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# **JURISDICTIONAL CHALLENGES IN COMBATING HUMAN TRAFFICKING IN SOUTH ASIAN CORRIDOR**

Charvi Rawal, Shefali Rawat, Malika Agarwal

## **ABSTRACT**

This paper examines the jurisdictional challenges and international cooperation mechanisms in combating human trafficking as transnational crime with a particular focus on the South Asian corridor involving India, Nepal, and Bangladesh. The study explores how fragmented legal systems inconsistent definitions of trafficking and the absence of effective extradition or mutual legal assistance frameworks allow traffickers to evade prosecution. Using the doctrinal methodology, the research analyses various domestic laws and international frameworks on human trafficking. Case studies particularly the Raxaul cross-border trafficking cases and Rohingya trafficking through Bangladesh-India routes, illustrate the practical application and limitations of these legal frameworks. Comparative insights are drawn from the European Union Directive 2011/36/EU and the U.S. Trafficking Victims Protection Act (TVPA) 2000, which offer more harmonised and extraterritorial models of jurisdiction. The study finds that while global conventions provide a broad cooperative framework, the South Asian region remains plagued by weak implementation, limited extraterritorial jurisdiction and inconsistent legal definitions. If South Asian states adopted similar provisions as that of EU and US models, particularly extraterritorial jurisdiction based on both the perpetrator's and victim's nationality, they could close existing jurisdictional gaps. Legal reforms must go beyond rescue and repatriation to ensure continuous accountability across borders, enabling justice to follow the crime rather than being constrained by territorial limits.

## I. INTRODUCTION

*“If crime crosses borders, so must law enforcement.” - Kofi Annan, Foreword to the UN Convention Against Transnational Organized Crime (2000).*

Human trafficking is not merely a crime, but also an assault on the dignity of individuals and a gross violation of human rights. It is a transnational offence that thrives in the shadows of weak governance, porous borders, and fragmented legal systems. Defined under Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (“Palermo Protocol”)*, human trafficking involves the recruitment, transportation, transfer, harbouring, or receipt of persons by means such as coercion, deception, or abuse of power for purposes of exploitation including sexual exploitation, forced labour, organ removal, or domestic servitude. Victims are recruited in one country, transported through another and exploited in a third. This transnational nature of trafficking makes it difficult to determine which state bears responsibility for investigation, prosecution, and victim protection. The result is a web of overlapping or absent jurisdictions that traffickers can exploit to escape accountability. Meanwhile, victims are often criminalised as illegal migrants rather than treated as survivors of grave human rights violations.

The South Asian region, particularly the corridors linking Nepal, India, and Bangladesh represents one of the world’s most vulnerable regions to trafficking. The region’s porous borders combined with widespread poverty, political instability and weak law enforcement create ideal conditions for traffickers to operate across borders with impunity such as in the India-Nepal corridor, particularly through the Raxaul border in Bihar and the India-Bangladesh corridor, often involving Rohingya refugees. Victims are frequently sourced from impoverished regions of Nepal and Bangladesh transported through India and sometimes routed further to South East Asia or the Gulf states. Each leg of this journey crosses multiple jurisdictions, each with distinct definitions of trafficking, and varying levels of enforcement. As a result, prosecuting traffickers becomes extraordinarily complex.

Although the *Palermo Protocol (2000)* and its parent instrument, the *United Nations Convention against Transnational Organised Crime (UNTOC)*, provide an international framework for prevention, prosecution and cooperation, however, the effectiveness of these instruments depends entirely on how they are implemented at the regional and domestic levels. The *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)*, the primary regional instrument for India, Nepal, and Bangladesh has also proved to be inadequate. Its narrow focus on prostitution, and lack of independent monitoring or enforcement mechanism have limited its effectiveness as a cooperative legal framework.

By contrast, other regions have made significant progress. The European Union through its *Directive 2011/36/EU*, has established harmonised definitions of trafficking, imposed binding obligations on member states and introduced mechanisms for cross-border prosecution. Similarly, the US also exercises extraterritorial jurisdiction over its nationals involved in trafficking offences abroad, ensuring accountability even when crimes transcend borders.

This research, therefore, examines these jurisdictional challenges within the South Asian trafficking corridor, and compares it with the more integrated legal responses in the EU and US. The paper argues that unless Asian states adopt extraterritorial jurisdictional principles, adopting dual jurisdiction principles (based on both perpetrator and victim nationality) and harmonised definitions in line with the Palermo Protocol, traffickers will continue to exploit legal vacuums due to weak evidences and jurisdictional issues. The forthcoming sections explore the nature of trafficking as a transnational crime, present key case studies from the South Asian corridor, analysis of the international and regional frameworks and propose recommendations based on comparative best practices.

