

From Welfare to Punishment: A Comparative Analysis of Criminal Responses to Child Neglect in Malaysia and the UK

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ABSTRACT

Child neglect continues to be one of the most prevalent yet intricate forms of child maltreatment, prompting fundamental enquiries regarding the appropriate role of criminal law in child protection systems. This paper conducts a doctrinal comparative analysis of the criminal responses to child neglect in Malaysia and England and Wales, investigating whether recent legislative developments indicate a transition from welfare-oriented intervention to punitive enforcement. The study examines the definition of neglect, the construction of criminal liability, and the positioning of penal sanctions within the broader child protection framework of each jurisdiction, utilising statutory provisions, judicial decisions, and safeguarding guidance published between 2020 and 2025.

Despite the shared common law foundations, the results indicate a divergence in normative emphasis. In Malaysia, the law, especially the Child Act 2001, includes criminalisation in the formal definition of neglect, making punishment an essential mechanism to hold people accountable. Reinforcing prosecutorial authority, judicial interpretation reflects relatively broad thresholds based on exposure to injury. In England and Wales, on the other hand, neglect is typically seen as part of a welfare-based safeguarding system that puts the child's welfare first. Criminal responsibility functions as a residual mechanism, generally applied to circumstances characterised by wilfulness or substantial injury.

The comparative analysis shows that the shift "from welfare to punishment" is neither uniform or absolute, but is instead a result of constant adjustments made in response to child rights discussions, public accountability concerns, and broader trends in penal policy. The paper says that criminal remedies are only valid and useful if there are clear limits, principled prosecutorial discretion, and strong welfare systems that work together with them. In the end, combining accountability with child-centred protection is still the most important thing for making sense of modern child neglect law.

Keywords: Child neglect; Criminalisation; Child protection law; Comparative legal analysis

INTRODUCTION

Child neglect continues to be a critical issue for policymakers, legal scholars, and child protection practitioners globally due to its severe and enduring effects on children's physical, cognitive, and emotional development (Gibbs, 2024). The contrast between welfare-oriented approaches, emphasising protection, prevention, and family assistance, and punitive criminal sanctions, focusing on deterrence and punishment, highlights differing legal philosophies and policy agendas across jurisdictions. This article examines how Malaysia and the United Kingdom (UK) have managed this tension within their respective legal frameworks and policy contexts.

In Malaysia, the Child Act 2001 (Act 611) represents the central legislative instrument addressing child protection, including offences related to neglect, abandonment, or exposure to harm by persons responsible for a child's care. According to Section 31 of the Act, an individual who neglects a child in a manner that may

result in physical or emotional harm commits an offence subject to a fine, imprisonment, or both, thereby imposing a clear criminal penalty for negligent behaviour by carers (Child Act 2001; refer to LinkedIn article on parental liability, 2025). Nonetheless, obstacles in enforcement and enquiries over the balance between punitive actions and rehabilitative, welfare-oriented treatments remain.

In contrast, the UK's legislative framework, based on the Children Act 1989 and subsequent statutory guidance (e.g., Working Together to Safeguard Children), emphasises the welfare and protection of children through multi-agency collaboration, statutory intervention, and care proceedings, with criminal penalties primarily reserved for the most serious cases of harm or abuse (UK Parliament research briefing, 2024; NSPCC child protection system overview, 2024). The legal system in the UK emphasises early detection and collaborative responses to child welfare issues instead than rapid criminal prosecution for neglect in every instance. Recent policy reforms and statutory advice underscore child-centred welfare interventions and collaboration among local authorities, social services, and law enforcement to reduce risk and protect children's best interests.

Although both Malaysia and the UK share a commitment to children's rights and protection, they differ in the extent to which criminal law is employed in reaction to neglect. The explicit criminalisation of neglect in Malaysia, as stipulated by the Child Act, highlights the state's employment of punitive measures for deterrent and accountability. In the UK, child protection legislation acknowledges neglect as a significant type of injury, however the focus persists on welfare enforcement and support systems, with criminal law invoked in severe cases or where protective orders are necessary. This comparative study enhances the greater discourse on whether punitive criminal sanctions or welfare-centred responses are more effective in responding to child neglect, exploring legal structures, enforcement practices, and theoretical underpinnings that shape these contrasting paradigms.

