

What is Sex Trafficking?

Sex trafficking is force, fraud or compulsion to perform sexual activity including prostitution, and pornography in exchange for, money, drugs, and other valuable items. The subject is allied to both human trafficking and slavery, as they follow the same legislation. Human trafficking is defined as illegally transporting individuals from one country to another, which is forced upon the person. The Modern Slavery Act defines slavery, 'If a person requires another to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.'¹

History

Slave trade was significantly contributing to the British economy until its abolition in late 19th century, with the Slave Abolition Act 1833.² In addition, Britons formed the Anti-Slavery International in 1839 to help abolish slavery in other countries too. However, even though slavery was abolished, human trafficking remains to be an issue for modern society. Parliament passed a series of legislation including the Modern Slavery Act 2015 among other in order to protect individuals from sex enslavement.

Legislation

In the UK, the subject of sex trafficking was seriously addressed in recent years, which resulted in the creation of the document Modern Slavery Act 2015. This document introduced: the office of the Independent Anti-slavery Commissioner, whose sole task is to fight sex trafficking, high penalties for committing a crime in this branch of law, such as life imprisonment or protection of victims who are forced by criminals to commit crimes so that they can not be held responsible for these acts.³ Most importantly, the document also introduces preventive measures to protect victims from harm both physically and mentally.

To What Extent Do Laws throughout England and Wales Protect Women against

SEX TRAFFICKING

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Current law

Law-making bodies are in the constant process of adapting laws and introducing new legislation to prosecute sex traffickers effectively and protect society from such offenders. Both the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 have received strong feedback, with the Home Secretary admitting in the 'UK Action Plan on Tackling Human Trafficking' that "there has been a number of successful prosecutions for trafficking for sexual exploitation using the new legislation."⁴ Particularly the Asylum and Immigration Act 2004 considers a much broader scope in trafficking, making it easier for prosecutors to take legal action against traffickers for a range of exploitative conduct. Despite this, the law must still ensure that these offences are punishable and women are protected in doing so.

Case Law & Eastern Europe

Not all sentences are appropriate for the severity of the crime, as shown in Attorney General's Reference (No.6 of 2004) where the defendant received a 10 year sentence, later increased to 23 years.⁵ This sentence was more appropriate due to the development of legislation and shows justice is being served.

WestLaw highlights how many appeals are made where often a lighter sentence is given, such as the case of R v Roci 2005. However, UK law making bodies have advanced much more than other countries, particularly Ukraine where they still lack much needed legislation to protect victims, especially since sex trafficking is a major problem in that country.

¹The Shared Hope Foundation, 'What is Sex Trafficking (2018),' > accessed on 2nd November 2018

²'How did the Abolition Acts of 1807 and 1833 affect the slave trade?', National Archives, accessed 11 November 2018

³Modern Slavery Act 2015

⁴Home Office & Scottish Executive, 'UK Action Plan on Tackling Human Trafficking' (2007)> accessed 12 November 2018

⁵Attorney General's Reference (No.6 of 2004) Also known as: R. v Plakici (Luan), Court of Appeal (Criminal Division)

To What Extent Do Laws throughout England and Wales Protect Women against Sex Trafficking?

Despite somewhat extensive legislation that reduce the number of offences connected to human trafficking for sexual exploitation throughout England and Wales, all circumstances are not fully elaborated upon. Sex trafficking, according to the Shared Hope International Group, is when ‘*someone uses force, fraud or compulsion to cause a profitable sex act with an adult which includes prostitution, pornography and sexual performance done in exchange for items of value, all including, money, drugs, shelter, food and clothes.*’¹ Whilst undertaking this research report to consider the chosen topic, sex trafficking is closely allied to human trafficking and slavery, as they link together under the same legislation guidelines. We believe that it is best to address this matter in the opening of our report as sex trafficking has only recently converted into an issue within England and Wales as it was previously perceived solely as human trafficking and slavery. Human trafficking is the action of illegally transporting people from one country or area to another and this action is usually forced. Section 1 of the Modern Slavery Act then defines slavery to be ‘If a person requires another to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour’²

History of the Law Regarding Sex Trafficking from 17th Century

Slave trade has had an active role in the British economy, especially during the early 17th century when Britons developed their own colonies and needed people to work for plantations³. During the Industrial Revolution, the proceeds from slave trade and the West Indies estates totalled 5% of the British Economy. Enslaved Africans and indentured poor English slaves

¹ The Shared Hope International, ‘What is Sex Trafficking’ (2018) <<https://sharedhope.org/the-problem/what-is-sex-trafficking/>> accessed on 2nd November 2018.