## II. HUMAN TRAFFICKING AS TRANSNATIONAL CRIME

Transnational crimes are those illegal acts that “*in inception, prevention and/or direct or indirect effects involve more than one country.*”<sup>1</sup> Trafficking networks adapt to target regions of poverty, conflict, and limited opportunity, notably Southeast Asia, Eastern Europe, and sub-Saharan Africa, using recruiters, transporters, and exploiters across source, transit, and destination countries. Its transnational character is evident in its operational structure, which typically spans source, transit, and destination countries.<sup>2</sup>

This multi-stage, cross-border process qualifies human trafficking as a *transnational organized crime* under the definitions set forth in Palermo Protocol and Convention (2000). To meet this classification, two elements must coexist:

1. **Organized:** A structured group of three or more persons acting in concert over time to profit from exploitation.
2. **Transnational:** Victims are recruited in one country(source), transported through another(transit), and exploited in a third (destination).<sup>3</sup>

The Palermo Protocol articulates “*serious crime*” of trafficking through a three-element test (the “AMP” model): *Act* (recruitment, transportation, transfer, harboring, or receipt of persons), *Means* (use of threat, force, coercion, abduction, fraud, deception, or abuse of power or vulnerability), and *Purpose* (exploitation, including sexual exploitation, forced labour, slavery, servitude, or organ removal) of trafficking.<sup>4</sup> Crucially, once coercive means are established, victim consent becomes

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<sup>1</sup> UN 1995 definition as cited in Marinella Marmo & Nerida Chazal, *Transnational Crime and Criminal Justice* 10 (2016).

<sup>2</sup> Mridula Harendra Pandey (2024) ‘Human Trafficking As A Transnational Crime- Legal Perspectives’, *International Journal for Multidisciplinary Research(IJFMR)*, 6(6). Available at: <https://doi.org/10.36948/ijfmr.2024.v06i06.33802> (Accessed on: 26 September 2025)

<sup>3</sup> See United Nations Convention Against Transnational Organized Crime art. 2(a) (defining “organized criminal group”), *id.* art. 3(2) (defining the “transnational” element), Nov. 15, 2000, 2225 U.N.T.S. 209. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the Convention, provides the specific definition of the crime of trafficking itself.

<sup>4</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol]art. 3(a) (defining the “act”); art. 3(b) (defining the “means”); art. 3(a) (defining the “purpose”).

irrelevant; for children under 18, the means element need not be proven, the recruitment or exploitation alone constitutes trafficking.<sup>5</sup>

### **The “Transnational” Criterion as under Article 3(2) of UNTOC**

The Convention states that an offence is transnational in nature if it meets one or more of the following conditions, all of which apply to human trafficking:

- It is committed in more than one State.
- It is committed in one State but a substantial part of its preparation, planning, direction, or control takes place in another State.
- It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State.
- It is committed in one State but has substantial effects in another State.

In essence, the Palermo Protocol defines trafficking, and the Palermo Convention situates it within transnational organized crime, forming the legal basis to treat human trafficking not as isolated domestic offences but as a global criminal enterprise demanding coordinated international action.

### **III. REGIONAL CORRIDOR CASE ANALYSIS: JURISDICTIONAL CHALLENGES**

In practice, traffickers first dislocate victims internally from Jharkhand, Assam or Chhattisgarh to transit hubs like Kolkata, Siliguri and Delhi, before pushing them across borders into Bangladesh, Nepal, Myanmar or Gulf circuits.<sup>6</sup> To understand how trafficking networks operationalize movement across South Asian borders, it is necessary to trace specific corridors that link internal recruitment zones to international transit points. The following corridor-based analysis does not merely catalogue incidents but examines how each interception, rescue or handover reveals patterns of actor involvement, institutional response, and accountability gaps. Through recent case developments along the India-Nepal and India-Bangladesh routes, it becomes possible to observe

<sup>5</sup> U.N. OFFICE ON DRUGS & CRIME [UNODC], GLOBAL REPORT ON TRAFFICKING IN PERSONS 2022, at 15.

