

Optimizing Screening and Support Services for Gender-Based Violence and Trafficking in Persons Victims

INDIA



About the project: The Asia Foundation, with support from the Office to Monitor and Combat Trafficking in Persons (J/TIP), United States (US) Department of State conducted a multicountry qualitative research study to improve the efficiency and effectiveness of screening and service provision to victims of trafficking in persons (TIP) and gender-based violence (GBV) in diverse contexts. The study's primary objective is to identify promising practices and challenges in integrating or separating services for GBV and TIP victims in the three target countries of **India, Nepal, and Sri Lanka**. GBV and TIP victims often suffer similar and intersecting forms of abuse, however, at the screening process these multiple vulnerabilities are often not identified and hence care is delayed. This study is premised upon a deeper study of these intersections; its resultant impact on identification of victims, leading to a concluding exploration of effective service delivery to the victims, and whether these stand in need of integration.

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India

Compiled and Authored by FXB India Suraksha

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The Foundation partnered with local organizations in the three countries for this research: FXB India Suraksha in India, Social Science Baha in Nepal, and Centre for Poverty Analysis in Sri Lanka.

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The research findings will provide guidance to policy makers and service providers to understand the intersectionality of abuses that TIP and GBV victims experience. We hope that it will inform the discourse on creating an integrated services delivery system for victims of TIP and GBV and help maximise the utilization of resources while providing optimal victim-centric care.



Nandita Baruah
Country Representative, India
The Asia Foundation

Preface

The Asia Foundation is pleased to present the publication ‘Optimizing Screening and Support Services for Gender-Based Violence and Trafficking in Persons’.

This report is a result of a research project implemented by The Asia Foundation’s offices in India, Sri Lanka, and Nepal with the primary objective of identifying promising practices and challenges in integrating or separating services for victims of Trafficking in Persons (TIP) and Gender-Based Violence (GBV). The project produced three national level reports, issue briefs, and action documents for service providers as well as a regional report to provide an evidence base to advocate for separation or integration of services for TIP and GBV victims. The national level reports were compiled by FXB India Suraksha for India, the Centre for Poverty Analysis (CEPA) for Sri Lanka and Social Science Baha (SSB) for Nepal, while the regional study was compiled by Dr. Geeta Sekhon. The Foundation hopes that the local research groups in the target countries will take on evidence-based policy advocacy to engage a broader audience—including key policymakers to integrate the research recommendations into their current efforts. In drawing evidence from three countries facing significant challenges on Trafficking in Persons, the research results are relevant across South Asia and beyond. This is particularly so, given that resource constraints that complicate service provision efforts in these countries typify those faced throughout the region and necessitate a view to greater service integration and efficiency. Therefore, the findings of the study are disseminated nationally and regionally to increase regional synergy and cross-country learning.

In India, the cases of TIP have seen a rise since 2019, with a noticeable dip in the conviction rates. This raises valid questions on the existent gaps in the screening and identification process and procedure, and how best to strengthen the existing service systems. A key question underlying the research was the possibility of integrating or separating services for TIP and GBV victims and thereby, ensure that victims have better access to services. The research conducted in India identified the lack of standard protocols and indicators for identification and screening of victims of TIP and GBV, gaps in the legal framework in addressing the cases of human trafficking, geographical unevenness in the availability of services where services are existent largely in the cities, and many barriers to accessing services by the victims. Inadequate funding and resource constraints is a major challenge to efficient delivery of services, given which, integrating the services provided to TIP and GBV victims is a valid argument. The study presents in-depth research on the current situation of the screening and identification services, and the possibility of integrating the services for the victims.

The Foundation hopes that the recommendations offered by the study would support victims’ access to services in a more cohesive and meaningful manner.

Contents

| | |
|---|-----------|
| Acknowledgements..... | 1 |
| Preface..... | 2 |
| Background..... | 9 |
| CHAPTER 1..... | 15 |
| 1.1. Introduction | 15 |
| 1.2. About the Project | 15 |
| 1.3. Objectives of the Study | 16 |
| 1.4. Methodology and Data Collection | 16 |
| 1.4.1 Rationale behind selection of states..... | 16 |
| 1.4.2 Research Methodology and Data collection..... | 20 |
| 1.5. Challenges and Limitation | 24 |
| CHAPTER 2 Understanding of Trafficking in Persons and Gender-Based Violence..... | 26 |
| 2.1. Introduction | 26 |
| 2.2. Situation Analysis of Trafficking in Persons and Gender-Based Violence | 26 |
| 2.2.1. Trafficking in Persons..... | 26 |
| 2.2.1.1 Modus Operandi of TIP | 36 |
| 2.2.1.2 The Traditional and Emerging Hotspots for TIP | 37 |
| 2.2.1.3 The Purpose of TIP..... | 37 |
| 2.3. Gender-Based Violence | 38 |
| 2.4. Trafficking in Person and Gender-Based Violence | 41 |
| 2.4.1 Conceptual Clarity | 41 |
| 2.4.2 Intersection between TIP and GBV..... | 44 |
| 2.5. Understanding of Trafficking, Migration, and Human Smuggling | 50 |
| 2.5.1 Defining Human Trafficking and Human Smuggling..... | 51 |
| 2.5.2 Intersections or Commonalities between “Human Trafficking”, “Human Smuggling” and “Migration”..... | 52 |
| 2.6. Conceptual clarity on different categories of TIP Victims | 54 |
| 2.7. Screening and Identification of TIP and GBV Victims and its Challenges | 58 |
| 2.8. COVID-19 and its Impact on TIP and GBV..... | 63 |
| CHAPTER 3 Legal Frameworks on Trafficking in Persons and Gender-Based Violence | 66 |
| 3.1. Introduction | 66 |
| 3.2. Existing Laws on Trafficking in Persons in India..... | 66 |
| 3.2.1 International Legal Framework..... | 66 |
| 3.2.2 National Legal Framework on Trafficking in Persons | 67 |

| | | |
|---|--|-----------|
| 3.2.2.1 | Immoral Traffic (Prevention) Act, 1956 | 67 |
| 3.2.2.2 | Indian Penal Code | 67 |
| 3.2.2.3 | Protection of Children from Sexual Offences Act, 2012..... | 69 |
| 3.2.2.4 | Juvenile Justice (Care and Protection of Children) Act, 2015 | 69 |
| 3.2.2.5 | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986..... | 70 |
| 3.2.2.6 | The Children (Pledging of Labour) Act, 1933 | 70 |
| 3.2.2.7 | Bonded Labour System (Abolition) Act, 1976..... | 70 |
| 3.2.2.8 | Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 | 70 |
| 3.2.2.9 | The Transplantation of Human Organs Act, 1994..... | 71 |
| 3.2.2.10 | The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 | 71 |
| 3.2.2.11 | The Emigration Act, 1983 | 71 |
| 3.2.2.12 | The Information Technology Act, 2000 | 71 |
| 3.2.2.13 | Other relevant laws | 72 |
| 3.3 | Existing Laws on Gender-Based Violence in India..... | 72 |
| 3.3.1 | National legal framework to address Gender-Based Violence..... | 72 |
| 3.3.1.1 | Dowry Prohibition Act, 1961..... | 72 |
| 3.3.1.2 | The Indecent Representation of Women (Prohibition) Act, 1986..... | 72 |
| 3.3.1.3 | Protection of Women from Domestic Violence Act, 2005 | 72 |
| 3.3.1.4 | Prohibition of Child Marriage Act, 2006 | 72 |
| 3.3.1.5 | Protection of Children from Sexual Offences Act, 2012..... | 72 |
| 3.3.1.6 | The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013..... | 73 |
| 3.3.2 | Provisions under the India Penal Code (IPC) | 73 |
| 3.4 | Gaps and Challenges in Laws and Legal Procedures | 74 |
| 3.5 | Landmark judgments from the higher courts on TIP and GBV | 81 |
| CHAPTER 4 Services and Service Delivery Framework on TIP and GBV | | 87 |
| 4.1 | Introduction | 87 |
| 4.2 | Services for victims of TIP and GBV | 87 |
| 4.2.1 | Available Services for TIP and GBV..... | 88 |
| 4.2.2 | Service Delivery Schemes | 90 |
| 4.2.3 | Stakeholders' Mandate..... | 98 |
| 4.3 | Service Delivery Framework | 102 |
| 4.3.1 | Plan and Policies | 102 |
| 4.3.2 | Protocols and Standard Operating Procedures (SOPs) | 102 |
| 4.3.3 | Advisories | 104 |