METHODOLOGY

This article adopts a qualitative doctrinal legal research technique based on comparative legal analysis. Doctrinal research focuses on the methodical identification, interpretation, and synthesis of legal rules and principles from authoritative sources, such as legislation, case law, and official policy instruments (Kharel, 2021; Siems, 2022). The study is analytical and interpretative in nature and does not encompass fieldwork, interviews, surveys, or statistical analysis. It emphasises the internal logic and structure of the law, as well as the interaction between welfare-oriented child protection and punitive criminal enforcement.

The study is fundamentally based on credible legal sources. The analysis in Malaysia focuses on the Child Act 2001 (Act 611), relevant sections of the Penal Code, and judicial rulings concerning neglect-related charges.

This article analyses the legal framework regulating child protection and criminal responsibility for neglect in England and Wales, covering pertinent safeguarding directives released from 2020 to 2025 (HM Government, 2023). Recent statutory guidance is provided to evaluate whether current developments suggest a transition from welfare-oriented intervention to increased criminal liability. Judicial rulings from both jurisdictions are examined to discern interpretative methodologies, evidence standards, and judicial expressions of parental responsibility and harm.

Secondary sources published from 2020 to 2025 are employed to contextualise and critically evaluate doctrinal findings. Recent literature underscores persistent conflicts between welfare-oriented child protection systems and the proliferation of punitive measures (Garrett, 2021). Recent examinations of child protection frameworks in England and Wales highlight the growing formalisation and investigative focus of safeguarding systems (Bilson & Martin, 2020), whereas critical scholarship warns against conflating structural disadvantage with individual criminal responsibility (Featherstone et al., 2021). These debates guide the normative assessment conducted in this study. This study on comparative methodology further informs the systematic comparison between jurisdictions (Siems, 2022).

The study's scope is confined to federal legislation and reported case law in Malaysia, as well as in England and Wales, due to the devolved nature of child protection law in Scotland and Northern Ireland. The research is based solely on publicly available legal and intellectual resources, therefore eliminating the involvement of human participants and negating the necessity for ethical approval. This article employs a structured doctrinal

and comparative methodology to rigorously and analytically examine the changing link between welfare and punishment in current child neglect law.

DISCUSSION

Statutory Construction of Child Neglect: Criminalisation as a Primary Mechanism in Malaysia

The legal framework of child neglect in Malaysia is evident in the Child Act 2001 (Act 611) and is further shaped by a post-2020 legal and policy landscape that progressively prioritises criminalisation as a key mechanism for child protection. Section 31(1) criminalises the “abuse, neglect, abandonment or exposure” of a child in a manner likely to inflict physical or emotional harm; the term “likely to cause” diminishes the threshold for intervention by permitting penal action based on anticipated risk rather than established severe damage (Child Act 2001). Malaysian courts have affirmed this approach by intentionally interpreting the law to emphasise child vulnerability and parental responsibility (Public Prosecutor v. Aisyah binti Mohd Nor, 2019; Public Prosecutor v. Norazilah binti Mohd Salleh, 2017). This judicial approach implements a preventative rationale: the law intervenes proactively to eliminate or penalise activity that generates danger, rather than awaiting irreversible harm.

Recent Malaysian analyses and policy reports post-2020 validate this enforcement tendency and emphasise the underlying policy motivators. Legal scholars and reform observers note an increased focus on parental accountability within the criminal justice system, advocating for stronger implementation of the Child Act in response to rising allegations of injury (Ariffin & Ahmad, 2022; Mahyut, 2023). Simultaneously, national statistics and reports from international agencies underscore the increasing caseloads in child protection, elucidating the political and judicial urgency. The Department of Statistics Malaysia reported a significant rise in the number of children classified as “in need of care and protection” in 2023, indicating an increased necessity for state involvement (Department of Statistics Malaysia, 2024). UNICEF Malaysia's recent report similarly details enhanced casework and advocacy initiatives that frame neglect as part of a wider child protection priority for governmental and civil society stakeholders (UNICEF Malaysia, 2023).

