44% of the total by the end of 2023.⁸ In contrast, referrals for potential adult victims decreased from the previous year, totalling 8,622 and representing 51% of the overall figure.⁸ But the referral rate for adults has gradually increased again in the 1st quarter of 2024.⁹ This research further revealed that regions like London, the West Midlands, and the North-West typically see higher numbers due to population density and economic activities.

The UK's exit from the European Union (Brexit) has also had significant negative impacts on HT in the UK. Specifically, the end of free movement has altered migration patterns, potentially increasing the vulnerability of migrants to traffickers. However, Brexit has increased the UK's ability to create and enforce its own stringent immigration and border control policies, potentially enhancing efforts to prevent and detect trafficking activities.

The criteria for identifying MS victims have been changed from 10th July 2023. Now, the decision maker must agree that there are "good reasons to believe a person is a victim of modern slavery."¹⁰ This considers the victim's story and other relevant information, and whether supporting evidence should reasonably be available

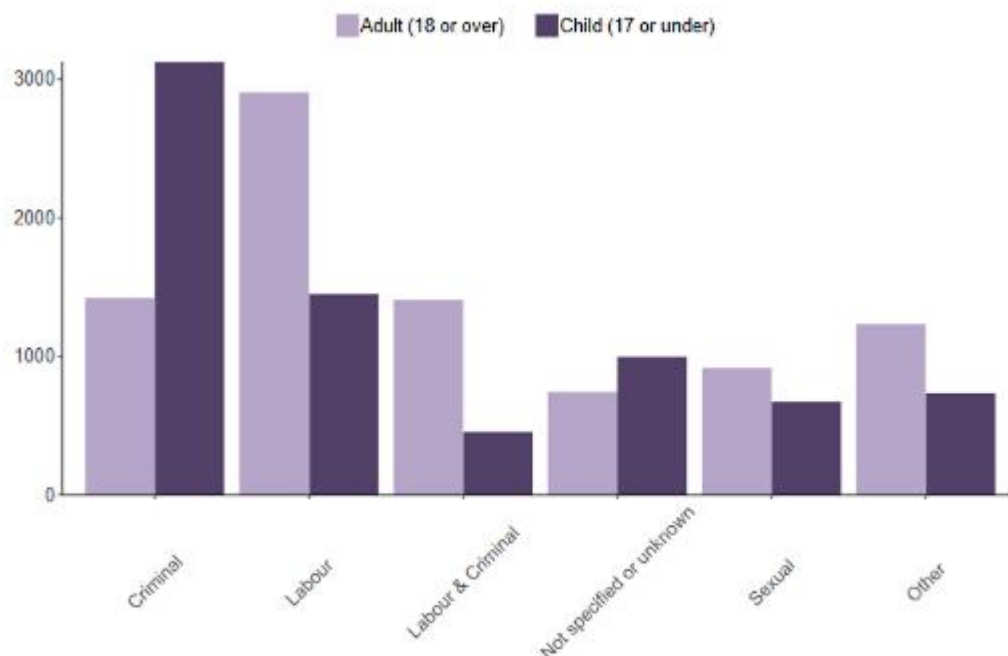
in the case. Before 10 July 2023, the criteria required decision makers to believe, based on objective factors, that there were reasonable grounds to consider someone a victim of MS.¹⁰ Therefore, this his new change could lead to fewer individuals being recognized as victims, as it now requires decision makers to have “good reasons to believe”, which might exclude some genuine cases due to a higher burden of proof.

2.3.2 Human trafficking by various facets of exploitation

In the UK, many victims are exploited in the construction and agriculture sectors, the sex industry, and various establishments such as nail salons, car washes, and cannabis farms.¹¹ The most common types of HT in the UK include:

1. “Sex trafficking”: Involves forced prostitution, pornography, phone sex lines, internet chat rooms, and escort agencies;
2. “Forced labour”: Victims work for little or no pay under poor conditions, often with threats of punishment;
3. “Domestic servitude”: Victims work in their employer's home for little or no pay, frequently facing abuse and unable to leave;
4. “Forced marriage”;
5. “Forced criminal activity”: Involves victims being coerced into begging, pickpocketing, selling drugs, or bag snatching;
6. “Organ harvesting”: Trafficking individuals to sell their organs for transplant.¹²

Over the ten-year period analysed by Ella Cockbain, sexual exploitation accounted for 37.5% of cases, followed by labour exploitation (26.6%), criminal exploitation (18.9%), domestic servitude (11.3%), and organ harvesting (0.1%).¹³ However, this has slightly changed by the end of 2023, as reflected in the table below, sourced from the UK Home Office website, showing the number of referrals by exploitation type and age.¹⁴



Source: SCA, IECA

Figure 2. Number of NRM referrals, by exploitation type and age group

The above graph illustrates the number of child victims of criminal exploitation has exceeded twice that of adult victims of criminal exploitation by the end of 2023. This leads to the assumption that stricter laws are

necessary to address this situation. Additionally, the year-end report for 2023 recognizes criminal exploitation as the most common type, making up 28% (4,715) of all referrals.¹⁴ For adults, labour exploitation was the most reported at 34% (2,902).¹⁴

Another important detail as of 2023 is that males most often reported criminal exploitation (34%; 4,382) or labour exploitation (33%; 4,255), while females most often reported sexual exploitation (36%; 1,470).¹⁴ This creates the assumption that laws must be well-designed with a gender-based approach in the UK.

2.3.3 A critical review of statistical data

Practically, victims of exploitation often suffer from several types of abuse at the same time, causing overlap. Therefore, it's important to recognize that different forms of exploitation frequently occur together. This raises questions about how effectively these situations are considered and calculated by the aforesaid mechanisms. Concerns also emerge about accurately distinguishing and obtaining a comprehensive overview of all referrals only related to HT within the context of MS (the distinction of HT, MS and human smuggling is assessed in detail in the 3rd chapter). Additionally, HT statistics can overlap with MS statistics because HT is a subset of MS that, involving forced labour, sexual exploitation, domestic servitude, and criminal activities. Hence, accurately distinguishing statistics related only to HT from broader MS figures is essential for understanding the real scope and specific challenges posed by HT in the UK. To distinguish HT from broader MS figures, it's important to focus on cases involving movement and coercion.

When investigating the UK Annual Reports on MS published on the Home Office website, specific sections or appendices that provide the evolution of detailed numerical figures on HT are not easily identifiable. Instead, these reports have been prepared with comparisons only to the previous year. Therefore, to gain a clearer understanding, at least a few reports should be reviewed with much effort. Ella presents that the NRM helps with research but has gaps and biases, so the findings don't capture all trafficking cases. She points out that the data might have errors and duplicates, providing a general view of reported cases over ten years but not the current situation or detailed patterns.¹⁵

"The 2024 Trafficking in Persons Report: United Kingdom", identifies that "the government of the UK fully meets the minimum standards for the elimination of trafficking [and] continued to demonstrate serious and sustained efforts during the reporting period; therefore, the UK remained on Tier 1."¹⁶ However, identifying and referring an accurate number of victims to the NRM should be a main effort undertaken by the government, but it has not been achieved yet. Therefore, the above phrase raises the question of whether the UK government is actually fulfilling its responsibility to collect accurate data, as indicated in the report.