| | | |
|--|---|------------|
| 4.4 | Service Delivery to Victims of TIP and GBV | 106 |
| 4.4.1 | Access to Services | 106 |
| 4.4.1.1 | Access to services based on geographical locations..... | 106 |
| 4.4.1.2 | Access to services based on gender | 107 |
| 4.4.1.3 | Access to services by victims of all forms of trafficking..... | 108 |
| 4.4.1.4 | Barriers to accessing services | 108 |
| 4.4.1.5 | Reasons for not accessing services by victims | 109 |
| 4.4.1.6 | Accessibility of services during the COVID-19 pandemic | 110 |
| 4.4.2 | Victim referrals and place where services are accessed: | 111 |
| 4.4.3 | One-Stop Crisis Centres (OSCCs) and Shelter Homes | 111 |
| 4.4.3.1 | Types of Services provided to TIP and GBV victims | 112 |
| 4.4.3.2 | Challenges in service delivery | 113 |
| 4.4.3.3 | Victim’s perception of services | 115 |
| 4.4.4 | Rehabilitation and Re-integration of TIP and GBV victims..... | 116 |
| 4.4.4.1 | Procedures for rehabilitation and re-integration | 116 |
| 4.4.4.2 | Victims’ preference for re-integration..... | 117 |
| 4.4.5 | Criminal justice delivery in cases of TIP and GBV | 117 |
| 4.4.5.1 | Services available to victims of TIP/ GBV during prosecutions and trials..... | 119 |
| 4.4.5.2 | Challenges of investigation, and prosecutions in TIP and GBV cases | 119 |
| 4.4.6 | Integration or Separation of Services for GBV and TIP Victims..... | 121 |
| CHAPTER 5..... | | 127 |
| Findings and Recommendations..... | | 127 |
| 5.1 | Introduction | 127 |
| 5.2 | Major Findings | 127 |
| 5.2.1 | Trends and Patterns of TIP in the country [and the six states selected for the study] | 127 |
| 5.2.2 | Trends in Gender-Based Violence in the country [and the six states selected for the study] | 128 |
| 5.2.3 | Understanding of TIP and GBV | 128 |
| 5.2.4 | Understanding of Human Trafficking, Human Smuggling, and Migration and their intersections..... | 129 |
| 5.2.5 | Screening and Identification of TIP & GBV Victims | 129 |
| 5.2.5.1 | Challenges to screening and identification of the victims of TIP and GBV | 130 |
| 5.3 | Gaps and challenges in the legal framework | 130 |
| 5.4 | Services and service delivery framework | 132 |
| 5.4.1 | Challenges in service delivery..... | 133 |

| | | |
|---------|--|------------|
| 5.4.2 | Rehabilitation and reintegration of TIP and GBV victims | 133 |
| 5.4.3 | Criminal justice delivery in cases of TIP and GBV | 134 |
| 5.4.4 | Integration or Separation of Services for GBV and TIP Victims..... | 134 |
| 5.5 | Recommendations | 135 |
| 5.5.1 | Set 1 - For the Government | 135 |
| 5.5.1.1 | Strengthened legal and policy framework | 135 |
| 5.5.1.2 | Coordination among different stakeholders..... | 135 |
| 5.5.1.3 | Mapping of vulnerable areas and hotspots for human trafficking | 135 |
| 5.5.1.4 | Guidelines and protocols..... | 136 |
| 5.5.1.5 | Access to services | 136 |
| 5.5.1.6 | Separation of services..... | 136 |
| 5.5.2 | Set 2 - For law enforcement agencies | 136 |
| 5.5.2.1 | Strengthening law enforcement responses through training and capacity building towards increased efficiency of screening and identification of victims and criminal justice delivery | 136 |
| 5.5.3 | Set 3 - For service providers..... | 137 |
| 5.5.3.1 | Awareness generation among the public and within communities | 137 |
| 5.5.3.2 | Access to services | 137 |
| 5.5.3.3 | Rehabilitation and reintegration..... | 137 |
| 5.6 | Future research possibilities | 137 |
| | Abbreviations..... | 138 |
| | Bibliography..... | 141 |

List of Maps

| Map No. | Title | Pg. No. |
|---------|-------------------------------|---------|
| 1.1. | Selected States for the Study | 17 |
| 2.1. | Border of Manipur and Myanmar | 56 |

List of Tables

| Table No. | Title | Pg. No. |
|-----------|--|---------|
| 1.1. | Gender Disaggregated Data of the Respondents (Stakeholders and Victims) | 21 |
| 2.1 | Trends in Victims Trafficked (IPC) 2017-2019 | 28 |
| 2.2 | Selected State-Wise Reporting of IPC Cases of Human Trafficking (2017- 2019) | 30 |
| 2.3 | Percentage Share in Reporting of Cases of Human Trafficking (IPC only) | 31 |
| 2.4 | Various Purposes for Trafficking in Persons 2016-2018 | 37 |
| 2.5 | Victims Perception on Barriers to Screening and Identification | 62 |
| 3.1 | Ratification of Key International Conventions | 66 |
| 4.1 | Schemes and Services for TIP and GBV Victims | 90 |
| 4.2 | Stakeholders and their mandates | 99 |

List of Charts

| Chart No. | Title | Pg. No. |
|-----------|---|---------|
| 2.1 | Cases Reported (IPC & ITPA) 2014-2019 | 27 |
| 2.2 | Responses of Respondents on the Vulnerabilities of GBV Leading to TIP | 47 |
| 2.3 | Responses of Respondents on the Vulnerabilities of TIP Leading to GBV | 49 |
| 4.1 | Available Services for TIP (and where relevant GBV) victims in India | 88 |
| 4.2 | Integration or Segregation of services for TIP and GBV victims | 122 |

List of Boxes

| Box No. | Title | Pg. No. |
|---------|--|---------|
| 2.1 | Facts on Total Reported Crimes Committed Against Women 2019 | 44 |
| 2.2 | Socio-Economic Profiling of Interviewed Victims of GBV and TIP | 49 |
| 2.3 | Some 'other' factors as cited by the Interviewed Victims, affecting proper screening and identification: | 66 |
| 3.1 | Sections from the IPC and those added by the Criminal Amendment Act, 2013 | 77 |

List of Case Studies

| Case Study No. | Title | Pg. No. |
|----------------|---|---------|
| 1 | Intersection between TIP and GBV | 44 |
| 2 | 'Rape' and 'Sham Marriage' leading to 'Trafficking | 47 |
| 3 | Presumed Victims of 'Trafficking | 55 |
| 4 | Efficiency and coordination amongst law enforcement agencies helps speedy trial proceedings in a case of Rape | 120 |
| 5 | Gulmohar Sakhi Centre - An Integrated Service for Victims of TIP and GBV | 124 |

Background

Trafficking in Persons (TIP) and Gender-Based Violence (GBV) are both human rights violations. In fact, they are violations of several rights and are deeply rooted in inequality and systematic discrimination, disproportionately affecting certain sections/groups of the society i.e. the marginalized and the vulnerable communities. Various forms of GBV, such as social discrimination, harmful cultural practices, and violence (both familial and outside the family) increases the vulnerability of a person (especially women and children) to trafficking. As a global crisis, TIP is a worse form of GBV. It is imperative to recognize however that, while TIP and GBV are both on the rise, the mechanisms to address these two types of crimes – such as, law enforcement and services provided to victims – are not adequately equipped to respond, which point to a deficiency in the state and non-state service delivery apparatus. This three-country research study – of India, Nepal and Sri Lanka - aims to identify promising practices, gaps, and challenges in integrating or separating services for TIP and GBV victims and optimizing screening and support services.

Given the vast geography of India, the six states of Delhi, Goa, Kerala, Madhya Pradesh, Maharashtra and Manipur were selected for the research. Each selected state can be considered as representative of their respective zone. The selected states also provide the opportunity to explore different forms of trafficking i.e., internal, transnational, transit to foreign land, source to transnational trafficking, especially labor and commercial sexual exploitation, etc. A total of 70 key informant interviews with the Law Enforcement Officials (*Police, Prosecutors, Judges and Border Officials*), Service Providers (*Shelter homes, NGOs, and Government Officials*), and Victims (*TIP and GBV*) were conducted to arrive at the findings and recommendations. A focused group discussion (FGD) was conducted with service providers.

Data Collection

According to crime statistics published by the National Crime Records Bureau in its ‘Crime in India Reports’, there has been a surge in the number of persons trafficked in the latest reporting year (2019) as compared to the previous two years, as well as an increase in the victims rescued. Yet the conviction rate is low, pointing towards a gap in the criminal justice system. Similarly, in terms of GBV, which is represented under the head ‘Crime against Women’ in the report, there is a trend of increase in violence against women with the majority of the cases reported under the (Indian Penal Code) being offenses of ‘Cruelty by Husbands and Relatives’, ‘Assault on Women with Intent to Outrage her Modesty’, ‘Kidnapping & Abduction of Women’ and ‘Rape’. However, even though review of secondary literature and also primary interventions revealed TIP and GBV are quite rampant and at a crisis stage in the country, yet due to the clandestine nature of the crime of trafficking and the widespread ignorance, stigma, stereotype, fear of retaliation attached to both the crimes of TIP and GBV, underreporting [especially in official records] is quite pervasive. Further, the inadequate responses by law enforcement agencies and the lack of trust in the police act as a deterrent for reporting cases. The existing inadequacies of official statistics have been highlighted by various national and international organizations. The latter report cases of trafficking in India in the millions, whereas the official data reports

a few thousand each year. There also seem to be gaps in identifying and linking ‘missing’ and ‘kidnapped’ cases (especially of women and children) to trafficking.