² The Modern Slavery Act, 2015, s.1

³ National Archives , “How did the Abolition Acts of 1807 and 1833 affect the slave trade?” <<http://www.nationalarchives.gov.uk/education/resources/slavery/>> accessed 11 November 2018

controlled the hard labour either to pay off debts or because they were property of their slave owners. The campaign to abolish slavery began in the 1760's supported by both white and black abolitionists⁴.

In 1772, the case of *Somerset v Stewart*⁵ held that slavery was unfounded by the common law and that it had never been legal by ruling in England and Wales, therefore it became unlawful. Following the abolitionist movement, initially led by William Wilberforce and Thomas Clarkson⁶, slave trade was voted to be illegal within the British Empire with the Slave Trade Act 1807. From then on, Britons opposed slave trade, since slavery itself was abolished within the British Empire, with the exception of India, with the Slavery Abolition Act 1833, which freed 800,000 slaves owned by Britons. In 1839, the Anti-Slavery International was formed in Britain with its aim to make slavery illegal in other countries too.

Even though slavery was abolished in the 19th century, there is no doubt that we are still fighting against it in the 21st century. It has taken the form of human trafficking, the illegal trading of human beings for the purposes of sexual exploitation or forced labour. Following the Slavery Abolition Act 1833, the legislation in England and Wales did not act to protect individuals from trafficking during the 20th century. Before the Modern Slavery Act 2015 came into force, the anti-trafficking legislation in England and Wales was a combination of different rules including the Nationality, Immigration and Asylum Act 2006, which made trafficking of people for reasons of prostitution unlawful as well as the Sexual Offences Act 2003, which made trafficking for all forms of sexual exploitation unlawful. In addition, the Asylum and Immigration Act 2004 outlawed human trafficking for all purposes, including forced labour while the Coroners and Justice Act 2009 made it unlawful for a person to force another person into forced labour.

Apart from UK legislation there are conventions and protocols that are dealing with human trafficking and have been adopted by England and Wales. These include the Convention on Action against Trafficking in Human Beings which was formed by the Council of Europe in 2015 and protects people who have been victims of trafficking. The convention was adopted by England and Wales in 2009 and following that the UK Human Trafficking centre was

⁴ David Olusoga, 'Slavery: The history of British slave ownership has been buried: now its scale can be revealed' *The Guardian* (12th July 2015) <<https://www.theguardian.com/world/2015/jul/12/british-history-slavery-buried-scale-revealed>> accessed 11th November 2018

⁵ *Somerset v Stewart* (1772) 98 ER 499

⁶ BBC History, 'William Wilberforce (1759 - 1833)' (2014) <http://www.bbc.co.uk/history/historic_figures/wilberforce_william.shtml> accessed 17th November 2018

created to ensure that both regions is complying with obligations under the Convention. They have also signed and approved the United Nation's Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children reinforcing the United Nation Convention against Transnational Organised Crime 2000⁷.

Legislation in Effect to Protect Women from Sex Trafficking

Since then, laws have been modernised and altered to suit the nature of sex trafficking crime due to the number of offences increasing. The vital acts, protecting women from sex trafficking in both England and Wales, include the Sexual Offences Act 2003, Asylum and Immigration Act 2004 and Modern Slavery Act 2015.

The Sexual Offences Act 2003

The Sexual Offences Act 2003 is one of the most important documents in the United Kingdom. In addition to crimes such as rape or child abuse, it also contains sections on sex trafficking. The first section that deals with this topic is part 1 subsections 51A - 54 which discusses prostitution. According to these records, a person commits a crime if he deliberately persuades another person to provide sexual services in order to gain benefits. The highest possible punishment from this article is a deprivation of liberty for up to 7 years. A subsection that explicitly addresses the subject of sex trafficking is the "*Trafficking*" (57-60C). The maximum penalty for bringing a person in England or Wales by doing anything or being aware that someone else will commit a crime is a deprivation of liberty for up to 14 years, hence deterring offenders and protecting women. The Sexual Offences Act of 2003 does not contain comprehensive information on sex trafficking, only a small part of the document is devoted to this subject, which does not constitute sufficient protection for victims or prevention of such crimes. It is not specified what kind of penalty threatens to force or psychological violence to provide sexual services.⁸