However, by carefully reviewing definitions, using reliable data mechanisms, and cross-referencing information from multiple reports, analysts can ensure precise identification and interpretation of HT statistics. This approach not only enhances clarity but also supports effective policy-making and targeted responses to combat HT effectively.

Stakeholders fighting against HT need accurate data to guide their efforts. Estimating the number of trafficking cases is complicated and there's no single best method. Shifting the focus from HT to MS in the UK is intended to improve protection and accountability, it still faces challenges in effectively implementing these policies and addressing deeper issues. However, the increase in NRM identifications over the past 15 years likely reflects improved awareness and prioritization, influenced by legislative changes like the Modern Slavery Act 2015, which will be evaluated more widely in the third chapter.

2.4 Conclusion

Effects of Brexit, COVID-19, shifts in asylum policies, and the complexity in MS terminology have created challenges and impacts on HT dynamics in the UK. Investigations are silent regarding the identification of root causes of this issue. At the beginning of 2024, the evidence is as follows. Common forms of exploitation reported include "labour exploitation", "sexual exploitation", "criminal exploitation", and "domestic servitude". Compared to other nationalities, the number of UK national victims is increasing rapidly since 2018. Currently, most victims are men due to criminal and labour exploitation, while women are mostly victims of sexual exploitation. Children exploited in criminal activities, continue to be the largest groups referred to the NRM. Referrals are not evenly distributed across the UK. Clear and distinct definitions, accurate data, comprehensive victim support, and effective law enforcement are essential for effectively combating HT.

3. The international legal response to human trafficking

3.1 Introduction

HT is recognized under international law as a serious human rights violation and is required to be criminalised. There are numerous fundamental international legal instruments universally and regionally that define, prevent and prosecute HT while imposing obligations upon member states to adopt anti- trafficking measures to establish HT as a criminal offence. Identifying such international and European legal instruments addressing HT is essential to effectively identify the gaps within the UK domestic system. Therefore, this chapter outlines the international and European legal framework on HT and MS. This will be accomplished firstly, by identifying key international and European instruments with specific provisions and assessing the United Nation's contribution; secondly, by exploring the definitions and distinctions between HT, MS, and Human Smuggling; and thirdly, by exploring the key obligations imposed upon member states under international law and assessing its capability to drive a change in the domestic law. Accordingly, it is attempted to conclude this chapter by outlining how the global legal framework has been implemented, whether it has effectively enhanced international cooperation in tackling this issue, its impact on law enforcement, and whether it has genuinely helped to prevent and control HT by placing more emphasis on Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo protocol) which is accepted as the leading instrument relating to HT among others.

3.2 International instruments and mechanisms addressing HT

3.2.1 Palermo protocol¹⁷

Palermo protocol provides the most frequently referenced, internationally recognized and agreed upon definition of HT among international instruments. This protocol highlights the absence of a prior universal instrument that comprehensively addressed all aspects of HT.¹⁷ Roger states that this protocol was created during a time of deregulation, weakened social protection, mass migration, and conflicting economic and border policies, leading to increased trafficking through shady labour brokers and recruitment agencies and thus, the protocol should be explored in that light.¹⁸ Along with that, it is mandatory to investigate whether this protocol has offered an accurate legal definition for HT avoiding previous defects.

This protocol was adopted in 2000 by the United Nations along with two more protocols¹⁹ supplementing the United Nations Convention against Transnational Organized Crime (UNTOC). It is not intended to operate as an independent entity; rather, it is required for states to first ratify the UNTOC and subsequently the protocol.²⁰ As of October 2023, 192 state parties have ratified the UNTOC²¹ and as of 2020, 178 states parties have ratified the Palermo protocol.²² The UK is a party to both. United Nations Office on Drugs and Crime (UNODC) monitors the implementation of the Palermo protocol and publishes toolkits, reports on global trends and responses acting as a guardian.

The Palermo protocol directs to promote international cooperation among state parties to prevent HT while protecting and assisting its victims.²³ Article 5 of the Palermo protocol imposes an obligation upon states to criminalize the offence of trafficking by laying the foundation for a criminalization approach. Article 2 and the preamble stress the need for a comprehensive international approach to combat trafficking, protect victims' rights, and address all aspects of HT, especially for women and children. It speaks about protection of identity and securing privacy of victims by states.²³ Article 3(a) presents the definition of HT, and it indicates three elements of this offence as follows:

Acts: "recruitment", "transportation", "transfer", "harbouring" or "receipt"

Means: "threat", "use of force", "coercion", "abduction", "fraud", "deception", "abuse of power", "abuse of vulnerability", "giving or receiving of payments or benefits" to achieve the consent of a person having control over another person

Purpose- "exploitation" ("exploitation of prostitution of others", "other forms of sexual exploitation", "forced labour or services", "slavery or practices similar to slavery", "servitude or the removal of human organs")

When any one or more of the elements from each of the above elements were experienced by a victim, he/she is considered to be trafficked.²⁴ In case of the involvement of child, the means become immaterial as per the protocol.²⁵ Article 3(b) states that the consent is not considered as a valid factor, if traffickers used any of the methods described in Article 3(a), such as coercion, deception, or abuse of power. Thus, this protocol says that a person can be a victim even if they consented to the exploitation.

As HT is a transnational crime, all member states must establish a mutual understanding of their legal regulations to prevent conflicts.²⁶ As pointed out earlier, the Palermo protocol has defined HT as a criminal offence based on a criminalization approach converting victims into defendants. It also prioritizes victim protection and assistance and highlights that victims are vulnerable who need support. Hence, states are encouraged to provide victims with access to medical care, legal remedies and social services⁴⁷ based on a

human right based approach. However, although this protocol was elaborated with the aim of establishing an internationally unanimous definition, that definition is complex. Its complexity has created an ambiguity and challenges in implementation and enforcement in domestic and international levels. For instance, for an act to constitute the offense of HT as per this definition, its purpose must be “exploitation”, which can be interpreted in multiple ways rather than the ways explained in Article 3(a). Roger presents this opinion in other words, suggesting that exploitation can occur even when someone is treated unfairly.⁴⁸ However, this is the most influential definition of HT according to Haverkamp.²⁸ In contrast, Natalia Ollus points out that this definition and its application in the current context may not fully align with contemporary understanding and perspectives of this global issue.²⁹

This protocol has tented much emphasis predominantly on women and children and failed to notice male victims and other marginalized groups. Regarding some of the provisions on victim protection, the language of the protocol lacks demanding and compulsory obligations. For instance, about allowing victims to remain in receiving countries, the protocol implies discretionary liability on states.³⁰ Another fundamental right for all victims is repatriation which creates the risk of retribution or re-trafficking due to returning to an environment where they were initially exploited and where protective measures may be inadequate. Therefore, the collaboration between the receiving state and the state of origin is crucial to ensure the safe return of victims to their homeland, without the fear of reprisal or re-trafficking. In this regard, situations such as granting legal status to irregular migrants is important to encourage effective cooperation with relevant legislative agencies, as exemplified by the Lyudmila Dzhygun case³¹, in the UK involved HT matter. More about this protocol is further analysed, along with the Modern Slavery Act, in the next chapter.