As per the Crime in India Reports (2017-2019) Maharashtra has the highest number of TIP and GBV cases in the country, followed by Delhi, Kerala, Madhya Pradesh, Manipur and Goa, in TIP numbers; and Madhya Pradesh, Delhi, Kerala, Goa and Manipur in GBV numbers. The major forms of TIP in the selected states and the country are – commercial sexual exploitation (CSE), forced labor, bonded labor, domestic servitude, forced marriage, drug peddling, forced begging, trafficking in persons for organ removal child labor, child pornography, trafficking for forced adoption, and child soldiers. In fact, Maharashtra (especially Mumbai) and Goa stand as major global sex trafficking destinations for both domestic and international victims; and Kerala, Manipur and Maharashtra are important source and transit destinations for transnational trafficking to Gulf Cooperation Council (GCC) and Middle Eastern countries.

Data reveals that women and children form a skewed proportion of total trafficked victims; and the official data on GBV focuses only on women and children. However, this doesn’t capture the fact that both crimes are indiscriminate and cut across the boundaries of age, sex, ethnicity, caste, and sexual orientation. Though it is true that violence meted out against women in the country is colossal and differs in magnitude and heinousness, nonetheless it is imperative to recognize that men and other genders may also be victims of trafficking and intimate partner violence. Further, the transgender community due to their socially assigned ‘non-conforming’ identity face extreme violence that ranges from familial abuse to various forms of sexual assault, rape, and even murder. The research found a disturbing under-reporting of, and ignorance towards such cases and a lack of their inclusion in the official statistics and legal framework, except for the introduction of the new Transgender Persons (Protection of Rights) Act, in 2019. This huge gap manifests in the lack of conceptual clarity in understanding TIP and GBV and their various forms and nuances among interviewed stakeholders. A fair number of stakeholders interviewed were aware of the definition of TIP as provided by the United Nations Trafficking Protocol (2000) and indicated knowledge of different forms and nuances of trafficking. Few stakeholders, especially the law enforcement officials (LEOs), relate trafficking to commercial sexual exploitation or prostitution involving predominantly women and girls. A majority of the interviewed victims exhibit some understanding in the activities involved in the trafficking process – such as buying and selling of women, use of force, befriending victims, making false promises and forcing victims into prostitution, etc.; however, their understanding is extremely biased towards TIP for the purpose of CSE of women/girls. GBV on the other hand is predominantly understood as violence against women or domestic violence, with very few stakeholders having a holistic understanding of the term.

Understanding of TIP and GBV

Although there are issues around understanding of the terms, respondents (law enforcement officials, non-governmental organizations, shelter homes, government officials, and victims) had a clear understanding about the intersectionality between TIP and GBV, more so of GBV leading to TIP. Respondents identified socio-economic reasons, aspirational migration, societal norms and pressure, physical and other forms of abuse within the family/ or by known persons, unfounded trust on outsiders, forced or sham marriages, especially coerced marriages to states with lower sex ratio as factors that lead to TIP. All these factors force the vulnerable to get

entrapped in the traffickers' web, leading to further violence. However, there appears to be a lack of understanding among the respondents about GBV within a TIP situation. Though the responses of the stakeholders were almost equally divided - between one section demonstrating knowledge and the other declaring no preponderance of GBV in a TIP situation, there was however, an understanding of GBV in sex trafficking than any other form of TIP, especially among the LEOs. Very few respondents (mostly service providers) presented a holistic understanding of GBV in all forms of trafficking, i.e. in forced or bonded labor conditions.

Further, the research found that poor understanding of TIP and GBV extends to a weak understanding of the three concepts of human trafficking, human smuggling, and migration - especially among border officials. There is also lack of understanding among a majority of the interviewed stakeholders on the types of victims – i.e., actual, potential, and presumed victims of trafficking. This in turn affects the screening and identification process, especially at the borders, since all three events are measured with the same yardstick, leading to uneven responses in intercepting/ detaining people crossing the borders. This leads to a negative impact on mobility and migration for work, especially for women, leading them to find often unsafe alternative routes, thus exposing them to being trafficked in foreign lands.

Other factors which also act as a deterrent to screening and identification of the victims of TIP and GBV are legal framework, uneven law enforcement, lack of appropriate identifying protocols, lack of coordination and cooperation among stakeholders, lack of awareness and cooperation from the victims and the local community, and fear of retaliation among victims.

Protection Afforded through the Legal Framework

In terms of the legal framework, India has ratified and/or is a signatory to various regional and international treaties and instruments and has multiple laws and legislations dealing with TIP and GBV. Notable among them are - Immoral Traffic (Prevention) Act (ITPA), 1956; Indian Penal Code (IPC); Protection of Children from Sexual Offences (POCSO) Act, 2012; Juvenile Justice (Care and Protection of Children) Act, 2015; The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986; Bonded Labour System (Abolition) Act, 1976; The Information Technology Act, 2000; Dowry Prohibition Act 1961; Protection of Women from Domestic Violence Act, 2005; and Prohibition of Child Marriage Act, 2006.

Despite a strong legal framework mostly in compliance with the international standards, India's law have some gaps which affect the delivery of justice (prosecution, investigation, trial and conviction) for victims. ITPA 1956, which deals with human trafficking, focuses only on CSE, neglecting other major forms of TIP in the country. It also lacks an appropriate definition of human trafficking and is self-contradictory as it both criminalizes and rehabilitates women trapped in prostitution. Though some of these discrepancies have been addressed by the Criminal Law (Amendment) Act, 2013 in the IPC – there is no comprehensive stand-alone TIP law in the country. Likewise, there is also an absence of a holistic legislation for dealing with GBV cases in the country. All of these create ambiguities among the LEOs, who often have insufficient knowledge and training on recent amendments, and sensitivity in handling these issues affecting the implementation of the laws related to TIP and GBV. Additionally, the confusion in understanding the term 'consent'¹ among the LEOs impacts justice delivery to victims of TIP and GBV. The legal provisions are women-centric leading to immense gender

gap in laws and other provisions for male and transgender (adult) victims, which in response also molds the service delivery system in the country.

Access to services for TIP and GBV victims

The major government stakeholders providing services to TIP and GBV victims are Government Departments [Ministry of Women and Child Development (MWCD), Ministry of Home Affairs (MHA), Ministry of Labour and Employment, Ministry of External Affairs (MEA), etc.]; various Commissions [National Commission for Women (NCW), National Human Rights Commission (NHRC), National Commission for Protection of Child Rights (NCPCR)]; Law Enforcement Agencies [State Police, Anti-Human Trafficking Units (AHTUs), Mahila Thanas or Women Police Stations, Special Juvenile Police Units (SJPU), Border Guards - Border Security Force (BSF)/Assam Rifles/ Sashastra Seema Bal (SSB), Central Bureau of Investigation (CBI), National Investigation Agency (NIA) etc.]; Judiciary [District Courts, High Courts, and the Supreme Court of India]; Public Prosecutors; Child Welfare Committees (CWC); District Child Protection Units (DCPU), Anti-Trafficking Task Force, and Civil Society. There are also government schemes for effective service delivery such as - Integrated Anti-Human Trafficking Units (IAHTU) Scheme, Ujjawala Scheme for TIP victims; Swadhar Greh for GBV victims; and One-Stop Center Scheme (OSCS), Nirbhaya Fund, ChildLine Service, Women Helpline Scheme, etc., for both the TIP and GBV victims. All of these stakeholders work towards prevention, protection, and prosecution. However, there is a gap in information on their monitoring, evaluation, and impact assessment to gauge their effectiveness. In partnership with the United Nations Office on Drugs and Crime (UNODC), the government has also formulated various Protocols, and Standard Operating Procedures (SOPs) on TIP; in addition to issuing advisories and guidelines. However, most of the SOPs and Protocols have become outdated and are also not known to the stakeholders involved in this sector.

Despite the challenges, the interviewed shelter home representatives shared that they were providing various services to the victims which include: shelter, psycho-social support, physical health care, nutrition, life skills training, vocational training, and economic security, education, identity documents, legal information and counselling, rehabilitation, and repatriation. The victims were referred through multiple sources such as police, well-wishers from within the community, helplines (CHILDLINE and Women helpline), child protection agencies, victims' family, courts, women's organizations and Panchayat; and the services were provided to the victims either in-house or after being associated with certain NGO/ One Stop Crisis Centres (OSCC). In most instances, the victims were satisfied with the responses received from the shelter homes and NGOs, but respondents expressed extreme dissatisfaction with the police and the prosecutors. The dissatisfaction is further extended towards rehabilitative services especially for economic independence. Most of the GBV victims interviewed were reluctant to file legal proceedings and looked for family rehabilitation whereas TIP victims (of CSE) preferred either to continue living in the shelter homes or to get rehabilitated in communities with or without their families, owing to lack of family acceptance.

Service delivery to victims are fraught with challenges, namely, inadequate funding and resource constraints along with other barriers such as, geographical unevenness in availability of services (concentration of services in the cities), lack of awareness especially in rural areas on the availability of services, inadequate responses from law enforcement officials, existing

prejudices about victims, lack of functional AHTUs, lack of cooperation amongst stakeholders, GBV victim's inability to identify oneself as a 'victim' of violence (especially in domestic violence cases), fear, shame, stigma, and lack of trust and family support. Notably, like the legal framework, gender disparity in accessing services is also evident since shelter homes and most of the services are available only for women and children. Very few NGOs and shelter home representatives mentioned providing family counseling and psychosocial support to the male and transgender victims of GBV.