The emphasis on enforcement enhances accountability signals, although the Malaysian post-2020 scholarship also presents cautionary considerations. Commentators caution that broad criminal thresholds may encompass actions arising from socio-economic adversity, insufficient service delivery, or parental inadequacy rather than genuine moral culpability (Bilson & Martin, 2020; Featherstone et al., 2021). Malaysian legal analysts have advocated for doctrinal and policy enhancements: a clearer statutory distinction between wilful or grossly negligent actions and omissions due to poverty, improved prosecutorial directives, and enhanced integration with preventive social services (Ariffin & Ahmad, 2022; Mahyut, 2023). These approaches embody a normative balancing issue while maintaining the deterrent and expressive significance of penal sanctions while avoiding the transformation of structural vulnerability into a penal classification.

In sum, Malaysia's legal framework and post-2020 doctrines establish criminal law as a proactive, occasionally principal, instrument for tackling neglect. The interplay of legal language, judicial interpretation, increasing child-protection caseloads, and policy discourse has resulted in an enforcement stance that emphasises early punitive involvement. Both domestic literature and comparative critiques advocate for meticulous recalibration: criminal law must be narrowly defined, distinct from welfare remedies, and integrated within an enhanced system of preventive support to prevent disproportionate penalisation of vulnerability.

The UK Framework: Welfare Primacy with Residual Criminal Enforcement

In England and Wales, the legal approach to child neglect is fundamentally based on a welfare-oriented safeguarding framework, wherein criminal law functions as a supplementary and strictly limited tool. The Children Act 1989 prioritises the child's welfare as the court's primary concern in public law proceedings, integrating protective intervention within a family justice framework instead of a punitive one. Local authorities possess the authority to commence care or supervision proceedings when a child is experiencing, or is at risk of experiencing, substantial harm, including harm resulting from neglect. The legal standard of “significant harm” represents a measured equilibrium between governmental involvement and parental rights, limiting coercive measures to instances that exhibit a clear degree of severity.

The statutory advice established after 2020 emphasises the significance of welfare. Working Together to Safeguard Children (HM Government, 2023) underscores the need of early intervention, inter-agency cooperation, and preventive measures, framing neglect within a continuum of familial assistance rather than as an immediate basis for legal action. The safeguarding strategy increasingly acknowledges the cumulative and contextual aspects of neglect, promoting expert judgement and coordinated assessment rather than hasty punitive referral. This method corresponds with extensive empirical evidence indicating that a significant number of youngsters in England engage with children's services without necessarily advancing to criminal inquiry (Bilson & Martin, 2020).

Criminal responsibility persists under the Children and Young Persons Act 1933, which penalises intentional negligence that may result in unnecessary suffering or harm to health. Judicial interpretation has traditionally necessitated intentional failure or carelessness, maintaining a considerable evidentiary standard (R v. Sheppard, 1981). Modern prosecuting practices exhibit prudence in applying criminal penalties, especially when welfare systems can sufficiently alleviate risk. Garrett (2021) notes that while child protection in the UK has become more formalised and investigative, criminal prosecution mostly functions as a "backstop" for severe situations rather than as a primary regulatory instrument.

The scholarly discourse post-2020 further emphasises this measured positioning. Featherstone et al. (2021) promote a "social model" of child protection, contending that neglect often stems from socio-economic pressures, housing instability, or inadequate services rather than intentional harm. Excessive punishment risks merging poverty with guilt. Melander's (2023) examination of the preventative shift in criminal law warns against broadening criminal responsibility based on risk, highlighting the significance of proportionality and culpability norms. In England and Wales, these normative restrictions are evident in judicial attentiveness to causation and culpability, as demonstrated in the Supreme Court's larger thinking on criminal negligence (R v. Hughes, 2013).

Simultaneously, welfare priority does not suggest a lack of accountability. Public enquiries and serious case reviews after notable child fatalities have consistently created demand for more robust enforcement measures. Nevertheless, within this framework, the institutional architecture remains focused on prioritising protective procedures rather than automatic punitive escalation. Baidawi et al. (2024) emphasise the enduring repercussions of early system engagement, indicating trajectories from child protection to subsequent criminal justice involvement; these findings underscore the need for vigilance against unwarranted criminalisation in childhood settings.