<sup>6</sup> UNODC, *Country Assessment Report on Human Trafficking in India*, U.N. Sales No. E.13.III.N.4, at 57-60 (2013), available at [https://www.unodc.org/documents/southasia/reports/Human\\_Trafficking-10-05-13.pdf](https://www.unodc.org/documents/southasia/reports/Human_Trafficking-10-05-13.pdf).

how trafficking manifests as a layered mobility chain, and what practical implications arise for law enforcement cooperation, victim identification, and state responsibility. After the 2013 Criminal Law (Amendment) Act, India redefined trafficking under Section 370 of the Indian Penal Code, 1860 (IPC), to align with Article 3 of the Palermo Protocol, expanding its scope beyond sexual exploitation to include slavery, servitude, forced labour, and organ removal.<sup>7</sup>

### A. India-Nepal Corridor: Raxaul Rescue Case

Movement between India and Nepal occurs across an open border facilitated by Article 7 of the 1950 *India-Nepal Treaty of Peace and Friendship*, which allows nationals of both States to travel, reside, and work in the other without passport or visa formalities.<sup>8</sup> However, the same open border regime has inadvertently created a fertile ground for human trafficking networks, allowing traffickers to transport victims (often women, and children from poor Nepali districts, such as Raxaul (East Champaran, Bihar) and Birgunj/Parsa (Nepal).

In the 2016 Raxaul Rescue Case, recruitment and deception took place in Nepal, where several women were promised employment as domestic workers in Indian cities. The victims were transported across the border into Bihar and the Railway Protection Force (RPF) and Sashastra Seema Bal (SSB) intercepted them aboard the Raxaul-Anand Vihar Express train before they could be sold to employers in metropolitan cities.<sup>9</sup>

The problem emerged during prosecution. Reports indicate that Nepal sought the return of the recruiters and urged Indian authorities to hand them over; however, there is no public record of a formal extradition request or successful transfer in this case.<sup>10</sup> Nepal's definition under the HTTCA does not mirror the Palermo Protocol.<sup>11</sup> This definitional gap continues to undermine cross-border prosecutions and extradition requests between India and Nepal. Under Section 4 of the HTTCA, "human trafficking" and "human transportation" are treated as two distinct offences unlike the

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<sup>7</sup> *Criminal Law (Amendment) Act*, No. 13 of 2013, § 5 (India); *Palermo Protocol*, art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319.

<sup>8</sup> *Treaty of Peace and Friendship Between the Government of India and the Government of Nepal*, July 31, 1950, available at [Treaty of Peace and Friendship](#).

<sup>9</sup> Maiti Nepal, *Annual Report 2016-17 23-24* (Kathmandu 2017); Apne Aap Women Worldwide, *Cross-Border Trafficking in South Asia: A Study of Indo-Nepal and Indo-Bangladesh Corridors* 11-12 (2017).

<sup>10</sup> U.S. Dep't of State, *Trafficking in Persons Report 2017*, Country Narratives: Nepal (Washington D.C., 2017).

<sup>11</sup> *Human Trafficking and Transportation (Control) Act*, No. 5 of 2064 (2007) (Nepal), §§ 3-4.

Palermo Protocol (and Indian law), which treats them as part of the same chain of exploitation. Section 3(2) of the Act clarifies that exploitation includes prostitution, forced labour, slavery, servitude, or organ removal. The HTTCA 2007, which criminalises recruitment, sale, and “taking a person out of the country for prosecution /exploitation,” has been narrowly interpreted by Nepali Courts. They held that trafficking is considered “complete” only when the person has actually been taken out of the country and the purpose of exploitation has been fulfilled or attempted abroad.<sup>12</sup> If the victims are intercepted before being exploited abroad or if the accused were caught inside India, the act is classified as ‘attempted trafficking’ not a completed offence. Nepal could not exercise territorial jurisdiction over the offenders because they had already crossed the border and committed the attempt beyond its borders. Unlike India’s Section 4 of IPC (now Section 1(5) BNS), Nepal’s law has limited extraterritorial jurisdiction that does not extend to trafficking. Moreover,

India, on the other hand, asserted territorial jurisdiction because the arrest and part of the transport occurred within its borders. The Indian authorities charged the traffickers under the Immoral Traffic (Prevention) Act, 1956 (ITPA) and under Sections 370 and 370A of the IPC (now replaced by Section 142 to 146 of the BNS 2023). However, the prosecution collapsed before conviction. This is because under the ITPA, the offences under Sections 3 to 5 penalises, prostitution-related activities, not trafficking per se and it requires actual exploitation or at least proof of intent to sexually exploit. In this case, however, the victims were rescued before reaching any brothel and there was no evidence of sexual exploitation or forced prostitution. Consequently, the ITPA charges collapsed for want of intent or completed act.<sup>13</sup>

Similarly, the prosecution could not establish the intent which is a requirement under Section 370 IPC, as they lacked firsthand testimony and direct evidence of coercion or deception - the victims had been immediately repatriated to Nepal. NGO statements were treated as secondary evidence, weakening the case.<sup>14</sup> In the end, NGO and press reports indicate that a small number of Indian intermediaries were convicted under minor ITPA provisions and received short custodial sentences. The Nepali recruiters were not prosecuted in India because there was no legal basis to try foreign

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<sup>12</sup> *Nepal Law Commission, Human Trafficking and Transportation (Control) Act, 2007*, available at <https://www.lawcommission.gov.np/en/>.