Integration of services as a way forward?

To address the barriers and challenges that jeopardize smooth access to and delivery of the services, we looked into whether integration or separation of services for both the victims of TIP and GBV was the way forward. Stakeholders had different opinions, which can be divided into three major groups – a) those in favor of integration of services, considering the commonality between the needs and experiences of TIP and GBV victims; b) some recommended a separation of services for TIP and GBV victims, citing their differing needs and experiences, with possible integration of few services like legal aid and medical facilities; and c) some respondents suggested separate units for services established under one common location for easy access. It's noteworthy that all interviewed police officers strongly suggested situating different departments in one common location which could provide services (recording of statement before Magistrate, production before Child Welfare Committee, medical assistance, trauma-induced care/counseling, translation, compensation etc.) for victims of both TIP and GBV, which would make subsequent procedures easier for the police.

Recommendations

Recommendations for improving the identification of victims and delivery of service to them:

- Strengthen legal and policy framework by adopting comprehensive laws on TIP and GBV; amending the ITPA 1956; setting up fast track courts for trial in TIP and GBV cases; and enforcing strict implementation of the laws.
- Improve coordination among stakeholders especially within different government departments and agencies, and between multiple stakeholders.
- Formulate standardized guidelines and protocols on screening and identification of victims of TIP for all relevant agencies; and upgrade existing SOPs and Protocols on investigation and prosecution of cases of human trafficking, by including new legislation and amendments to the existing laws.
- Ensure reach and access to services in smaller towns and rural areas, especially at border areas in partnership with NGOs; and set-up shelter homes where they are currently not available to ensure equitable geographical distribution depending on the scale of the problem.
- Strengthen responses of law enforcement through training and capacity building to improve screening and identification of trafficked victims and criminal justice delivery.

- Develop an individual care and exit plan to enable victims in shelter homes to rehabilitate (especially economically) and reintegrate themselves within the community, either with or without their families' support.
- Separate shelter homes for GBV and TIP victims, especially those rescued from commercial sexual exploitation; but integrate services at a common location, similar to the One Stop Crisis Centre model, under one roof.
- Integration of possible services for GBV and TIP victims may be done for medical and legal aid services.

CHAPTER 1

1.1. Introduction

Discrimination and violence have always been major forms and processes of oppression. Trafficking in Persons (TIP) and Gender-Based Violence (GBV) reflects that damaging side of society as a whole.¹ Both TIP and GBV are deeply rooted in social inequality and patriarchy and are clear signs of human rights violations.²

TIP is a global crisis and is one of the worst forms of GBV.³ GBV includes harmful cultural practices, social discrimination, and family violence and often induces trafficking.⁴ It increases the vulnerability of those, mostly women and children, who are easily entrapped by the traffickers. Hence, both the problems are interlinked and there is hardly any country that has remained unaffected by these crimes. The current trends in trafficking and gender-based violence described in various national and international reports suggest that both are burgeoning problems globally. Yet statistics on TIP and GBV remain grossly underplayed and demand attention. It is imperative to acknowledge that prevention plays a crucial role in decreasing the prevalence of TIP and GBV. Equally important is the need to address issues related to screening and service provision of GBV victims as also those already trafficked to stop further victimization and/or re-victimisation.

1.2. About the Project

This research project aims at analysing the efficiency and effectiveness of screening and service provision to victims of Trafficking in Persons (TIP) and Gender-Based Violence (GBV) in diverse contexts in India. Victims of TIP and GBV often suffer similar and intersecting forms of abuse. While the needs for services are similar for both the groups, certain victims may need additional care (psychological and emotional) and support (legal and financial). This research, therefore, seeks to analyse the efficiency and effectiveness of the existing screening and service delivery to victims of both the groups by identifying promising practices, gaps, and challenges in screening and service provision. Thereafter, it presents a set of recommendations for implementation by stakeholders. The project further examines whether the integration of services which are at present provided separately to the victims of TIP and GBV is feasible; and whether such integration would lead to the efficient utilisation of the human and capital resources of the service providers. The unprecedented COVID-19 pandemic has created further urgency on the prompt identification of victims and service delivery. It has also exposed the gaps that either thwarted or made it extremely difficult for the service providers to impart services and for the victims to seek help.

1 Mathur, Kanchan (2004). *Countering Gender Violence: Initiatives towards Collective Actions in Rajasthan*. Sage Publications India Pvt Ltd.

2 EIGE, *What is Gender-Based violence?* Retrieved from: <https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>. Accessed on: 6 November 2020.

3 Sorensen Jennifer, Piazzano Sara, DiPretoro Olga, Donnell Carolyn O' (2012) *Addressing Inter-linkages between Gender-Based Violence and Trafficking in Persons to Prevent Reinforcement of Inequalities*. Winrock International. Retrieved from: <https://winrock.org/wp-content/uploads/2016/03/Addressing-inter-linkages.pdf>. Accessed on: 6 November 2020.

4 Ibid

The study has been conducted in three countries – India, Nepal, and Sri Lanka, as part of an 18-month research project. In India, the research was conducted in the six states of Delhi, Goa, Kerala, Madhya Pradesh, Maharashtra, and Manipur by FXB India Suraksha (FXBIS or henceforth *the project team*) with support from The Asia Foundation. Given the vast terrain of the country, a pan-India study would have been both ambitious and time-consuming. Hence, the six states were selected for a more comprehensive and robust study.

1.3. Objectives of the Study

The primary objectives of the research are -

- To understand the processes of screening and identifying victims of TIP and GBV in India and recognize the gaps that hinder their appropriate identification.
- To study the existing national laws on TIP and GBV and their gaps, along with challenges in implementation.
- To analyze the availability of services for the victims of TIP and GBV.
- To examine whether integration of services for the victims of TIP and GBV is a possibility or not, and the challenges if such integration is recommended.

1.4. Methodology and Data Collection

This study is based on i) secondary data and literature analysis, ii) legal framework analysis and iii) analysis from primary field research. The secondary part constitutes - literature review, analysis of data from the National Crime Records Bureau (NCRB), analysis of online content (news, articles, information from authentic websites), and different project reports. The legal framework analysis comprises – critical analysis of legal provisions/acts/ judgements related to human trafficking and GBV, and the primary field research analyses of *key informant interviews* (KIIs), *case studies* gathered from the field, and *focus group discussions* (FGDs). The study is broadly structured on a qualitative methodological approach. However, a brief quantitative analysis of the secondary data on TIP and GBV is also incorporated in Chapter 2.

1.4.1 Rationale behind selection of states

The primary research investigation and data collection was conducted in Delhi, Goa, Kerala, Madhya Pradesh, Maharashtra, and Manipur. The states selected provide a regional coverage and can be seen as representative of the factors affecting the screening and service provision in their respective zones i.e., Manipur - Eastern and North-Eastern region, Goa, and Maharashtra - Western region, Madhya Pradesh - Central region, Delhi - Northern region, and Kerala - Southern region. Apart from regional coverage, each state is defined by respective characteristics as either an emerging or existing hotspot for human trafficking.

Map⁵ No 1.1. Selected States for the Study



Delhi – Delhi is a major destination state for trafficked victims in the country. GB (Garstin Bastion) Road, a major red light district, is a place known for selling young women and children for forced prostitution.⁶ The state also provides fertile ground for fake placement agencies that entrap women and children from poor socio-economic backgrounds, mostly from states like Jharkhand, West Bengal, Assam, and Bihar,⁷ and push them into domestic servitude and forced labour/child labour.⁸ The industrial and factory regions of the state – Okhla, Gandhi Nagar, Mustafabad, Seelampur – are hubs where children are trafficked and forced into labour. With the onset of the COVID-19 pandemic such incidents have surged.⁹ Further, the metropolitan area and its associated towns – Gurugram, Noida, Ghaziabad, and Faridabad-- also exhibit a surge in demand for young children, particularly girls for domestic work.¹⁰ Apart from being a prominent destination point, Delhi, has recently also emerged as a source state for trafficking

5 The boundaries represented in the map do not imply official endorsement or acceptance by The Asia Foundation, the United States Government, and FXBIS.

6 Haider Faizan (2018). Rescued from Delhi's red light area, woman returns to GB Road to save minor. Hindustan Times. Retrieved from: <https://www.hindustantimes.com/delhi-news/rescued-from-delhi-s-red-light-area-woman-returns-to-gb-road-to-save-minor/story-06yfW0AQzzL9fBIDpcJzAL.html>. Accessed on: 24 November 2020.

7 Satya Prakash (2017) Let's end dark economics of domestic servitude. The Sunday Standard. Retrieved from: <https://www.newindianexpress.com/thesundaystandard/2017/mar/25/lets-end-dark-economics-of-domestic-servitude-1585889.html>. Accessed on: 18 January 2020.

8 Freedom United, Help stop domestic slavery in Delhi. Retrieved from: <https://www.freedomunited.org/advocate/help-stop-domestic-slavery-delhi/>. Accessed on: 20 December 2020.

PTI (2020) Delhi police, DCPCR say child labour cases increased during COVID-19 pandemic. The Indian Express. Retrieved from: <https://www.newindianexpress.com/cities/delhi/2020/sep/27/delhi-police-dcpcr-say-child-labour-cases-increased-during-covid-19-pandemic-2202684.html>. Accessed on: 18 January 2020.