3.2.2 Other international instruments taking a human right approach

As stated above, the Palermo protocol redefines the emphasis from the victims of HT to the perpetrators, highlighting the exploitation of women and children by traffickers.³² As argued by McAdam to determine if HT is a breach of human rights, the circumstances of a given trafficking situation must be analyzed whether the exploitative objective and the techniques employed to achieve it violate specific rights.³³ The Universal Declaration of Human Rights (UDHR) embarks everyone is born free, equal in rights and dignity assuring their right to life, freedom and security³⁴ while prohibiting servitude and slavery.³⁴

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) sets out the legal obligation for member states to make laws and take action to stop trafficking and the exploitation of women in prostitution.³⁵ This obligation imposed under article 6 “be read as an indivisible provision, which links trafficking and sexual exploitation.”³⁶ It has been identified by the CEDAW Committee that trafficking is a form of gender-based violence.³⁷ United Nations General Assembly has provided further confirmation for this gender-based acceptance by their resolution adopted in 2005 declaring the same idea.³⁸ In addition to prohibiting discrimination, CEDAW mandates that states must take “appropriate measures to eliminate discrimination against women, including gender-based violence, whether by public or private acts.”³⁹ General Recommendation No. 38 states that the UK has several legal and international commitments to reduce the demand that leads to trafficking for sexual exploitation. It highlights that restrictive migration and asylum policies increase the vulnerability of smuggled women and girls to trafficking by forcing migrants to take irregular and unsafe routes. In the realm of international human rights law, individuals who have been trafficked are recognized as refugees, granting them rightful entitlement to various protections.⁴⁰ The recent CEDAW UK Country Report, which provides a comprehensive view of the UK's efforts and progress in promoting HT in alignment with CEDAW's objectives, will be reviewed in the next chapter.

The Convention on the Rights of the Child (CRC) expressly mandates states to safeguard children from “all forms of sexual exploitation and abuse.”⁴¹ Recruiting and transporting a child for prostitution, as well as subsequently controlling that child's involvement in prostitution, is a violation that almost universally contravenes both legal statutes and moral norms.⁴² The CRC confirms that the “best interest of children” must be the preliminary principle of all actions taken regarding children.⁴³ The rights of children outlined in the CRC are considered universal and are supported by the principles of non-discrimination and the best interests of the child.⁴⁴ Article 39 indicates state parties’ obligation to protect children from neglect, exploitation or abuse. The International Convention on Civil and Political Rights (ICCPR) also prohibits slavery, servitude and forced labour.⁴⁵ Article 11 of the ICCPR prohibits imprisoning someone just because they can't fulfil a contract, which supports anti-HT efforts by upholding the principle of freedom from forced labour and exploitation. The UK, as a party to the above-mentioned international instruments, is legally obligated to incorporate these global standards into its domestic law and ensure compliance with their provisions.

3.2.3 European instruments

The European legal framework on HT is strong and comprehensive, concentrating on prevention, protection, and prosecution. It combines Council of Europe Conventions, European Union Directives, national action plans, and mechanisms for cross-border cooperation developed by the European Union (EU) and the Council of Europe.

Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)⁴⁶ is a broad treaty dedicated to preventing HT, protect victims' rights, and prosecute traffickers.⁴⁶ This convention covers all types of trafficking, both within and across borders, whether connected to organized crime or not, and without regard to victim's gender or age. It addresses multiple forms of exploitation, such as "sexual exploitation" and "forced labour". An independent monitoring group, known as GRETA, is established by the convention to ensure that the parties adhere to its provisions.⁴⁷ As of 1st January 2024, the UK is no longer a member of the EU. However, the CETS No. 197 still applies to the UK and is bound by that. Because UK remains a ratified party and has not withdrawn from its obligations under it. This extensive treaty aims to protect trafficking victims and prosecute traffickers promoting international cooperation. Furthermore, this convention sets standards for victim assistance, recovery, and reintegration, while also emphasizing the importance of monitoring and evaluating implementation.

The Directive 2011/36/EU is significant piece of legislation within the European Union's legal framework for addressing HT which adopts "an integrated, holistic, and human rights approach to the fight against trafficking".⁴⁸ This was adopted on 5th April 2011 and revises the previous Council Framework Decision 2002/629/JHA.⁴⁸ It highlights that the law enforcement authorities in the member states should continue to collaborate to strengthen the fight against HT.⁴⁸ This directive provides a broad definition that includes pick-pocketing, shop-lifting, drug trafficking, illegal adoption or forced marriage and the removal of organs and other similar activities.⁴⁸

The EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016) was a comprehensive policy instrument that was built upon the Directive 2011/36/EU. It highlights key priorities as identification, protection and assisting victims, stepping up prevention, prosecution and law enforcement, partnerships and cooperation among member states, organizations and civil society and gender-specific approach.⁴⁹ As of today, another EU strategy is being implemented to combat HT.