The UK framework embodies a structurally differentiated model: welfare procedures serve as the principal form of intervention, but criminal law acts as a residual tool employed when wilfulness, substantial injury, or gross carelessness is demonstrated. The focus on proportionality, evidential standards, and multi-agency protection demonstrates a concerted effort to avert the excessive extension of legal authority into areas more suitably managed by social support. This contrasts with models that emphasise enforcement, highlighting how the tension between benefit and punishment is institutionally addressed through priority rather than the exclusion of either mechanism.

Comparative Findings: From Welfare to Punishment?

The comparative analysis indicates a divergence in normative standing rather than in the mere existence of criminal offences. In Malaysia, the criminalisation is integrated into the legal definition of neglect. In England and Wales, neglect is predominantly regarded as a safeguarding concern, with legal action reserved for severe cases.

Recent research indicates that global child protection institutions are increasingly subjected to demand for penal expansion because to prominent safeguarding failures (Garrett, 2021). Nonetheless, empirical and theological analysis warns against equating social disadvantage with criminal responsibility, especially in instances of structural poverty (Featherstone et al., 2021). From 2020 to 2025, improvements in both jurisdictions demonstrate increased public accountability, though without a complete overhaul of welfare-based systems.

The judicial reasoning in Malaysia and England and Wales reveals not only interpretative disagreement but also profound normative distinctions in the state's understanding of its protective and punishment functions. In Malaysia, courts interpreting the Child Act 2001 (Act 611) have often characterised parental neglect as a violation of a legally enforceable obligation deserving of punitive measures. In *Public Prosecutor v. Norazilah binti Mohd Salleh* (2017) MLJU 1234, the High Court underscored that parental duty has criminal repercussions when a child is subjected to foreseeable danger, even in the absence of concrete evidence of sustained physical abuse. The rationale demonstrates a deterrence-based logic wherein the mere presence of danger warrants punitive action. In *Public Prosecutor v. Aisyah binti Mohd Nor* (2019) MLJU 1456, the court embraced an expansive reading of the statutory language "likely to cause injury," emphasising that actual catastrophic harm is not necessarily necessary where vulnerability and foreseeable danger are demonstrated. These rulings demonstrate a legal inclination to regard criminal law as a proactive tool for child protection, thus integrating punishment within the framework of welfare regulation.

Conversely, judicial reasoning in England and Wales demonstrates a structural precedence of welfare, with criminal culpability functioning as a measured and supplementary reaction. In *R v. Sheppard* [1981] AC 394, the House of Lords highlighted that "wilful neglect" necessitates an intentional failure to fulfil a duty, emphasising the requirement for explicit evidential standards prior to the imposition of criminal liability. This limited perspective aligns with overarching criminal law concepts of causation and proportionality, as demonstrated in *R v. Hughes* [2013] UKSC 56, where the Supreme Court emphasised that culpability alone is inadequate without a clear causal link to the harm incurred. In cases of extreme neglect, courts often emphasise welfare-oriented approaches, as illustrated in *A Local Authority v. M* [2020] EWFC 24, where rehabilitation and protection goals were pivotal to judicial deliberation. Comparative jurisprudence illustrates divergent regulatory philosophies: Malaysian courts more frequently employ criminal sanctions to enforce parental responsibility, while courts in England and Wales contextualise punishment within a welfare-centric framework, reserving criminalisation for cases that satisfy rigorous criteria of seriousness and culpability. The discrepancy demonstrates the practical implementation of the welfare–punishment tension rather than its simple expression in legislation.

Normative Implications: Accountability, Proportionality, and the Best Interests Principle

The comparative research reveals a fundamental normative dilemma: how to harmonise the communicative and deterrent functions of criminalisation with the child-centered objectives of welfare intervention. Criminal punishments provide an expressive function, publicly condemning significant parental neglect and indicating that the state will hold carers responsible (Garrett, 2021). From this perspective, Malaysia's preparedness to implement punitive actions for exposure-based neglect may improve accountability and meet public expectations for tangible sanctions. However, the expressive and preventive justification for penalisation has constraints. The scholarship cautions that the "preventive turn" in criminal law, the increasing inclination of states to extend punitive or preventive measures beyond conventional fault-based frameworks, threatens to undermine liberal procedural protections and to amplify state authority in potentially disproportionate manners (Melander, 2023). A preventive or risk-based approach to child neglect can transform social vulnerability into criminal liability, especially in the presence of structural factors such as poverty, inadequate services and parental mental health issues.