9 PTI (2020)

10 Satya Prakash (2017).

women to Goa – another state that is fast becoming a major destination for trafficked women.¹¹ Besides, since the laws, schemes, policies, and plans for victims of TIP and GBV are drafted by the relevant ministries of the central government and are based in New Delhi, it was crucial to engage government stakeholders in the study.

Goa – Goa is a destination state and an emerging hotspot for trafficking in women and girls from across the country and other parts of the world for commercial sexual exploitation.¹² A field research conducted by Anyay Rahit Zindagi (ARZ) – the nodal NGO appointed by the Anti-Human Trafficking Unit of the Goa police – exposed the dark side of sex trafficking in various hotspots like massage parlors, hotels, and big housing complexes. Apart from domestic trafficking, the state is also a major destination spot for trafficked victims from Nepal, Bangladesh, Uzbekistan, Tajikistan, Kazakhstan, Kyrgyzstan, and Russia.¹³ Moreover the state has undergone a shift from the traditional avenues of soliciting to online platforms for recruiting, soliciting, and receiving of payments.¹⁴ The continuous demand for commercial sexual activities in the state is the outcome of its vibrant tourism industry and the existence of an organized network of traffickers.¹⁵

Kerala – Kerala is a locus for trafficking of men and women to the Gulf Cooperation Council (GCC) countries for forced labour, prostitution, and domestic servitude.¹⁶ The state is also a source area for men and women migrating to Middle Eastern countries as labourers, and thereby, sometimes getting trafficked in forced labour situations. In conjunction, minors, especially young girls and women in the state are also vulnerable to being trafficked for sexual exploitation.¹⁷

Madhya Pradesh – Madhya Pradesh is an example of a source, transit, and destination point for trafficking in India especially of young boys and girls.¹⁸ According to the Crime in India Reports, for the past few consecutive years, the state topped the list of states in the *missing children* category, many of whom are deemed to have been trafficked for labour, sexual exploitation, organ trade, and child marriages.¹⁹ The state is home to a major proportion of the tribal population of the country and most of the missing children belong to the Scheduled Tribes and Scheduled Caste

11 Shetye Murari (2019) 20% of women rescued from trafficking are foreigners. The Times of India. Retrieved from: <https://timesofindia.indiatimes.com/city/goa/20-of-women-rescued-from-trafficking-are-foreigners/articleshow/70446268.cms>. Accessed on: 24 November 2020.

12 Da Gama Danuska (2020) Combating Human Trafficking in Goa. The Navhind Times. Retrieved from: [https://www.navhindtimes.in/2020/08/16/magazines/panorama/combating-human-trafficking-in-go/#:~:text=Human%20trafficking%20\(mainly%20of%20women,exploitation%20happens%20in%20broad%20daylight.&text=Despite%20the%20pandemic%2C%20there%20have,human%20right%20have%20been%20violated](https://www.navhindtimes.in/2020/08/16/magazines/panorama/combating-human-trafficking-in-go/#:~:text=Human%20trafficking%20(mainly%20of%20women,exploitation%20happens%20in%20broad%20daylight.&text=Despite%20the%20pandemic%2C%20there%20have,human%20right%20have%20been%20violated). Accessed on: 27 December 2020.

13 Shetye Murari (2019)

14 Ibid

15 Ibid

16 Jacob Jeemon (2016) The sex slaves of Kerala. India Today. Retrieved from: <https://www.indiatoday.in/magazine/investigation/story/20160314-kerala-sex-human-trafficking-police-828558-2016-03-02>. Accessed on: 24 November 2020.

More teeth for anti-human trafficking units (2017). The Indian Express. Retrieved from: <https://www.newindianexpress.com/states/kerala/2020/oct/20/more-teeth-for-anti-human-trafficking-units-2212505.html> Accessed: 19 December, 2020.

17 Ibid.

18 Anti-Trafficking Center (2019) Understanding Trafficking in Madhya Pradesh – Interview with Prasant Dubey. Retrieved from: https://www.fighttrafficking.org/atc_blog/interview-prashant-dubey/ Accessed on 27 December 2020.

19 Ibid

communities.²⁰ Of the children who go missing a huge proportion of the girls end up in sex trafficking whereas others are forced into domestic servitude and forced (child) labour.²¹ Inter-generational trafficking and prostitution, a custom practised by the *Bancbda and Bedia community* of the region also makes the state volatile to trafficking, especially in the regions of *Neemuch* and *Mandsaur*.²²

Maharashtra – Maharashtra topped the list of states in the number of human trafficking cases registered in the year 2019 by NCRB.²³ The state has an extensive network of red light areas in the three metro cities of Mumbai, Pune, and Nagpur.²⁴ There are also small- and medium-sized red light areas across the state.²⁵ This makes Maharashtra a major destination state for both domestic and transnational trafficked victims. Rescue operations carried out in the state reveal that majority of trafficked victims in the state are women and roughly 90 per cent end up in prostitution.²⁶ The state is also deemed as a source and transit point for sex trafficking of women/girls from India, Bangladesh, and Nepal to the Middle East – especially Dubai, Kuwait, and Saudi Arabia – and other parts of the world for work. This often ends up in sex trafficking and/or domestic servitude.²⁷

Manipur – In recent times, Manipur has emerged as a new migration route which is used as a transit point for trafficking women and girls especially from Nepal and the North Eastern states of India to Myanmar.²⁸ From Myanmar, these women and girls trafficked onwards to various

20 Ibid

21 Singh Ramendra (2019) Madhya Pradesh tops in missing kids' count. The Times of India. Retrieved from: <https://timesofindia.indiatimes.com/city/bhopal/mp-tops-in-missing-kids-count/articleshow/67401655.cms>. Accessed on 17 January 2021.

22 Ibid

23 Navalkar Priyanka (2020). Maharashtra records highest human trafficking cases in 2019. The Free Press Journal. Retrieved from: <https://www.freepressjournal.in/mumbai/maharashtra-recorded-highest-human-trafficking-cases-in-2019#:~:text=Maharashtra%20tops%20the%20list%20of,of%20which%20936%20were%20women>. Accessed on: 18 January 2021.

24 Madan Neha (2020) 105 Women go missing every day in Maharashtra: NCRB data. Mumbai Mirror. Retrieved from: <https://mumbaimirror.indiatimes.com/mumbai/crime/105-women-go-missing-everyday-in-maharashtra-ncrb-data/articleshow/78756011.cms> Accessed on: 8 January 2021.

25 Ibid

26 Natu Nitasha (2020) Human trafficking cases drop, but Maharashtra still tops. TOI. Retrieved from: <https://timesofindia.indiatimes.com/city/mumbai/human-trafficking-cases-drop-but-maharashtra-still-tops/articleshow/78713481.cms>. Accessed on: 19 January 2020.

27 B. Nitin (2018) Sold as slaves, tortured in Middle East: the human trafficking nexus in Hyderabad. The News Minute. Retrieved from: <https://www.thenewsminute.com/article/sold-slaves-tortured-middle-east-human-trafficking-nexus-hyderabad-88165>. Accessed: 18 December, 2020

Singh K. Sumit (2015) Thousands of sex slaves from India, Nepal and Bangladesh sold to middle East and IS Terrorists. The New Indian Express. Retrieved from: <https://www.newindianexpress.com/nation/2015/sep/14/Thousands-of-Sex-Slaves-From-India-Nepal-and-Bangladesh-Sold-to-Middle-East-and-IS-Terrorists-814117.html>. Accessed: 18 December, 2020.

28 Manipur: 21 women rescued from human traffickers sent back to Nepal (2020). The Morung Express. Retrieved from <https://morungexpress.com/manipur-21-women-rescued-from-human-traffickers-sent-back-to-nepal>. Accessed on: 15 January, 2021.

cities across South Asia and the Middle East.²⁹ That apart, child trafficking is on the rise within the state.³⁰

1.4.2 Research Methodology and Data collection

The stakeholders identified for Key Informant Interviews (KIIs) for this study were: law enforcement officers (police, judicial officers, and public prosecutors), service providers (NGOs, shelter homes, government officials) and, victims of TIP and GBV.

The Questionnaires and Training: The drafting of questionnaires for each group of stakeholders and the victims was carried out by the Principal Investigator (PI). After this, a two-day training workshop with the project team was designed and conducted by the PI. In the training, the nuances of the project, the focus of the study and the questionnaires were discussed in detail. The training also included discussing the ‘Guidelines for the Ethical Conduct of Research and Data Collection’ and a ‘Handout on Self Care for Researchers and Interviewers’ to guide the ethical conduct of the research and address the mental health wellbeing of researchers. The project team planned the pilot-testing interviews during the workshop. After the training and before the pilot-testing, the questionnaires were translated into the local language to facilitate easy communication and understanding. It is also imperative to acknowledge that, in states where both the languages (i.e. Hindi and English) were difficult for the respondents to understand and articulate their responses, the project team took the help of local translators and successfully carried out the interviews.

The findings and observations from the interviews conducted during pilot testing were incorporated in the questionnaires.