Organizations such as Europol and INTERPOL contribute significant roles in combating HT collaborate with Frontex. INTERPOL operates globally while Europol aims law enforcement within the EU contributing to combat HT with the intention of enhancing international cooperation.⁵⁰

3.3 United Nation's role

The United Nations (UN) has formulated frameworks and obligations for states including the UK to combat HT. The key instruments and initiative include the UNTOC and its protocols which discussed above, resolutions and action plans. The UN Global Plan of Action to Combat Trafficking in Persons, adopted in 2010, aims to prosecute perpetrators, protect victims, and collaborate with states to prevent HT.⁵¹ This global plan has achieved significant milestones, such as conducting research and collecting data that "provides the backbone of the international community's response to trafficking in persons"⁵², holding a high-level appraisal in 2021 regarding the plan's implementation progress⁵³ and regularly releasing global reports. However, the plan faces key challenges in its implementation, including variability in states' responses, the use of technology in HT, and the difficulty in collecting evidence of hidden cases. These challenges need to be addressed to enhance the plan's effectiveness. Furthermore, several UN Sustainable Development Goals, such as "Goal 5 - Gender Equality," "Goal 8 - Decent Work and Economic Growth," and "Goal 16 - Peace, Justice, and Strong Institutions," address this issue.⁵⁴ Target 16.2 focuses on ending abuse, exploitation, trafficking, and all forms of violence against and torture of children.⁵⁴

3.3.1 Special Rapporteur's role

Furthermore, the role of the UN Special Rapporteur must be appreciated. The Special Rapporteur is "the only exclusively focused international human rights mechanism" to combat this issue.⁵⁴ They collaborate with policy forums, civil society, and analyse legal provisions worldwide to address this issue effectively by acting against violations. The Special Rapporteur conducts country visits, formulates recommendations through experts' opinions, and submits annual reports to the UN Human Rights Council and General Assembly, raising awareness about HT. Its importance lies in being an independent expert with a global mandate. The Special Rapporteur's reports could expand awareness and promote effective, sustainable solutions to HT. Two months ago, UN reporters have urged the UK to enhance its management of labour migration by adopting stricter policies and protections⁵⁵. They highlight the need to prevent fraud, improve victim identification and support, and combat labour trafficking, while ensuring the UK upholds its international human rights commitments. However, these reports do not have the force of law and are not legally binding on member states like the UK. Nevertheless, they can influence national legislation and practices through advocacy, public pressure, and engagement with international human rights mechanisms. This research found that while Special Rapporteur reports have the

potential to influence laws and policies, there is little clear evidence that the UK has directly acted on them. Instead, their impact is primarily observed in raising awareness, stimulating public discussions, and contributing to gradual policy changes over time.

3.4 Clarifying the distinctions between human trafficking, modern slavery, and human smuggling

Understanding HT is complicated because it overlaps with MS and smuggling. They intersect but have distinct meanings. Thus, it is essential to investigate the differences and the relationship between the above terms. MS is used as an umbrella term that shields numerous different forms of exploitation such as “HT”, “forced labour”, “debt bondage”, “descent-based slavery”, “child slavery”, “forced and early marriage” and “domestic servitude.”⁸⁵ The ONS states that there are five types of exploitation that a MS victim may face: “labour,” “sexual,” “criminal,” “domestic servitude,” and “organ harvesting.”⁵⁷ Hence MS covers all forms of exploitation, while HT specifically focuses on facilitating travel/moment of an individual with the intention of exploiting them. For the purpose of global estimates MS comprises “forced labour” and “forced marriage”.⁵⁸ Thus, MS encompasses a wide scope and, HT is a one way of MS as defined by Article 3 (a) of the Palermo protocol.

According to the Forced Labour Convention 1930, forced labour encompasses “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Slavery is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Smuggling is accepted as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident”.⁵⁹

According to Bakirci, there is a misconception of trafficking that it commences by transporting people for sale over political and geographical boundaries.⁶⁰ However, as in human smuggling trafficking in person does not necessarily require any transportation.⁶⁰ In contrast, Section 2 of the Modern Slavery Act 2015 defines HT with reference to “travel” as the key element. Furthermore, the consent of victims is also not relevant in trafficking in case any exploitative means have been established as confirmed by Article 3 (b) of the protocol. In case of trafficking or smuggling initial consent is often given in many situations.⁶¹ However, the actual situations of the consented victims may be very different from the agreed situation.⁶¹ Specifically, the freedom or consent is difficult when the choice is made for exploitative sex working.⁶¹ The distinction between HT and smuggling can be illustrated in the following table.

HT	Smuggling
Happens across borders or within a country	Always involves crossing borders illegally
Victims might think they're moving legally before being exploited	Smuggled migrants usually know they're being transported illegally
Trafficking often involves the contrary of pure consent. However, the consent becomes legally irrelevant when the trafficker starts using threats, coercion, deception or fraud in order to exploit the victim.	Smuggled individuals usually consent to transportation and his main intention is to cross borders illegally
Exploitation occurs after reaching the destination.	Smuggled migrant fully aware of what is going on from the initial stage.
Victims may see traffickers in a negative light after being exploited.	Smuggled migrants often see smugglers as helpful.
The central element is exploitation, and this is a crime against individual.	This is a crime against state

However, there are instances that begin as smuggling and thereafter, can turn into trafficking creating an intersection in above definitions causing ambiguity. Thus, international law is still not perfectly sufficient to define such instances under the current framework. These unclear situations need extra attention from local authorities in destination countries and all mechanisms must be well-trained and attentive to properly assess every scenario.

3.5 Transforming domestic laws through international mandates

Do states have a mandatory obligation to uphold international legal standards? When exploring the answer to that question, it was revealed that, beyond Articles 27 and 46 of the Vienna Convention, neither the Vienna Convention nor any other international legal mandates ensuring national laws are in line with international treaties. Therefore,

while the principle of “Pacta sunt servanda”⁹⁶ is acknowledged, each country essentially retains the autonomy to determine its approach to implementing international obligations domestically.

States adopt various approaches to integrate international law, often situating themselves along a spectrum between monism and dualism. Monism asserts that national and international legal systems forms a unity, and international law automatically incorporated into the national legal system.⁶³ Dualism distinguishes between international and national laws as distinct spheres and it includes elements such as international law does not automatically become domestic law unless explicitly enacted, individuals cannot rely on international law for rights unless it has been formally integrated into domestic legislation and in cases of conflict between domestic and international law, domestic law takes precedence, and international law yields.⁶³

When evaluating how international law influences national legal systems, it is evident that countries like Argentina⁶⁴, France⁶⁹, Mexico⁷⁰ have elevated the status of international law within their constitutions, granting it superior authority over national laws. South African Constitution upholds the validity of customary international law⁶⁷ and ensures that the judiciary should follow reasonable interpretation align with international law.⁶⁷ In numerous countries, national courts serve as intermediaries and guardians in ensuring that international obligations are upheld at the domestic level through the process of interpretation.

UK is considered as a dualist country and international treaties do not automatically become part of UK law upon ratification. However, the most effective way to determine the effectiveness of an international legal framework is by evaluating its implementation rather than adoption. Countries also have different challenges in dealing with issues like immigration and smuggling. For an illustration, some countries depend on the money their citizens working abroad send back home, but they also have to deal with pressure from other countries to stop illegal immigration. Recently, some countries have been teaming up to control their borders better, like the EU working with other countries to stop migrants from coming in. However, this can create conflicting situations, where countries claim to protect asylum seekers but simultaneously try to prevent them from entering.