<sup>13</sup> Maiti Nepal, *supra* note 9, at 24.

<sup>14</sup> Apne Aap Women Worldwide, *supra* note 9, at 13.

nationals for conduct that occurred in Nepal as Section 4 of IPC (now Section 1(5) BNS), extends extraterritorial jurisdiction, only to Indian citizens committing crimes abroad. There was no formal extradition or judicial transfer recorded; Reports suggest that after diplomatic correspondence, the accused were returned to Nepal where no follow-up prosecution occurred due to the jurisdictional limitations discussed earlier.

Had India and Nepal incorporated broader provisions of extraterritorial jurisdiction and harmonised definitions aligned with Article 15 and Article 3 of the UNTOC and the Palermo Protocol, the Raxaul case might have taken a different course. The Convention encourages states to establish jurisdiction not only on the basis of territory, but also on three additional grounds and they are as follows: 1) Active personality principle - when the offender is a national of the state; 2) Passive personality principle - when the victim is a national of the state and; 3) Objective territorial (effects) principle - when the effects of the offence are within the state territory, even if the acts occur abroad. If such provisions had been integrated into the domestic law, Nepal could have exercised active personality jurisdiction to prosecute its own nationals (the recruiters) for acts committed partly in Nepal and partly in India, without depending on physical extradition. Likewise, India could have invoked objective territorial jurisdiction, asserting that the trafficking act produced a direct effect within its borders since the victims were detained on Indian soil. Under this model, dual criminality would no longer have been a procedural barrier because both states would recognise the same conduct - recruitment, transportation, and intended exploitation as trafficking, regardless of where each element occurred. Through Mutual Legal Assistance and extradition cooperation, evidence could have been shared seamlessly, ensuring that every link in the trafficking chain was legally addressed.<sup>15</sup> In essence, the Raxaul case demonstrates how a lack of extraterritorial jurisdiction and definitional inconsistency creates a jurisdictional vacuum. The Raxaul case did not fail because law was absent. It failed because the laws stopped at borders while the crimes spanned them. Closing that gap requires both legal harmonisation (definitional and jurisdictional) and operational tools (bilateral treaties, joint investigation, teams, and victim protection). Together, these measures let justice follow the crime rather than be confined by an artificial territorial line.

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<sup>15</sup> UNODC, *Global Report on Trafficking in Persons 2018*, at 67-68 (United Nations, Vienna, 2018).

Recently, in May 2025, a similar incident occurred wherein four minor Nepali girls aged 13-17 were rescued, who were being transported without documentation under false promises of employment; one handler was arrested on site.<sup>16</sup> Authorities classified the episode as human trafficking intervention, but no cross-border prosecution mechanism was initiated, and the case remained registered under domestic IPC provisions. In July and August 2025, following a Patna High Court directive to investigate reports of minors being trafficked for “orchestra group” performances, the Bihar Police (Saran/Ekma jurisdiction) conducted targeted raids and rescued at least ten minor girls, with seven persons arrested under the Protection of Children from Sexual Offences Act, 2012(POCSO) and The Immoral Traffic Prevention Act, 1956(ITPA) provisions.<sup>17</sup>

Similarly, on 12 May 2025, Parsa District Police (Nepal) arrested a 20-year-old Nepali woman accused of transporting a minor Nepali girl into Raxaul, where she was allegedly forced into prostitution at a budget hotel; The Indian Sashastra Seema Bal (SSB) assisted in coordinating the victim’s return.<sup>18</sup> The suspect was booked under Nepal’s HTTCA 2007, but no parallel FIR was registered in India, despite cross-border movement being confirmed.

In August 2025, SSB personnel at the Maitri Bridge crossing near Raxaul detained four traffickers returning from Nepal after they had allegedly lured a Bihar-based minor via social media, taken her across the border, and kept her confined for eight days before attempting to re-enter India.<sup>19</sup> In a related incident reported the same month, SSB and a local NGO jointly rescued another minor girl intercepted during transit after being contacted online and promised marriage, highlighting the emergence of digital recruitment patterns.