Interviews with Stakeholders: Before starting with the interviews, the project team mapped out key stakeholders from the selected states. Thereafter, the project team was gearing up for the field visits when the outbreak of the COVID-19 pandemic impeded the data collection process. A nationwide lockdown was imposed with effect from March 25, 2020 to contain the pandemic, bringing with its extreme mobility restrictions which prevented any travel. This prompted the project team to adapt a methodological change for data collection. After holding an elaborate discussion with The Asia Foundation and the other two research partners in Nepal and Sri Lanka, it was unequivocally decided that the KIIs would be carried out on virtual/digital platform.

Accordingly, the stakeholders were approached through emails with i) a letter seeking permission for the interview, ii) a consent form, and iii) the relevant questionnaire. This structure was followed so as to keep the entire process as transparent as possible while maintaining the trust and reliability of the stakeholders. Interviews were scheduled on dates and time selected by the stakeholders, either over Zoom meetings or on the telephone.³¹ Each interview was recorded with prior permission from the respondents in order to prevent loss of any vital information.

29 Choudhury Ratnadip (2019) Manipur police rescue 183 in ongoing anti-human trafficking operation. NDTV. Retrieved from: <https://www.ndtv.com/india-news/manipur-police-rescue-130-in-ongoing-anti-human-trafficking-operation-1987440>. Accessed on: 24 November 2020

30 Manipur new source of cross-border trafficking (2018). Business Standard. Retrieved from: https://www.business-standard.com/article/news-ians/manipur-new-source-of-cross-border-child-trafficking-118052401301_1.html. Accessed on 10 January 2021.

31 The virtual interviews had certain challenges and limitations. Those facets are highlighted in section 1.4 of the chapter.

The anonymity of the respondents was assured and maintained while drafting the report. The chart below provides a broad overview of the stakeholders interviewed for the study:

Table 1.1: Gender Disaggregated Data of the Respondents (Stakeholders and Victims)

| Type of Interview | Type of Respondents | | Location [Number of Interviewees] | Female | Male | Number of Interviews |
|--------------------------------|--------------------------|-----------------------|-----------------------------------|-----------|-----------|----------------------|
| In-depth Interviews | Law Enforcement Agencies | Police | Delhi [3] | 3 | 8 | 11 |
| | | | Madhya Pradesh [6] | | | |
| | | | Manipur [2] | | | |
| | | Border Security Force | Delhi [1] | 0 | 2 | 2 |
| | | West Bengal* [1] | | | | |
| | Judge | Delhi [2] | 3 | 0 | 3 | |
| | Maharashtra [1] | | | | | |
| | Prosecutors | Delhi [3] | 2 | 2 | 4 | |
| | Madhya Pradesh [1] | | | | | |
| | Total | | | 8 | 12 | 20 |
| | Service Providers | Shelter Homes | Delhi [2] | 9 | 1 | 10 |
| | | | Kerala [1] | | | |
| | | | Madhya Pradesh [1] | | | |
| Maharashtra [1] | | | | | | |
| Manipur [5] | | | | | | |
| Non-Governmental Organisations | | Delhi [4] | 8 | 6 | 14 | |
| Goa [1] | | | | | | |
| Kerala [2] | | | | | | |
| Madhya Pradesh [6] | | | | | | |
| Maharashtra [1] | | | | | | |
| Government Officials | Delhi [4] | 1 | 5 | 6 | | |
| Maharashtra [2] | | | | | | |
| Total | | | 18 | 12 | 30 | |
| Victims | Trafficking in Persons | Delhi [8] | 8 | - | 8 | |
| | Gender-Based Violence | Delhi [5] | 12 | - | 12 | |
| | Madhya Pradesh [7] | | | | | |
| Total | | | 20 | | 20 | |
| Total | | | | 46 | 22 | 70 |

#Note: The 70 respondents are inclusive of the 4 pilot interviews done in February 2020, during pilot-testing, one each with the police, prosecutors, a representative from the shelter home and the NGO.

* Though West Bengal was not selected as a representative state for the study, a BSF officer from the state was interviewed. The reason being that India and Bangladesh share the longest international border which is 4096.7 kilometers (KM) and the fifth longest border of the world. West Bengal with 2217 KM shares the longest border with Bangladesh, which is volatile in terms of trafficking in persons, outside and especially within India. Hence, the project team deemed it appropriate in engaging with a BSF officer from the state so as to capture various nuances and challenges that the border forces face in terms of handling situations related to human trafficking at international borders.

No interviews conducted with the Immigration Officials – The COVID-19 pandemic not only changed the methodology of data collection from in-person interactions to switching to virtual platforms – but also affected access to relevant stakeholders. Accessing law enforcement officials was most challenging and this not only delayed the completion of the interviews but also made interviews with Immigration Officials impossible. Despite all efforts of the project team, the Immigration Officials could not secure the necessary permissions for such interactions from their supervisory authorities.

Focus Group Discussion: As per the initial design of the research, two focus group discussion (FGD) one each with the LEOs and service providers were to be conducted by the project team. However, COVID-19 made it difficult to bring LEOs from different states (and also from one state) onto one platform. After continuous follow-up, the project team was able to convene a FGD with service providers (NGOs, shelter home and government officials) on 7 October 2020. The FGD had seven participants from the states of Manipur (1), Delhi (3), Madhya Pradesh (1) and Maharashtra (2). Out of 7 participants, 4 were women (2 representatives each from shelter homes and NGOs) and 3 men (3 government officials).

Interviews with victims of TIP and GBV: A decision was taken collectively by TAF and the three research partners not to interview victims through virtual platforms as these could have negative consequences and would be ethically incorrect. FXBIS (*the project team*) identified three organizations working directly with the victims of TIP and GBV, namely- *Society for Participatory Integrated Development* (SPID) in Delhi, *Shakti Shalini* in Delhi, and *Action Aid* in Madhya Pradesh. The project team worked with these organisations to conduct interviews with victims. A facilitator was appointed by the organizations to carry out the interviews with the victims. Before the interview, the facilitators were trained by the PI and the project team over the virtual platform, on the questionnaire and procedures and protocols that should be followed. Additionally, each facilitator was assisted by a team member from the project team throughout the interview process. All the interviews conducted with the victims were recorded with their permission and on condition of anonymity.

Gender disaggregated data of the interviewees: Gender-disaggregated data of stakeholders interviewed for this study reflects the skewed representation of men and women in segments like law enforcers, service providers, and victims. Among the law enforcers and service providers which are also sub-divided under various professional designations, gender disparity is evident even within the sub-professional designations (see the table above). An important point here is that, though an equal number of male and female prosecutors, and only female judges (trial court judges), have been interviewed under the LEO category for the research, this in no way reflects the actual gender-disaggregated composition in the LEO force. It is imperative to understand that the total number of judges and prosecutors determined to be interviewed were 2 and 4 respectively - not strong enough numbers to highlight the gender-disaggregated composition in the groups. Further, the team could only interview those individuals who willingly participated. Besides, the judges interviewed (2 females) for the research were from the trial court. The nature of problems and gender representation in trial courts are quite different from those in the lower and higher judiciary - reflecting a progression in inclusivity of the women in the lower judiciary. A better representation of the gender-disaggregated composition, however, can be understood from the composition of the police force (8 males and 3 females) and the border officials (2 males) – where the majority were men.

Among service providers, women predominantly represented the shelter homes and NGOs. Among government officials interviewed, men outnumber women in such positions. All victims interviewed – both TIP and GBV – either currently seeking services or were once recipients of the services, were women. The feminisation of victimhood and the prevalence of ‘women-centric’ legal procedures and service provision are also explored under relevant sections in the report. This disparity is a result and representative of the actual situation in the country where an overwhelming majority of the services available to TIP and GBV victims cater exclusively to women. A majority of certain service providers are also women, whereas the share of law-enforcers is skewed towards men.

Data output: Interviews were recorded after seeking permission from the respondents – stakeholders and victims – with an assurance of anonymity and accurate representation of the data or radical analysis. To gain the trust and to uphold transparency, the project team also decided to share the recordings of respective respondents with them and the final analysis of the report with the interviewed stakeholders. Subsequently, recordings from all the interviews were transcribed and coded under themes. The project team while coding and analysing the data ensured the anonymity of the respondents. The recordings of the interviews were also kept secure as per the internal data protection policy of the organisation.

The Report: The Report was designed to constitute five chapters, addressing the objectives of the project. Both primary and secondary information has been used in all the chapters for analysis.

Chapter 1 introduces the project; presents the objectives addressed in the subsequent chapters; gives a detailed account of the methodologies used for the study; lists the limitations and challenges faced during the data collection and report drafting phase; and details the ways in which the challenges were overcome.

Chapter 2 comprises a detailed analysis of the current situation of TIP and GBV in India from the secondary data available in Crime in India Reports. It further tries to underscore the understanding that the respondents have on defining human trafficking and gender-based violence and their intersectionality; the problem in understanding other closely related terms to human trafficking – i.e. smuggling of migrants, and migration; and the conceptual clarity on the categorisation of victims of human trafficking. The chapter then analyses the gaps in the understanding of the various respondents and the impact on screening and identification of victims. Chapter 2 concludes with the current COVID-19 situation and its impact on TIP and GBV. Apart from the situation analysis, most of the other segments in the chapter are derived from primary field investigations.