The implementation of the global framework for HT involves more intense approach requiring strong legislation, international cooperation, victim protection, joint operations, intelligence sharing between countries and consistent monitoring. Coordinated efforts in the EU through Europol must be appreciated in this regard. More continuous efforts to harmonize laws, enhance cross-border collaboration, and adopt victim-cantered approaches are essential for advancing the global fight against HT. However, factors such as variations in adoption of international law, lack of a direct and common mechanism to measure enforceability throughout the world, political opinions, cultures, and concerns about sovereignty had made it hard for countries to cooperate on matters such as HT creating challenges. Additionally, as pointed out earlier, states are not obliged to duplicate the entire text and provisions of the protocol into their national legislation⁶⁷ or it does not directly impose obligations on national constitutions, rather it builds countries in creating anti-trafficking laws align with global standards granting discretionary powers. However, states must understand the purpose of the above-mentioned instruments when they exercise their discretionary power.⁶⁸ There are still instances where state policies themselves have led to the creation of such issues within their own countries. For instance, Turkmenistan has alleged for forced labour in state own harvesting industry.⁶⁹ Steps must be taken to stop these issues, and definitions must be updated to clearly identify each term, ensuring effective enforcement strategies.

When answering the question of whether the current approach has effectively reduced HT? there's little evidence to suggest it has. In fact, there's a significant increase in HT cases. Criminalizing and prosecuting traffickers doesn't seem to deter them. Understanding why these measures haven't worked is essential. Still the state parties to the convention and its protocols haven't agreed on a way to hold each other accountable for their efforts. This lack of accountability suggests a failure in the international legal framework. Furthermore, the convention's significance may decline without a proper review system. The key objectives of the protocol are to punish traffickers, protect victims and their internationally recognized human right.⁷⁰ Therefore, the primary duty of the state must be in line with the protocol despite the content of their domestic legislations and revenue-based agendas. “Does UK legal framework comply with these international standards?” will be analysed in the next chapter.

3.6 Conclusion

International law provides a considerable foundation for combating HT, offering definitions, standards, and frameworks for cooperation and victim protection. However, its effectiveness is often undermined by challenges in implementation, resource constraints, and the complex nature of HT. Continuous efforts to strengthen international cooperation, enhance enforcement mechanisms, and adopt comprehensive, victim-centred approaches are essential for making significant progress in the fight against HT. International law, while influential in a unique and indirect way, is often seen as a law without a sword. Consequently, it cannot function independently. It relies on national laws to fill in gaps and address shortcomings. For both international and national laws to develop and be sustained, they must support each other, with each contributing to the growth and effectiveness of the other. Otherwise, all attempts to update international law to tackle this issue will be in vain.

4. Combating human trafficking in the United Kingdom: A critical analysis of legal framework and judicial approaches

4.1 Introduction

In the UK, laws against HT aim to stop exploitation. But their success depends on effective enforcement and the determination of the courts to address this issue. The main purpose of this chapter is to examine the effectiveness of the UK laws and strategies in combating HT. This will be accomplished first by assessing the effectiveness of the UK legislative framework, specifically focusing on the Modern Slavery Act 2015 and evaluating its strengths and weaknesses. Second, by analysing gaps in implementation, enforcement, victim protection, and support, and investigating to what extent they comply with international standards. Third, by exploring the judicial approach to victims to understand trends in judicial attitudes. This analysis will be conducted from the perspective of the victims. This approach is chosen to ensure the current UK framework genuinely benefit and protect victims, highlighting their real impact and identifying areas for enhancement. Accordingly, this chapter aims to demonstrate the need for continuous evaluation and adaptation of legal and judicial approaches to effectively address the evolving challenges of HT in the UK.

4.2 The United Kingdom's legislative response to human trafficking

The UK has enacted several acts to combat MS and HT: the Modern Slavery Act 2015 (hereinafter referred to as MS Act) in England and Wales, the Human Trafficking and Exploitation (Scotland) Act 2015, and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. While these acts all aim to fight against MS and HT, each one has different rules and approaches suited to their specific regions. This project specifically concentrates on the MS Act due to the word count limitations of this research.

4.2.1 The Modern Slavery Act 2015: A critical review

Agnes Simic and Brad Blitz state that the UK MS Act is celebrated as the first law of its kind in Europe and one of the first globally to specifically tackle MS.⁷¹ Hence, its framework and implications need to be carefully examined.

This Act describes HT for the purposes of “exploitation”.⁷² When reading all sections collectively, the Act aims to prevent MS and HT, protect and support victims, and ensure that perpetrators are effectively prosecuted. However, since the Act was enacted, there has been increasing recognition of more forms of exploitation that fall under MS, such as “orphanage trafficking” and “county lines”. Therefore, it's important to explore whether the Act's definition of “exploitation” can cover all those new types of MS and HT.

This Act's definition includes “slavery”, “servitude”, “forced labour”, and other types of exploitation, providing a broad framework to capture different trafficking scenarios.⁷² Section 2(1) defines HT with reference to “travel” as a key element. This has made it easier to prosecute cases where “movement” is a clear element to prove. However, neither any international convention nor instrument defines HT with reference to “travel”, raising the question of whether the UK is truly aligning with international obligations.

As revealed in the 2nd chapter, by the end of 2023, the number of child victims of criminal exploitation had more than doubled compared to adult victims of criminal exploitation in the UK. However, this Act does not provide an official legal definition of “child criminal exploitation” which leads to varied interpretations of this crime. “A statutory definition of “child criminal exploitation” would be the start of improving the child protection and criminal justice response to this form of exploitation”.⁷³ Thus the lack of such official legal definition results in inconsistent prosecution and protection of exploited children, potentially leading to continued criminalization of victims and inadequate legal responses to exploiters in the future.

In the UK, businesses that “supply goods or services” [and have] “a total turnover of not less than an amount prescribed by regulations made by the Secretary of State” are required to publish an annual statement detailing the actions they have taken to combat HT and MS within their operations.⁷⁴ However, the exact criteria used by the Secretary of State to determine the total turnover are not mentioned in the Act. This suggests that this Act grants discretionary powers for the Home Secretary. The Chartered Institute of Procurement and Supply found that 29% of companies required to report on MS, have not submitted their statements in 2022.⁷⁵ Additionally, in 2023, the number of submitted statements dropped by 46% compared to 2022.⁷³ This represents that businesses are not prioritizing or may be neglecting their reporting duties. The only remedy granted by the Act is obtaining an injunction against those companies.⁷⁶ However, this research revealed that as of now there have been no penalties or injunctions imposed on non-compliant companies or poor reporting companies. Furthermore, Section 54 (5) of the Act states that those reports “may include” certain information, making it clear that the inclusion of these details is not mandatory and grants companies discretionary powers. The lack of a mechanism to monitor those statements also depicts a significant gap. Additionally, companies that discover HT in their

supply chains often simply stop doing business with those suppliers instead of addressing and fixing those issues. This can leave the exploited people in an even worse situation.