The most extensive operation occurred in March 2025, when Bihar Police and SSB raided a fraudulent job placement/training company operating in Raxaul, freeing over 400 youths, including 79 minors, from confinement.<sup>20</sup> Victims were drawn from both Nepal and Bihar and were reported

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<sup>16</sup> Press Information Bureau (India), *RPF foils human trafficking bid at Raxaul; rescues 4 minors under Operation AAHT*, May 16, 2025, [RPF Foils Human Trafficking Bid at Raxaul; Rescues 4 Minor Girls Under Operation AAHT](#).

<sup>17</sup> India Today (Law), *Patna HC seeks report on trafficking of minors into orchestra groups*, July 1, 2025

<sup>18</sup> Khabarhub (Nepal), *Parsa Police arrest woman trafficking minors into Raxaul Hotel*, May 12, 2025, <https://english.khabarhub.com/2025/12/466111/>.

<sup>19</sup> Times of India (Patna), <https://timesofindia.indiatimes.com>.

<sup>20</sup> The Telegraph India, [Job ‘scam’ bust frees 400: Rescue efforts expose extortion network in Bihar's Raxaul - Telegraph India](#).

having their phones confiscated, mobility restricted, and families coerced for money, while three arrests were made and the alleged ringleader remained absconding at the time of publication.

Collectively, these incidents demonstrate that while enforcement actions led to multiple rescues, no harmonised legal framework, prosecution or cross-border case-linking mechanism was initiated, leaving each interception classified as an isolated incident rather than part of an organized transnational trafficking circuit. The legal complexities and jurisdictional gaps that were unveiled in the 2016 case, the same issues continue to exist to this day.

### **B. India-Bangladesh Corridor: Rohingya Trafficking Networks**

Between India-Bangladesh, trafficking has become increasingly complex with the inclusion of vulnerable Rohingya refugees, who fled from Myanmar due to exploitation, seeking refuge in Bangladesh again being exploited, they are then trafficked to India. This section represents new challenges for jurisdiction, prosecution, and international cooperation.

Following the 2017 persecution of Rohingya Muslims in Myanmar, hundreds of thousands crossed into Bangladesh. Many traffickers exploit their statelessness to traffic them into India, particularly through West Bengal, Assam, and Tripura, for forced labour and sexual exploitation.<sup>21</sup>

The statelessness of Rohingya complicates jurisdictional claims since victims lack nationally recognized citizenship or travel documents, limiting legal protection in both countries. They are treated like criminals in both the countries, they are refused to take refuge in India, denied any rights here and forcefully deported back to Myanmar which is both cruel and unlawful as some of them held identification documents issued by UNHCR.<sup>22</sup> It adds up one more reason why victims in another country fear to report trafficking in other countries as they are treated as criminals and not a person who is in need of protection.

In June 2022, the National Investigation Agency (NIA) filed its chargesheet against six individuals from Assam and Meghalaya for orchestrating illegal movement of Rohingya and Bangladeshi nationals across the Tripura-Agartala and Silchar (Assam) border belt, using porous land routes and arranging forged Indian identity papers to move victims inland. The chargesheet stated that handlers

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<sup>21</sup> UNHCR, Rohingya Emergency, March 2023.

<sup>22</sup> Amnesty international's India: stop deportation and protect Rohingya refugees

received victims at Silchar and Shillong transit points, before routing them toward document hubs in Kolkata and Bengaluru, where fake Aadhaar and voter IDs were prepared. The case was committed to trial in the NIA Court (Guwahati jurisdiction), and no conviction status has been publicly recorded to date.<sup>23</sup>

In November 2023, Deutsche Welle reported that Rohingya women were transported from Cox's Bazar camps in Bangladesh, crossing via the Benapole-Petrapole land border into North 24 Parganas (West Bengal) and then moved north by rail and highway routes through Delhi to Bandipora (Jammu & Kashmir). On 28 November 2023, J&K Police (Bandipora District) arrested five persons, including a Rohingya handler, and rescued four trafficked Rohingya women, confirming that the corridor was used for sale into coerced marriages. FIR entries were made under local IPC kidnapping and trafficking provisions, and the case was transferred to a special cell for cross-border movement offences.<sup>24</sup>

On 28 May 2024, the NIA arrested Jalil Miah, a resident of Tripura, identified in NIA reward notices as a key facilitator in the cross-border trafficking chain, responsible for receiving victims who crossed near Sonamura-Agartala, then forwarding them by bus to Silchar, Shillong and Kolkata safe-houses. According to the NIA press note, over 30 co-accused had already been detained in related FIRs across Tripura, Assam and West Bengal, with mobile devices, forged IDs and foreign currency seized, forming part of consolidated digital evidence now under forensic analysis. The case was officially brought under NIA special jurisdiction due to cross-state organised operation.<sup>25</sup>