Chapter 3 presents a critical analysis of the existing legal frameworks on TIP and GBV, with its gaps and challenges, and concludes with an account of landmark judgements by the higher courts. This chapter also discusses issues related to the understanding of various legal terms – such as ‘consent’ ‘definition of age of a child’, etc., by the respondents and the repercussions of lack of clarity on the appropriate implementation of the laws.

Chapter 4 critically analyses the current schemes and services available to victims of TIP and GBV, and the gaps and challenges in their implementation. The chapter further deals with the current services that are provided by the (interviewed) stakeholders and the barriers to access and

provision of services, taking into account both the stakeholders' and the victims' perspective. A segment of the chapter also deals with the challenges faced by the service providers in addressing the needs of the victims due to the COVID-19 pandemic and the processes they adapted to deal with such challenges. The chapter ends with presenting the views of the interviewed stakeholders on the integration or separation of services for victims of GBV and TIP.

Chapter 5 encompasses the major findings of the study, and concludes with significant recommendations that have been made by the interviewees to address the loopholes in screening and identification of the victims; making legal implementation strong and stringent; having strong service provision and making services more accessible to the victims. The chapter also outlines a future road map for research and processes that should be addressed in integrating the services.

It must be emphasised that all the analysis and recommendations are based on the views and perceptions of the interviewed stakeholders from the six selected states. The study in no way claims to represent the overall situation in the country, which may differ in states that are not a part of this research.

1.5 Challenges and Limitation

The major challenge faced during the project period was the sudden outbreak of the COVID-19 pandemic, which affected and delayed the field research. With the imposition of the nationwide lockdown, the project team had to rely on virtual platforms for the interviews. This came with its own challenges such as:

- Challenges faced in accessing the LEOs [especially police and the Immigration Officials] for virtual interviews as they were preoccupied with handling the COVID-19 situation. Moreover, as per the design and requirement of constructing a strong and all-inclusive research, the study intended to interview high-ranking national security officials such as border officials and immigration officials which required permissions from the Ministry of Home Affairs, especially for interaction with immigration officials. Organizing this permission was a difficult ask, especially during lockdown conditions. The research, therefore, does not reflect the perspective of immigration officials.
- Interrupted network connectivity posed a major challenge for remote interviews. The disruptions interrupted the flow of the conversation and increased the duration of some interviews making them exhausting for both interviewees and interviewers. With broken connectivity an interview extended to an average of over 2.5 to 3 hours and, in some cases, even more.
- Cancellation of interviews without prior notice by the stakeholders was another major impediment that not only delayed the study but also disrupted its momentum. Some interviews were rescheduled multiple times to accommodate the interviewees' conflicting schedules.
- Language barriers made communicating questions to the respondents somewhat challenging through a virtual platform, especially with respondents in Manipur. Although the services of

a translator were used, the entire process became cumbersome and increased the duration of the interview.

- Time management became challenging and forced many interviews to end abruptly. Hence, multiple sessions had to be conducted for completion of a single interview.

Along with the above limitations, other factors that posed a challenge to the study were—due to the interviews being conducted virtually, the questions meant to capture information on the victim's screened by law enforcement agencies/NGOs and the victim's provided services by the government/NGOs had to be omitted, as the interviewees could not access their offices for the details. This segment would have provided some understanding on i) the under-reporting and ii) the numbers of victims receiving services. This would have given a better perspective regarding the difference in government data in identifying and screening of the victims of TIP and GBV. Also, online interviews are limiting in terms of diversity of information. Participant observation which is a very important tool in qualitative analysis went absolutely awry with virtual interviews. Hence, the data collected was restricted to conversations. Nothing else could be viewed, for example, the shelter home conditions, the services that they provide and the standards followed as per the Juvenile Justice Act of 2015. No sample of records or resource materials of the shelter home or NGO etc, could be seen physically for a broader understanding.

CHAPTER 2

Understanding of Trafficking in Persons and Gender-Based Violence

2.1. Introduction

This chapter deals with the current scenario and nuances of Trafficking in Persons (TIP) and Gender-Based Violence (GBV) in India; the definitional issues around terminologies – i.e., smuggling of migrants and migration - those that are inherently different but often [mistakenly] used interchangeably; discussing conceptual clarity on different categories of TIP victims and the understanding of responders; concluding with identifying the barriers and challenges in victim screening and identification.

2.2. Situation Analysis of Trafficking in Persons and Gender-Based Violence

2.2.1. Trafficking in Persons

Though human trafficking is defined as a criminal offence under Indian laws, it is pervasive and continues to pose a significant problem in the country. India remains a major source, transit, and destination country for thousands of men, women, and children being trafficked internally and cross-border every year – especially for commercial sexual exploitation and forced labour.³² Human traffickers exploit domestic and foreign victims in India and traffickers exploit victims from India abroad.³³ Forced internal labour constitutes India's largest trafficking problem; traffickers use debt-based coercion (bonded labour) to compel men, women, and children to work in agriculture, brick kilns, rice mills, embroidery and textile factories, and stone quarries.

Trafficking patterns in the country indicate that about 90 per cent is domestic (i.e., intrastate and interstate) and 10 per cent transnational.³⁴ This huge proportion of internal trafficking is because of the country's vast geographical landscape and diversity.³⁵ Every state and even districts of the country present diverse cultural, socio-economic, political and environmental characteristics that act as both push and pull factors for such large scale domestic trafficking.³⁶

32 Department of State (2018) Trafficking in Persons Report. United States of America. p 221-226. Retrieved from: <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>. Accessed on: 13 January 2020.

33 Department of State (2021) Trafficking in Persons Report. Department of State United States of America. p. 282. Retrieved from: <https://www.state.gov/reports/2021-trafficking-in-persons-report/>. Accessed on: 10 July 2021.

34 National Human Rights Commission – Institute of Social Sciences – UNIFEM (2002-2003) A Report on Trafficking in Women and Children in India. NHRC-UNIFEM-ISS. New Delhi. p. 14.

Leland Stanford Junior University (2010) Human Trafficking in India: Dynamics, Current Efforts, and Intervention Opportunities for The Asia Foundation. p.vi

Murugan Bala P. (2020) Human Trafficking Under-reporting: Comprehensive Legislation Needed. Delhi Post. Retrieved from: <https://delhipostnews.com/human-trafficking-under-reporting-comprehensive-legislation-needed/>. Accessed on: 18 January 2021.

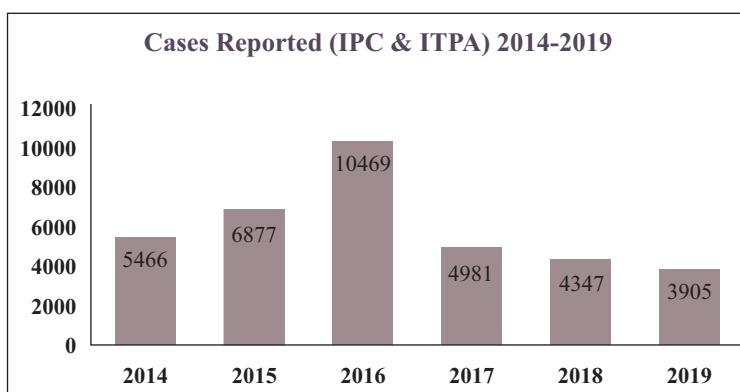
35 Leland Stanford Junior University (2010) p. vi.

36 Ibid. p.vi The primary field research conducted as part of this study also substantiates this.

For cross-border trafficking, India is a destination for victims from its neighbouring countries mainly Nepal and Bangladesh, due to its long and porous borders with both countries, and from Europe, Asia, Central Asia, and Africa.³⁷ The cross-border migration, might be voluntary during the initial phase, but may subsequently result in trafficking.³⁸ Women and children are trafficked in large numbers from Nepal and Bangladesh to India. Nonetheless, precise statistics are lacking and official figures misleading.³⁹ Authorities have identified Indian forced labour victims in Armenia, Portugal, Gabon, and Zambia and Indian female sex trafficking victims in Kenya.⁴⁰

An analysis of crime figures for the past 5 years reveals that there was a surge in reporting of trafficking cases⁴¹ in 2016, marking the highest number of reported cases (*refer chart 2.1*), after which there has been a gradual decrease in the cases with 2019 accounting for the lowest number of cases registered. The decrease in the number of cases, however, does not reflect a fall in persons trafficked, as the number of persons trafficked in 2019 surpassed the previous two reporting years of 2017 and 2018.

Chart 2.1



Source: *Crime in India, 2014-2019*

In 2017, 2018 and 2019 a total of 2,854, 2,465, and 2,260 cases were reported under the Indian Penal Code (IPC), and in these years, 5,898, 5,788, and 6,616 victims were trafficked respectively. Out of the total trafficked victims, the number of women has always surpassed that of men, mostly in cases of adult victims (*Table 2.1*).

37 UNODC Regional Office for South Asia (2011) Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka. UNODC, New Delhi. p. 26 Retrieved from: https://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf. Accessed on: 9 November 2020.