The creation of the “Independent Anti-Slavery Commissioner” under Section 40 of the MS Act is an important step forward in promoting effective practices to combat HT and identify victims. There are concerns that since the Home Secretary appoints the Commissioner, this could influence the role's independence through Home Office officials and potentially affect the perceived credibility and transparency of the Commissioner's work. This might complicate coordination and impact the effectiveness of the Commissioner's work.⁷⁵ The only restriction imposed on his powers is related to individual cases under Section 44(1), subject to Section 44(2). Thus, appointing the Commissioner by an independent authority could enhance independence and minimize potential bias. The Independent Anti-Slavery Commissioner is required to present an annual report to Parliament under Section 42 (10) (b). However, the latest available report is from 2021-2022⁷⁶, with no reports yet for 2023 or 2024. Further, this research found that this role remained unfilled for a long time and was only recently appointed again after a long delay. As per the 2021- 2022 report, the Commissioner's strategy focuses on improving victim support, prevention, law enforcement, and leveraging research and innovation.⁷⁶ However, although this strategy identifies “the challenge of online child sexual exploitation,”⁷⁶ it does not specifically address reducing the demand for sexual exploitation yet. This is a significant oversight, as it fails to meet obligations to reduce the demand for sexual exploitation under the Palermo Protocol, CEDAW, and its Recommendation No. 38. The 2023-24-House of Commons report also stresses this as a gap.⁷⁷

Section 45 of the MS Act introduces a statutory defence for victims of HT who are compelled to commit criminal offences as a direct consequence of their exploitation. This aligns with the “non-punishment principle” which advises that trafficked victims should not be punished for offenses they were compelled to commit. This ensures that victims are treated as such rather than as offenders based on a human rights-based approach. However, this research revealed that victims of HT in the UK are still being prosecuted for crimes they were forced to commit, which contradicts Section 45.⁷⁷ However, the burden of proof under Section 45 has been clearly interpreted in cases which are discussed below. GRETA also represents that prosecuting victims violates the state's duty to help them and discourages them from assisting in investigations against traffickers.

Due to its complexity, it is not possible to analyse the entire Act within this word limit, so this analysis is focused on some selected sections only. This Act demonstrates both characteristics of a human rights-based approach and a criminalization approach, as revealed by the sections discussed above. It has made important strides in tackling HT, but its impact is limited by issues in how it is put into practice and how it supports victims. Reforms are needed to address these problems and better meet international standards.

4.3 Assessing gaps and compliance with international standards

There are many illustrations to prove that the MS Act explicitly references the Palermo Protocol.

Section 2 of the MS Act criminalizes the arrangement or facilitation of travel for another person with a view to them being exploited. It covers the “recruitment, transportation, transfer, harbouring, or receipt of persons” as outlined in the Article 3 of the Palermo protocol. Section 3 is directly in line with the forms of exploitation described in the Article 3 of the protocol. Section 5 mirrors the Article 3 in the Palermo Protocol that the consent of a victim is irrelevant where coercive means have been used. Section 2 and 5 criminalize the conduct of HT by imposing liability to imprisonment for life. This criminalization approach aligns with Article 5 of the protocol. Section 40 supports the aims of Article 9 by creating an “Independent Anti-Slavery Commissioner's role” to focus on improving victim support and protection, helping to meet the objectives of preventing trafficking and safeguarding victims.

The approach of Article 6 of the protocol has influenced Section 45 regarding the statutory defence for victims. Section 48, regarding the “Independent Child Trafficking Advocates”, addresses the special needs of child victims as outlined in Article 6(4) of the protocol.

Currently, the UK sees HT mainly as immigration problems, which means they think of them as crimes against the country.⁷⁷ This represents a human rights-based approach, as it prioritizes the protection and support of victims over penalizing them for immigration-related issues. Caroline Haughey states that the UK won't make real progress in fighting against MS and HT until it changes this perspective.⁷⁷ Thus, Haughey argues that instead, they should see these as crimes of exploitation, which are harms done to individuals. By shifting this viewpoint, the government can better address and combat the exploitation and abuse involved in HT.

The recent report from the “UN's Universal Periodic Review (UPR) of the UK- 4th cycle” highlights the necessity for the UK to protect migrant workers from exploitation and abuse.⁷⁸ It criticizes recent UK policies, including increased immigration fees and the “Illegal Migration Act”, for potentially increasing the vulnerability of migrant workers to exploitation. This represents significant gaps in the UK's efforts to combat HT and safeguard vulnerable people.

A report commissioned by the Council of Europe, published in September 2023, concludes that parts of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 violate the UK's obligation to protect trafficked people from being punished for crimes they were forced to commit.

Paying for sex with someone who has been forced is a strict liability offence in England and Wales under Section 53A of the Sexual Offences Act 2003. However, between 2013 and 2020, there have only been three convictions.⁷⁹ The low number of convictions and small penalties have made it less likely for police to pursue offenders and reduce the perceived seriousness of this crime. This allows the exploitation to continue and weakens the effectiveness of anti-trafficking strategies. Increasing the penalties and securing more convictions are very important, and the UK is required by international law to take these actions.

The UK has only 0.29 labour inspectors for every 10,000 workers, which is less than a third of the number needed to meet the International Labour Organisation's (ILO) recommended standard of one inspector per 10,000 workers.⁸⁰ This has led the UK to be ranked 27th out of 33 OECD countries.⁸⁰

This research found that the most recent country report submitted by the UK to the CEDAW Committee is the UK's eighth periodic report.⁸¹ The Committee appreciates the "MS Act", "Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland)", and the "Human Trafficking and Exploitation (Scotland) Act" which criminalize these offenses.⁸² However, it criticizes the MS Act's reliance on a travel-based definition of trafficking. Despite ongoing improvements to the NRM, the Committee remains concerned that many trafficking and slavery victims are still not being identified, and the support provided is insufficient, exposing victims to homelessness, destitution, and further exploitation.⁸²

The UK government rehabilitates victims of HT primarily through the NRM. Once identified, victims receive immediate protection and support, including safe housing, medical care, and counselling as outlined by the Article 6 of the Palermo protocol. The government works with NGOs and charities to provide personalized services. They also offer legal help and programs for education and job training to help victims reintegrate into society. But, once they leave, the support is inconsistent and needs to be improved.⁸³ While the NRM is essential in rehabilitating and tackling HT in the UK, it faces criticism for "inadequate support"⁸⁴, "lengthy decision-making processes"⁸⁴, and its close ties to immigration control, which can deter victims from seeking help. Additionally, the NRM has been criticized for not adequately addressing the specific needs of child victims, leaving them vulnerable. These issues highlight the need for reforms to improve how it helps all victims.