Asylum and Immigration (Treatment of Claimants) Act 2004

The Asylum and Immigration Act criminalised human trafficking for all purposes, including forced labour. Its main purpose, to unify immigration and asylum appeals into a single level of appeal with restricted forward review, the asylum and immigration tribunal. If parties wish to

⁷ In Brief, 'UK anti-trafficking laws' <<https://www.inbrief.co.uk/offences/human-trafficking-uk-law/>> accessed 11th November 2018

⁸ The Sexual Offences Act 2003

further appeal to the High Court, it can only be made on the basis that the tribunal made a mistake of law. The aim of the act is to create criminal sanctions in order to penalise individuals who come to England and Wales without valid travel documents or who don't work with the authorities to get new travel documents when a previous claim has not been successful. The Act also provides with accommodation individuals in need of asylum who are not able to return home immediately with the condition that they contribute in activities of the community. In addition, it pinpoints "sham marriages" and demands foreign nationals from outside the European Economic Area to provide the authorities with written permission from the Home Office in order to be given approval to get married in Britain.

Modern Slavery Act 2015

The document that best protects victims of sex trafficking is the Modern Slavery Act 2015. The first subsection says, "A person commits a crime if he keeps a second person in captivity while being aware of his actions." The maximum penalty for doing so is life imprisonment, a punishment which is bound to ward off offenders and consequently protect women who are victims. In addition, the subsequent section of the document is preventive measures. They are used to prevent a potential perpetrator from harming victims in any physical or psychological method.

This is an important aspect because the essence of mental health is perceived. Victims are also protected through part 5, section 45, which talks about defence in the event of crime, for example as a result of coercion. The act (part 4) also introduces the existence of the Independent Anti-slavery Commissioner, which is appointed by the Secretary of State. Its most imperative fact is his position is independent and the most important parts of his tasks are: creating reports for the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland, making recommendations for any public authorities, supporting (financial or any needed) to conduct research, providing information, education and training, government consultations and non-governmental, cooperation with government organisations (e.g. the Commissioner for Victims and Witnesses), voluntary and other people. This office can be a potential breakthrough in protecting the rights of modern slaves as victims because it is one of the first offices of this type.

For the first time, people who have been harmed by the crimes of sections 1, 2 and 4 of this act have an advocate who is solely interested in their affairs. Therefore, The Modern Slavery Act 2015 is a great example of how the state should fight sex trafficking and protect women.

However, this is a relatively new document, since there was no adequate protection in this matter before. Nevertheless, it can serve as an example for other countries too.

How Current Law has been Adapted to Sex Trafficking Cases

With the ongoing issue of sex trafficking in England and Wales, the law-making bodies have found themselves in the constant process of adapting laws and introducing new legislation to prosecute sex traffickers more effectively and protect society from such offenders. The Sexual Offences Act 2003⁹ forbids all forms of human trafficking, whilst the Asylum and Immigration Act 2004¹⁰ criminalises trafficking into, within, and out of, England and Wales for not only sex trafficking, but also all other forms of exploitation. Both pieces of legislation have received a very strong response, with the Home Secretary admitting in the 'UK Action Plan on Tackling Human Trafficking'¹¹ that "*there has been a number of successful prosecutions for trafficking for sexual exploitation using the new legislation.*"¹² Such statement is indeed true to much extent, particularly through looking at the Asylum and Immigration Act 2004¹³ which, because of its consideration of a much broader scope in trafficking, has made it substantially easier for prosecutors to take legal action against traffickers for a range of exploitative conduct. Despite this, sex trafficking offences continue to remain an issue in England and Wales, the law needs to be updated to ensure that these offences are punishable under legislation and women are thus protected in doing so.

The UK Borders Bill¹⁴, which is currently continuing its journey through parliamentary process, covers a substantial amount of trafficking legislation, and it is this that is presently being amended "to extend the territorial application of trafficking offences,"¹⁵ highlighting how and why the law is adapting in regard to sex trafficking offences. More recently in regard to this, The Modern Slavery Act 2015,¹⁶ aims to combat modern trafficking and slavery within England and Wales as a whole, and this has already inflicted change in society, with "12 slavery

⁹ Sexual Offences Act 2003 (s. 42)

¹⁰ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, s. 19

¹¹ Home Office & Scottish Executive, 'UK Action Plan on Tackling Human Trafficking' (2007) <https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/uk_action_plan_on_tackling_human_trafficking_en_1.pdf> accessed 12th November 2018.