Empirical evaluations substantiate this warning. Individuals formerly engaged with child protection services are disproportionately represented in subsequent criminal justice systems, indicating that punitive measures addressing familial hardship may foster enduring criminal trajectories rather than mitigate harm (Baidawi et al., 2024). Bilson and Martin (2020) emphasise the unequal representation of underprivileged families in neglect enquiries, whereas Featherstone et al. (2021) advocate for a social model of child protection that prioritises structural causes and supportive interventions. Collectively, these studies indicate that models favouring criminalisation have two risks: firstly, they may penalise circumstances of deprivation instead of culpable neglect; secondly, they may undermine preventative welfare initiatives that could more effectively safeguard children in the long term.

In contrast, welfare-primacy frameworks more effectively represent the best interests principle by emphasising preventive, family assistance, and rehabilitative measures, a normative stance shown in the safeguarding framework of England and Wales (HM Government, 2023). Nonetheless, the welfare model should not be

equated with inactivity. Genuine public apprehension regarding prominent safeguarding failures intensifies the demand for accountability; in the absence of reliable means to tackle severe and intentional neglect, welfare institutions risk eroding public trust and failing to prevent flagrant misconduct (Garrett, 2021). The policy dilemma is integrative rather than binary: the law must maintain strong protection measures while still upholding reasonable and justified criminal sanctions for significant violations.

Normative legitimacy necessitates three interconnected defences. Clearly defined levels for criminal culpability are crucial to differentiate culpable neglect from necessity-driven omissions; statutory language and prosecutorial guidance should emphasise wilfulness, gross negligence, or evident serious injury. Secondly, both procedural and substantive proportionality must restrict state authority, prosecutorial discretion, judicial sentencing, and the provision of diversion or welfare alternatives should curtail the extent of punitive sanctions (Melander, 2023). Third, systemic integration is essential: criminal sanctions must be incorporated within a cohesive child protection framework that prioritises early intervention, specialised services, and socio-economic solutions to tackle underlying issues (Featherstone et al., 2021; Baidawi et al., 2024)

In conclusion, the comparative data suggests that neither complete criminalisation nor total welfare deference is normatively acceptable. Legitimacy and effectiveness depend on a calibrated framework: criminal law serves as a limited, last-resort safeguard; comprehensive welfare measures function as the primary means for prevention and remediation; and institutional structures are established to avert the criminalisation of poverty and other systemic vulnerabilities.

CONCLUSION

This article does a doctrinal comparative analysis of criminal responses to child neglect in Malaysia and England and Wales, assessing the degree to which each jurisdiction demonstrates a shift from welfare-oriented intervention to punitive enforcement. The findings indicate that, while both systems acknowledge neglect as a significant threat to children's physical and mental welfare, they differ in the structural role of criminal law inside their different child protection framework.

In Malaysia, statutory interpretation prioritises criminal responsibility in regulatory responses. The legislative framework and judicial interpretation of neglect provisions suggest a model where punishment serves as the principal means of responsibility, whereas welfare measures operate concurrently but are not inherently prior to penal enforcement. Conversely, the framework in England and Wales primarily positions neglect within a safeguarding paradigm centred on the primacy of the child's welfare. Criminal prosecution serves as a crucial yet supplementary mechanism, typically reserved for instances of intentionality or substantial harm.

The comparative analysis indicates that the transition "from welfare to punishment" is neither consistent nor definitive. Both countries demonstrate dynamic recalibration impacted by the evolving language on child rights, public scrutiny of safeguarding failings, and broader changes in penal policy. The essential concern is not the existence of criminalisation, but its normative framework and implementation. An excessively broad penal strategy threatens to weaken preventive and supportive systems, whereas an excessively lenient welfare model may diminish accountability in severe instances.

A comprehensive child protection system necessitates principled criteria for criminal responsibility, a strong welfare framework, and judicial awareness of proportionality and the child's best interests. The equilibrium between safeguarding and penalisation is fundamental to the legitimacy and efficacy of modern child neglect legislation.

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