On 24 June 2024, the NIA filed a chargesheet against eight more individuals, identifying a structured network responsible for bringing Rohingya and Bangladeshi nationals into India through the Benapole-Petrapole route and the Tripura-Agartala sector, then distributing them across Assam, West Bengal, Karnataka and Tamil Nadu using fabricated Aadhaar cards, SIM cards, and bank accounts opened in Kolkata and Bengaluru. Charge documents named Liton Chakraborty as a

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<sup>23</sup> NIA Files Charge Sheet in Case of Human Trafficking of Rohingyas & Bangladeshi Muslims into India (RC-05/2021/NIA-GUW), [Rohingya trafficking: National Investigation Agency files charge sheet](#).

<sup>24</sup> Deutsche Welle, *Kashmir: Rohingya refugee women lured by trafficking gangs* (Nov. 2, 2023), [Kashmir: Rohingya refugee women lured by trafficking gangs – DW – 11/02/2023](#).

<sup>25</sup> [NIA arrests key accused involved in trafficking of Bangladeshis, Rohingyas into India](#).

document forger based in Kolkata, and Rabiyl Hasan, coordinating transfers toward Bengaluru construction zones and Chennai industrial belts. The case file was placed before the NIA Special Court under FIR registered October 2023, and supplementary investigation remained active.<sup>26</sup>

On 20 May 2025, the NIA Special Court, Chennai, delivered its first conviction in this corridor-linked case series. Two Bangladeshi nationals - Shahabuddin Hossain alias Md. Sahab Uddin and Munna alias Noor Karim alias Nur Karim were sentenced to two years of rigorous imprisonment and fined ₹11,000 each, after the court found that they had procured forged Indian Aadhaar and voter identity documents, opened bank accounts and activated SIM cards, which were used to facilitate the movement and labour placement of Rohingya persons across state lines. The third accused Babu SK alias Babu Shoriful alias Md. Soriful Babumiya was charge-sheeted but his trial was recorded as ongoing at the time of sentencing. The NIA recorded the conviction as part of its first successful trafficking-related prosecution involving the Rohingya movement using Indian forged credentials.<sup>27</sup>

Now the question arises why they were not prosecuted for trafficking, the Indian laws which prohibits trafficking in persons i.e. Article 23 of Constitution of India, 1950 is a fundamental right that is exercised by any person, but Rohingya fearing deportation and prosecution as they have entered India illegally do not invoke that, and ITPA, 1956 and Ss. 370 & 143 of IPC, 1860 and BNS, 2023 respectively as they are confusing and are confined to sexual exploitation and prostitution and not forced labour. Although, the new criminal law under S. 111 BNS, 2023, on the lines of UNTOC, includes organised crime but there are still no cases which are prosecuted under that for human trafficking, so there are no data to interpret. Both the above-mentioned accused were found guilty for forgery and illegally entering in India as the investigation revealed that both of them were involved primarily in the facilitation of illegal stay through forged documents.<sup>28</sup> This distinction by the prosecution could be due to the evidence available and the roles each accused played within the trafficking network. The prosecution against the third accused, Babu SK, is still going on as he was the only one who was found actively involved in the trafficking.

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<sup>26</sup> [NIA charge-sheets eight people allegedly involved in trafficking Rohingyas, Bangladeshis into India.](#)

<sup>27</sup> [2 Bangladeshis get rigorous imprisonment for trafficking Rohingyas into India..](#)

<sup>28</sup> The New Indian Express [NIA files two charge sheets naming three Bangladeshi nationals in case of human trafficking](#)

NIA majorly looks into the matters of these cross border trafficking situations but one of the setbacks of this special court apart from delays that happen in giving results are lack of transparency. With drawbacks like these one can only assume on the basis of circumstances and the laws of the country, why there are delays in convictions, one being the complexity of the human trafficking case. This complexity significantly contributes to the prolonged duration of the trials and delayed conviction.