¹²*ibid*, 8

¹³ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, s. 19

¹⁴ UK Borders Act 2007, s.30

¹⁵ Home Office & Scottish Executive, 'UK Action Plan on Tackling Human Trafficking' (2007) 8 <https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/uk_action_plan_on_tackling_human_trafficking_en_1.pdf> accessed 12th November 2018.

¹⁶ Modern Slavery Act 2015, s.30

and trafficking prevention orders put in place and 183 people taken to court between April and December”¹⁷ when the Act was just introduced. This adaption in legislation therefore acts as a deterrent to sex trafficking offenders, especially as maximum sentences have not only been increased, but the courts have also been given the powers to restrict the activities of suspected traffickers and gang-masters.¹⁸ Thus, it can be said that the law is continually adapting in response to developing sex trafficking offences, and this has produced slightly positive results in protecting women in England and Wales, however minimal these results may be.

Case Law Regarding Sex Trafficking

A particular case which reflects changes to the law on sex trafficking and how far sentencing has increased over the years is Attorney General’s Reference (No.6 of 2004) R v Plakici 2004¹⁹.

In this case, the defendant received an extremely lenient sentence of 10 years imprisonment following a guilty plea to charges of facilitating illegal entry, living on the earnings of prostitution, kidnapping and incitement to rape²⁰ after bringing girls from Romania to the England under the impression they were going to ‘work in a bar’.

It was later recognised by the Attorney General that this sentence was far too lenient for the nature and seriousness of the crime, he then referenced it and appealed to the Courts. The Attorney General’s reference was allowed by the Courts and the sentence was increased to a more suitable sentence of 23 years imprisonment for the string of offences committed by Plakici. This demonstrates how sentencing guidelines are slowly adapting to recognise the seriousness of human trafficking for sexual exploitation is and how more protection is provided to victims, by putting the accused away for a longer period of time. Shortly after, in May 2005, the Council of Europe adopted the Convention on Action against Trafficking in Human Beings²¹ which provides legal protection and minimum standards of care for victims of human trafficking. This includes temporary residence permits for victims who may be in danger if they return to their original country and access to specialist support, medical care and legal advice

¹⁷ BBC News, 'Trafficking Prosecutions Rise Following New Laws' (26th February 2016) <<https://www.bbc.co.uk/news/uk-35665503>> accessed 14th November 2018

¹⁸ *ibid*

¹⁹ Attorney General's Reference (No.6 of 2004) Also known as: R. v Plakici (Luan), Court of Appeal (Criminal Division), 29 April 2004.

²⁰ Attorney General's Reference (No.6 of 2004) Also known as: R. v Plakici (Luan), Court of Appeal (Criminal Division), 29 April 2004.

²¹ HM Government, *Human Trafficking: The Government's Strategy* (2011) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf> accessed 15th November 2018.

which ultimately protects them from being involved in trafficking crime and reduce risks associated with their origin countries and health problems from the actual offence committed against them, such as contracting diseases from the sexual exploitation they were involved with.

Comparison to Eastern Europe Law Regarding Sex Trafficking

Even though Ukraine has been making efforts to eliminate trafficking, the national government does not fully comply with the minimum effort that should be in place to eradicate this offence in comparison to England and Wales. Even though the issue in England and Wales is not as vast as that of Ukraine, it is fair to say that our law-making bodies have made progress drafting new legislation to protect victims.

Conclusion

Concluding our findings, our group decided that laws throughout England and Wales protect women from sex trafficking to a certain extent. This is because though additional laws and statutes being recently created to provide more protection to victims and deter people from committing sex trafficking offences, the courts have still given more lenient or reduced sentences. This became evident through our research on WestLaw, multiple cases from 2005 onwards showed a large number of appeals being accepted. This signifies the fact that the legal system does not consider sex trafficking offences as significant to other offences. We concluded that the law is very tolerant towards sex traffickers and the legal system should prioritise the protection of women from such offenders.