The MS Act provides a solid foundation for combating HT but may not fully address "online exploitation" due to its emphasis on physical and labour-related aspects of HT, while digital exploitation presents unique challenges such as anonymous perpetrators and global reach. Additionally, the rapid pace of technological advancement and the complexities of online platforms often outpace the Act's provisions, necessitating supplementary legal and technological strategies to effectively combat online abuse.

GRETA's Third Evaluation Report on the UK also points out the need to better identify trafficking victims, provide more legal and psychological help, and increase the number of traffickers convicted.⁸⁵

International law has significantly influenced and shaped UK law regarding HT. For instance, the Palermo protocol's comprehensive framework for addressing HT through prevention, protection, and prosecution has been mirrored in the UK's MS Act. This Act incorporates many of the Palermo protocol's provisions, emphasizing victim protection and strong legal measures against traffickers. Additionally, the Council of Europe Convention on Action against Trafficking in Human Beings has significantly influenced UK legislation by promoting a human rights-based approach to combating HT. The UK's adoption of the MS Act reflects the convention's focus on victim support and protection, such as the provision of assistance and support to victims, including access to accommodation, medical treatment, and psychological support. The convention's emphasis on cooperation and coordination between states has also reinforced the UK's efforts in international collaboration to tackle trafficking. Further, this Act has been influenced by the UN Special Rapporteur's concerns, showing how international recommendations can lead to changes in UK law. Furthermore, the European Union Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims has been crucial in shaping UK policies on HT before Brexit. Even post-Brexit, the principles of the directive continue to influence the UK's legislative framework and practices in combating HT. The MS Act incorporated key aspects of the directive, such as measures to enhance the protection and support for victims, and provisions to ensure that traffickers are prosecuted effectively as discussed in the previous chapter.

4.4 The role of judiciary in combating human trafficking

Following extensive research, a selection of cases was made to examine how UK courts approach human trafficking.

The possibility of misusing the legal defence indicated in Section 45 by criminals rather than victims was critically clarified by judicial interpretation in *MK v R*.⁸⁶ This judgment ensures justice for victims by providing critical clarification. In this case, the appellants sought to rely on the statutory defence in Section 45. The court decided that the person seeking the defence only needed to show some evidence that they might be a trafficking victim. If they succeed, the prosecutor must disprove the inapplicability of this defence beyond a reasonable doubt. This judgment helps genuine trafficking victims by making it easier for them to use statutory defence, ensuring they get justice and protection. In contrast, it may create challenges for prosecutors, as they must disprove the applicability of this defence beyond a reasonable doubt, potentially making it easier for some defendants to misuse the defence. The basis for this judgment is a human rights-based approach, as it prioritizes protecting and ensuring justice for vulnerable trafficking victims over criminalization.

*R v K, W, A*⁸⁷ is another landmark judgment that clarified the interpretation of the law regarding the exploitation of children in drug trafficking and the legal protections for vulnerable children under the MS Act. Its significance lies in the court's categorical statement that exploiting children for drug trafficking is illegal, even if the children consent to participate. When delivering the judgment, the court has based on a human rights approach, as it emphasizes the protection of vulnerable children from exploitation regardless of their consent. This approach prioritizes safeguarding the rights and welfare of children over merely criminalizing the act. Further, by highlighting that exploitation is illegal regardless of consent, the judgment supports efforts to safeguard children who are often at higher risk of exploitation in such scenarios.

The case *R v. Josephine Iyamu*⁸⁸ is a landmark case in the UK that illustrates the gender-based approach taken by courts to safeguard women's rights in the context of HT. Iyamu was convicted of trafficking five Nigerian women to Germany for prostitution, using voodoo rituals to control and intimidate her victims, and was sentenced to 14 years in prison. The judgment aligns with CEDAW's principles, ensuring that trafficked women are treated as victims rather than criminals. The court has followed human rights-based approach, recognizing the severe exploitation and control methods used against the victims.

HT often involves exploiting vulnerable individuals, including those with cognitive impairments. The *Re JB*⁸⁹ case is significant because it sets a precedent for how the law interprets consent and capacity, particularly for those with cognitive impairments. The case emphasizes that everyone, including those with cognitive impairments, must understand that both people need to agree to any sexual activity, which helps protect vulnerable people from being forced into sexual activities without their agreement. The court in *Re JB* adopted a human rights-based approach, emphasizing the need to protect the autonomy and dignity of individuals with cognitive impairments. This approach ensures that vulnerable individuals are safeguarded from exploitation by requiring a clear and mutual understanding of consent in any sexual activity.

The *R v AFU*⁸⁹ case emphasizes that people who are forced into committing crimes because they were trafficked are treated as victims, not criminals, in the UK. AFU, a Vietnamese man, was trafficked to the UK and forced to work in a cannabis farm, and he sought defence under Section 45 of the MS Act. The court delivered its judgment based on a human rights-based approach, recognizing that trafficked individuals forced into criminal activities are victims rather than offenders. This approach underscores the importance of identifying victims of HT when there is a credible defence and the legal protection under Section 45. Further, this decision indicates that the UK aligns with international human rights standards and conventions aimed at safeguarding the rights of trafficking victims. This case specifically shows that prosecutors must thoroughly investigate the trafficking circumstances in each case.

*ADG and Another*⁹⁰ emphasizes the need to better protect children who are victims of exploitation. In this case, the appellants were under 18 and were exploited by older individuals to sell drugs. They pleaded the defence under Section 45. The trial judge incorrectly held that the boys needed to prove they were forced, which is not actually required for minors under the Act. The Court of Appeal recognized this mistake and overturned their convictions. This decision is crucial as it corrects a legal error and ensures justice for the exploited minors. The basis for this judgment is a human rights approach, emphasizing the protection and proper treatment of child victims of exploitation, aligning with both national legislation and international standards.

By consistently adopting a human rights-based approach rather than a criminalization approach, the courts emphasize protecting victims of HT rather than treating them as offenders. This approach aligns with international standards and underscores the need for victim-centred reforms. In the future, this focus may lead to stronger support systems and more effective prevention strategies, but it also highlights the ongoing challenge of balancing justice for victims with holding traffickers accountable.

4.5 Conclusion

The MS Act has made significant strides in addressing HT and MS by offering broad protections and introducing a statutory defence for victims, combining criminalization and human rights-based approaches. UK courts have increasingly adopted a human rights-based approach in their interpretation. However, there are significant gaps, including unclear definitions and inadequate enforcement, that limit the Act's impact. Criticism has also been directed

at the UK's alignment with international standards, especially regarding victim support and online exploitation. To strengthen its response, the UK needs to address these issues and better align its practices with global expectations.