Trafficking cases often require a high degree of proof regarding coercion, deception, and exploitation, which is not always straightforward. Digital evidence, witness protection, and establishing a syndicate's functioning require meticulous collection and analysis, prolonging proceedings.<sup>29</sup>

The challenges faced by Indian authorities include the clandestine *modus operandi* of traffickers, who exploit porous borders and corrupt border security personnel through bribery to facilitate unauthorized crossings.<sup>30</sup> Many Rohingyas lack official identification documents issued by UNHCR, face linguistic barriers, and have limited financial means making them vulnerable to exploitation by traffickers once inside India. This is exactly what happened in the present case, they were left in the process of prosecution against those two, the victims remained in the dark still struggling to survive in a foreign land and the traffickers who exploited them got only two years of punishment. This shows that our laws are not that robust to prosecute traffickers. This case is a classical example of how traffickers exploit the weak implementation of laws and victims are left behind facing secondary victimization.

The jurisdictional challenges are faced by both India and Bangladesh, the border is the critical point where trafficking occurs with collusion between Indian and Bangladeshi smugglers and, at times, complicity from border security forces on both sides.<sup>31</sup> This cross border nexus complicated law enforcement as crime spanned two sovereign jurisdictions.<sup>32</sup>

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<sup>29</sup> <https://vidyajournal.org/index.php/vidya/article/download/611/297/1739>

<sup>30</sup> Shailendra Upadhyay's Rohingya Crisis: Security concerns and Diplomacy dilemma for India.

<sup>31</sup> Rohingya migration to India by mixed migration centre.

<sup>32</sup> [a multidimensional analysis of border security challenges in bangladesh: navigating operational complexities](#)

The vulnerable Rohingya population in Bangladesh face risks of trafficking, sexual exploitation, and forced marriages. Their precarious situation, lack of protection, and the presence of criminal networks highlight the broader humanitarian crisis rather than curbing it.<sup>33</sup>

The prosecution of accused on Human Trafficking, not only Babu SK but plenty of others, in India reflects ongoing efforts against human trafficking, it reflects our weak implementation of laws, limited applicability, and enforcement challenges. Humanitarian vulnerability of Rohingya refugees further complicates the enforcement of laws and protection of their human rights. While India fails to prosecute the traffickers under the trafficking laws, Bangladesh altogether remains less involved and unbothered by the acts of their citizens which increases the insecurity of the refugees providing fertile ground for trafficking networks as it depicts by the no issue of any public statement or news regarding the same.

This transnational dimension requires coordinated legal, security, and humanitarian responses across borders, enhanced cooperation between India and Bangladesh, and protection mechanisms for vulnerable refugee populations to effectively tackle trafficking and related crime.

#### **IV. INTERNATIONAL COOPERATION FRAMEWORKS AND COMPARATIVE**

##### **LEGAL ANALYSIS**

The South Asian Association for Regional Cooperation (SAARC) adopted the *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002*, to which India, Nepal and Bangladesh are all parties. This Convention represented a significant early attempt at regional collaboration, however, its scope and structure remain extremely limited. It narrowly defines trafficking as acts carried out “for the purpose of prostitution,” thereby, excluding all other forms of exploitation, such as forced labour, domestic servitude, or organ trade. Moreover, the Convention lacks any binding enforcement or monitoring mechanisms. It does not establish uniform definitions or nor does it address the problem of

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extraterritorial jurisdiction. Consequently, while the SAARC Convention symbolises shared political acknowledgement of trafficking as a

<sup>33</sup> [Rohingya women trafficked to India on promises of 'a good life' face threat of indefinite detention](#)

transnational issue, it has had little practical effect in aligning legal framework or enabling cross-border prosecutions.<sup>34</sup>

By contrast, the European Union offers one of the most comprehensive regional responses to human trafficking. The *Directive 2011/36/EU on Preventing and Compacting Trafficking in Human Beings*, establishes a harmonised definition of trafficking In alignment with Article 3 of the Palermo Protocol.<sup>35</sup> With respect to jurisdictional issues, Article 10 of the director requires member states to establish jurisdiction not only for offences committed within their territory, but also for those committed by their nationals abroad (active personality principle).<sup>36</sup> Additionally, the directive encourages the exercise of jurisdiction when the victim is a national or habitual resident of the state (the passive personality principle) thereby closing a major loophole that traffickers often exploit. This jurisdictional breadth is supported by robust institutional mechanisms. Agencies such as Europol and Eurojust facilitate cross-border investigations through joint investigation teams (JITs), enabling prosecutors and investigators from multiple EU countries to work together under unified legal authorisation.<sup>37</sup> Furthermore, the European Arrest Warrant (EAW), simplifies extradition by replacing political negotiation with judicial cooperation, ensuring that offenders can be swiftly transferred between EU states without diplomatic delay.<sup>38</sup> Oversight and compliance are strengthened by the *Council of Europe Convention on Action against Trafficking in Human Beings* (Warsaw Convention, 2005), monitored by the Group of Experts on Action against Trafficking in Human Beings. (GRETA).<sup>39</sup> GRETA conducts regular evaluation of member states' anti- trafficking measures, making the European framework unique, combining harmonised law, regional cooperation, and independent monitoring.<sup>40</sup>

The United States, meanwhile, has adopted a strong national legislation with extra territorial reach through the Trafficking Victims Protection Act (TVPA), 2000 and its subsequent re-authorisations.<sup>41</sup>

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<sup>34</sup>UNODC, *Global Report on Trafficking in Persons 2022*, at 87-89 (United Nations, Vienna, 2022).