5. Conclusions and Recommendations

5.1 Conclusions

This research delves into the topic of the effectiveness of UK legislation in eradicating HT. After a critical analysis of the legal framework addressing HT, the judicial role, and relevant literature, this research has proven that many areas still need to be changed and reformed to achieve full effectiveness. The UK legal framework does not fully coincide with, align with, or comply with all international obligations imposed upon it. The current legal framework, including the MS Act, has made significant strides in addressing HT but suffers from significant gaps in enforcement and clarity. Alignment with international standards, especially in victim protection and online exploitation, remains inadequate, limiting the overall effectiveness of these laws. Exploring the UK government's anti-trafficking strategy reveals that while there is a unified approach, its effectiveness has been questioned due to inconsistent implementation and limited success in reducing trafficking cases. Current laws in the UK, while strong in prosecuting trafficking offenses, often inadequately address the socio-economic factors and systemic vulnerabilities, such as poverty and lack of education, that contribute to HT, limiting their overall effectiveness. To enhance its response, the identification of the real number of victims should be reformed to ascertain even dark figures, as accurate data is essential for effectively solving the issue. Furthermore, the UK must refine definitions, improve enforcement mechanisms, and ensure better integration with global expectations.

It is encouraging that some gaps in the legal framework have been correctly interpreted by courts using a balanced approach rather than relying solely on literal interpretation. International law helps improve the UK's domestic legal system by identifying legislative gaps and offering best practices for addressing issues like HT; however, because the UK follows a dualist approach, these international standards must be explicitly incorporated into domestic law through legislation, which can delay necessary reforms and create inconsistencies in the application of protections, potentially undermining the effectiveness of legal frameworks and exacerbating existing issues. Finally, although the UK has been recognized as a Tier 1 country, certain lacunae and gaps within the current framework as identified by this project present a paradox that must be addressed. Therefore, adopting a balanced approach that combines criminalization with human rights considerations can achieve greater effectiveness.

5.2 Recommendations

After arriving at the above conclusions, the following recommendations are suggested.

The UK can improve its laws on "sexual exploitation" by adopting a more holistic approach like Sweden, Norway, France, Canada, and Ireland, which focus on reducing demand by criminalizing buyers and providing extensive support for victims. These countries also enforce their laws more effectively and address sexual exploitation as a gender-based issue, which could enhance the UK's efforts. Sweden's "Sex Purchase Act 1999", which criminalizes the buying of sexual services while decriminalizing the selling of them is an illustration in this regard. The Section 54 of the MS Act should be enhanced by imposing fines on businesses that don't comply with its "Transparency in Supply Chains requirements" and by encouraging companies to address potential MS issues proactively. The number of inspectors in the Gangmasters and Labour Abuse Authority (GLAA) per 10,000 workers should be increased to meet ILO standards. The effectiveness can be further improved by extending GLAA inspections to the public sector and allocating funding by the government. This would enhance the GLAA's ability to monitor and combat labour exploitation. The new "Independent Anti-Slavery Commissioner" should add a specific plan to reduce the demand for sexual exploitation in their strategy by retouching previous defects. To make this role truly independent, the government should be required to formally respond to the Commissioner's reports and recommendations. Additionally, setting up a statutory oversight board to advise and support the Commissioner⁹¹ would help ensure greater independence and effectiveness. "The Home Office should review its Modern Slavery statutory guidance on criminal exploitation at least every six months to be inclusive of emerging intelligence for this form of trafficking".⁹²

In the Online Safety Act 2023, HT is designated as a priority offence in Schedule 7. This classification is a crucial move in addressing trafficking facilitated by technology, including websites that promote exploitation. However, it needs careful implementation to avoid overregulation and ensure it effectively targets illegal activities without causing unintended problems. The Government should encourage better cooperation between the Crown Prosecution Service (CPS), police, and the National Crime Agency. This may include involving the CPS earlier in police investigations.

The Companies Act 2006 should be revised to mandate that companies include a reference to their modern slavery statement in their annual reports.⁹³ Make non-compliance an offence under the Company Directors Disqualification Act 1986.⁹⁴

To improve the criminal justice system in the UK for tackling HT, establishing specialized courts and training for trafficking cases can enhance the prosecution process. Specialized courts would ensure consistent, expert handling of complex trafficking cases, while targeted training for law enforcement and legal professionals would increase their ability to identify, investigate, and prosecute trafficking effectively, ultimately strengthening deterrence.

As revealed in this research the legal framework in the UK have made improvements in addressing HT but often fall short in comprehensively tackling the root factors, such as poverty and organized crime. To better address these underlying issues, it is recommended that the UK implement more holistic anti-trafficking strategies, including enhanced international cooperation and targeted support for at-risk communities, which would address both prevention and enforcement more effectively.

The UK has made some progress in adopting gender-sensitive approaches to HT, but there is room for improvement in fully aligning with international instruments. To enhance this, the UK should develop and implement targeted policies that address the specific needs of female and LGBTQ+ victims, incorporating comprehensive support services and preventive measures tailored to their unique vulnerabilities.

Traffickers can use the Illegal Migration Act to control their victims further, making them scared to seek help. Under this Act, if victims of trafficking come forward, they risk being deported to their home country or Rwanda. This makes them choose between staying exploited or reporting their situation and facing deportation, so many prefer to stay silent and continue suffering. To mitigate the negative impact of this on HT victims, the UK should amend the legislation to ensure that all potential victims are granted protection and support regardless of their immigration status, thereby encouraging them to report their exploitation without fear of deportation. However, implementing such a recommendation can be challenging due to complex political and logistical factors. A more practical approach might involve creating a safeguard within the Act that ensures victims who come forward are given temporary protection and support while their trafficking situation is investigated, thus balancing both immigration control and victim protection.

In accordance with the recommendation made by the Organisation for Security and Cooperation in Europe (OSCE) in its 2023 UK country visit report, it is recommended that the UK government to withdraw the issue of HT and MS from the Minister for Immigration and reinstate the full remit of HT and MS policy to the Minister for Safeguarding alone.

Paying for sex with someone who has been forced is a strict liability offence in England and Wales under Section 53A of the Sexual Offences Act 2003. However, between 2013 and 2020, there have only been three convictions. This will allow the exploitation to persist and undermines the effectiveness of anti-trafficking strategies. Therefore, the Section 53A of the Sexual Offences Act 2003 needs to be stronger, and the penalties should be higher. It can be further recommended that “the Government should publish annual data on prosecutions and convictions under section 53A.”⁹⁵

Lastly, to enhance the performance of “Independent child trafficking Advocates” under Section 48 of the MS Act, the UK should ensure consistent funding and comprehensive training for advocates, enabling them to provide specialized and continuous support to trafficked children. This will ensure that advocates are well-equipped to navigate complex legal and social systems, thereby improving outcomes for child victims and ensuring their best interests are consistently prioritized.

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