<sup>35</sup> Directive 2011/36/EU of the European Parliament and of the Council, 2011 O.J. (L 101) 1.

<sup>36</sup> *Id.*, arts. 10

<sup>37</sup> Europol, joint investigation teams: Practical Guide (2020), at 5-9.

<sup>38</sup> Consolidated version of the treaty on the functioning of the European Union art. 82 (1, 2012 OJ (C326), 47 (TFEU); see also council framework decision 2002/584/JHA, 2002OJ (L1 90) 1 (European arrest warrant).

<sup>39</sup> Council of Europe Convention on Action against Trafficking in Human Being, May 16, 2005, CETS No. 197 (Warsaw convention).

<sup>40</sup> *Id.*, art. 3 open (establishing GRETA).

<sup>41</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (TVPA).

The TVPA criminalizes all forms of trafficking and Under Section 18, it explicitly grants extra territorial jurisdiction over offences committed by US nationals, permanent residents or persons resident in US territory, even if the crime occurred abroad. This reflects the active personality principle. The TVPA also introduced a unique form of soft extraterritorial influence through its trafficking in persons (TIP) Report, which ranks countries based on compliance with minimum antitrafficking standards. States placed on lower tiers may face sanctions or restrictions on aid effectively incentivising foreign cooperation.<sup>42</sup> In practice, the system has enabled US prosecutors to pursue traffickers whose crimes have transnational elements even where the offence's locus delicti lies outside the US. For example, in the *United States v. Clark (2006)* the defendant, an American citizen, was convicted under the TVPA for engaging in child, sex tourism in Cambodia, marking a landmark application of extraterritorial jurisdiction based on nationality.<sup>43</sup>

The contrast between these systems underscores why South Asia regional response remains weak. While the SAARC Convention acknowledges trafficking, it fails to provide harmonisation enforcement, or jurisdictional clarity. The EU model by embedding both active and passive personality principles and creating institutional cooperation. Mechanisms ensure that trafficking crimes cannot be insulated by borders. The US model on the other hand demonstrates how strong domestic law with extra territorial reach can hold nationals accountable for crimes abroad, and exert global pressure on non-compliant states.

## V. WAY FORWARD

To strengthen the regional and domestic capacity to prosecute traffickers, Asia must draw lessons from the European Union's harmonisation model and the United States' extraterritorial enforcement model. South Asian states must harmonise their domestic definition of trafficking to mirror Article

3 of the Palermo protocol, ensuring inclusion of all forms of exploitation and recognising trafficking as a process involving recruitment, transport and harbouring - whether or not, the act is completed. Harmonisation reduces disputes over whether an offence was "completed" within one jurisdiction, a common obstacle in transnational prosecutions. Secondly, the domestic legislations

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<sup>42</sup> U.S. Dep't of State, *Trafficking in Persons Report 2024*, at 25-27

<sup>43</sup> *United States v. Clark*, 435 F.3d 1100 (9th Cir.2006).

must explicitly incorporate jurisdictional clauses model on Article 15 of the UNTOC allowing states to prosecute trafficking offences 1) When the offender is a national or habitual resident (active personality); 2) When the victim is a national or habitual resident (passive personality); and

3) When the effects of the crime occur within the state, even if the conduct occurred abroad (objective territorial or effects principle). Adopting similar provisions would prevent traffickers from escaping prosecution by exploiting cross-border technicalities. Thirdly, Asian states should create a regional anti trafficking review mechanism under regional framework cooperation like SAARC. This body should have the authority to monitor implementation and Recommend sanctions for persistent non-compliance.

Ultimately, Asia's challenge lies not in the absence of norms, but in their fragmented and inconsistent application. A unified, regional legal framework - harmonised in definition, strengthened in jurisdiction and monitored through an independent mechanism, is crucial to transform the regions' antitrafficking response from reactive enforcement to sustained justice. By adopting the EU's harmonisation ethos, and the US' jurisdictional assertiveness, Asian states can finally close the jurisdictional gaps that have long enabled traffickers to evade accountability.