38 Ibid

39 Ibid

40 Department of State (2021) p. 288

41 The cases registered are derived by summing up both the Indian Penal Code (IPC) and Immoral Traffic (Prevention) Act, 1956 (ITPA) cases reported in the Crime in India (CII) Reports, National Crime Records Bureau (NCRB) for all the years.

Table 2.1 Trends in Victims Trafficked (IPC) 2017-2019

| Year | Victims Trafficked Below 18 Years | | | Victims Trafficked Above 18 years | | | Victims Trafficked Total | | |
|------|-----------------------------------|--------|-------|-----------------------------------|--------|-------|--------------------------|--------|-------|
| | Male | Female | Total | Male | Female | Total | Male | Female | Total |
| 2017 | 2037 | 1516 | 3553 | 321 | 2024 | 2345 | 2360 | 3538 | 5898 |
| 2018 | 1587 | 1247 | 2834 | 482 | 2472 | 2954 | 2069 | 3719 | 5788 |
| 2019 | 1742 | 1172 | 2914 | 795 | 2907 | 3702 | 2537 | 4079 | 6616 |

Source: *Crime in India Reports, 2017-2019*

About 6,571 victims were rescued in 2019 as compared to 5,264 and 5,789 victims in 2018 and 2017 respectively. Out of the total victims rescued in 2019, 3,734 were adults (770 male; 2,964 female) and 2,837 were below 18 years (1,734 boys; 1,094 girls). The number of females in overall rescued victims was 4,058 in the same reporting year. This higher proportion of women and children shows their increased vulnerability to trafficking and points to the fact that they are easy targets. However, an important point to note is that even if the proportion of victims trafficked and rescued has increased, the conviction rate for traffickers decreased as compared to previous years. This is a serious problem that is evident in the official statistics and has also been pointed out by the respondents in the field research. In 2019, the conviction rate for human trafficking cases (under the IPC) dipped to 22.0 per cent compared to 29.4 per cent in 2018 and 24.5 per cent in 2017.⁴² There has also been a fall in the charge-sheet rate – i.e., 84.3 per cent in 2017, 84.6 per cent in 2018 and 83.7 per cent in 2019.⁴³ Though number of persons arrested in 2019 was 5,128, charge-sheets were filed against 3,638 persons; 1,329 persons were acquitted and only 324 were convicted. The low conviction rates was pointed out by majority of respondents interviewed as part of primary field research (*LEOs, NGOs, shelter homes, and government officials*) due to the uneven responses of the Indian legal system. The US TIP report 2021 also indicates the inadequacy of the law enforcement efforts as the bottleneck to improved charge-sheet filing and conviction rate in the country.⁴⁴ A sizeable number of (interviewed) stakeholders felt that though stringent laws exist in the country, they lack appropriate implementation – a serious gap that has been broadly discussed in chapter 3.

It is important, however, to acknowledge that official statistics do not present a comprehensive picture of the trafficking situation in the country (and the selected states). This point was highlighted repeatedly by the stakeholders and which is obvious if we compare official statistics with the numbers presented by different national and international reports. Various scholarly works⁴⁵ and many other reports have pointed to the lack of accurate data in revealing the actual magnitude of TIP cases in the country.⁴⁶ The reason being inadequate response by LEOs

42 NCRB (2017/2018/2019). P. 980. (table no 14.6. column 10).

43 NCRB (2017/2018/2019). P. 980. (column 6).

44 Department of State (2021) p. 282.

45 Mishra V (2015) *Combat Human Trafficking: Gaps in Policy and Law*. Sage Publications India Pvt Ltd.

46 Department of State (2019). *Trafficking in Persons Report*. Department of State United States of America pp.234-240. Retrieved from: https://www.google.com/search?q=trafficking+in+person+report+2019&rlz=1C1CHBF_enIN-877IN877&oq=trafficking+in+ person+report+2019&aqs=chrome..69i57.9662j0j8&sourceid=chrome&ie=UTF-8. Accessed on: 13th January 2020.

compared to the magnitude of the problem especially in bonded labour cases.⁴⁷ A large number of cases go unreported as the police often prevent victims of labour trafficking from pressing charges against their employers or exploiters and settle many such cases at the complaint stage.⁴⁸ In some cases, the district magistrates dissuaded bonded labour victims from pursuing cases against their traffickers and mediated cases in lieu of criminal prosecution.⁴⁹

There is considerable ignorance about the crime in general and lack of confidence among the victims and their families to seek police help.⁵⁰ Thus, while the government identified 313,000 bonded laborers (approximately) since 1976, the numbers estimated by NGOs stand at eight million.⁵¹ Likewise, the Trafficking in Persons Report 2021 states that India is home to millions of trafficked victims.⁵² Another report⁵³ claims that currently about 2 million women and children are trapped and engaged in commercial sex work in the red light districts of the country, a vast majority of which are minor girls. The above data from various internal and international sources is thus at variance with official statistics. There is a wide divergence between law enforcement data and the numbers claimed by these other sources, highlighting the fact that data collection on TIP remains a challenge due to the clandestine nature of the crime.

Link between TIP and missing children/ persons -As per the United States Trafficking In Persons Report 2020 and 2021- some state authorities (West Bengal, Jharkhand, and Assam) are alleged to have directed the police to register trafficking cases as “kidnapping” or “missing persons” to reduce the numbers of trafficking cases in official statistics.⁵⁴ This may explain the gradual increase in the statistics on missing children and persons and kidnapping and abduction in the country. Some studies have pointed towards a probable link between missing cases and trafficking in the country.⁵⁵ A total of 73,138 children (21,074 boys, 52,049 girls, and 15 transgenders) were reported missing in 2019 as compared to 67,134 children (19,784 boys, 47,191 girls, and 159 transgenders) in 2018 and 63,349 children (20,555 boys, 42,691 girls, and 103 transgenders) in 2017. The number of missing children has increased by 8.9 per cent in 2019 over 2018. For adults, the number of persons reported missing has increased by 9.5 per cent i.e., 380,526 persons in 2019 in comparison to 347,524 persons missing in 2018. Out of the total missing persons 132,089 were men, 248,397 were women, and 40 were transgenders. Among the selected states for the research, Madhya Pradesh accounts for the highest number of missing children

47 Department of State (2021). Trafficking in Persons Report. Department of State United States of America p. 282.

48 Ibid. Department of State (2019). Trafficking in Persons Report. Department of State United States of America pp.234-240 Retrieved from https://www.google.com/search?q=trafficking+in+person+report+2019&rlz=1C1CHBF_enIN877IN877&oq=trafficking+in+person+report+2019&aqs=chrome..69i57.9662j0j8&sourceid=chrome&ie=UTF-8. Accessed on: 13 January 2020.

49 Department of State (2019). p. 283

50 Information gathered from field.

51 Department of State (2020).

52 Department of State (2021) p. 281, 288.

53 Manipur Commission for Protection of Child Rights (2016) Child Trafficking in The Indo-Myanmar Region: A Case Study in Manipur: 2016. Government of India, Ministry of Women and Child Development, New Delhi.

54 Department of State (2020). p. 251. Department of State (2021). p. 282.

55 Sekhon Geeta (2020) Combating Trafficking in Persons Through Public Awareness and Legal Education of Duty Bearers in India. In: The Palgrave International Handbook of Human Trafficking [John. Winterdyk and Jackie Jones, eds]. Palgrave Macmillan, Cham. Retrieved from: https://doi.org/10.1007/978-3-319-63058-8_44. Accessed on: 10 October 2020.

with 11,022 missing children (2,450 boys, 8,572 girls). For missing persons, Maharashtra ranks at the top with 66,478 persons reported missing (27,972 men and 38,506 women) followed by Madhya Pradesh (47,452 total persons missing of which 13,559 were men and 33,893 were women). Moreover, a huge number of both missing children and persons remain untraced every year. In the latest reporting year of the Crimes in India 2019, the total untraced children (including the previous years) stood at 48,364 and adults at 344,395. The percentage of recovery for both missing children and adults is 59.6 and 50.3 respectively. These children and adults (especially women) stay vulnerable to trafficking and a considerable number get trafficked for sexual exploitation, forced labour, and domestic work in metropolitan cities.⁵⁶

Similarly, the cases of kidnapping and abduction have also increased over the years from 95,893 in 2017, to 105,734 in 2018, with a marginal decrease (0.7 per cent over 2018) in 2019 i.e., 105,037. Of the stated number of cases, 108,025 persons (23,104 men and 84,921 women) were kidnapped or abducted in 2019, out of which 71,264 were children (15,894 boys and 55,370 girls) and 36,761 persons (7,210 men and 29,551 women) were adults⁵⁷. There are various reasons for kidnapping -- deemed kidnapped (elopement/love relationship; left home by own will/ scolding by parents; missing; deemed kidnapped), forced marriage, illicit intercourse, wrongful confinement, unlawful activities (such as, drug peddling, petty crimes, pornography, terrorist activities, for selling of body parts).⁵⁸ Reasons for missing women and children point towards mostly – running away/ eloping with a boyfriend/ girlfriend, promise of a good job in the city, escaping abusive parents or partners, or as star-struck girl or boy boarding a train and losing one’s way.⁵⁹ These vulnerable groups sometimes end up being trafficked. The increase in the number of missing and kidnapped children and women reveals a different and complex side of the trafficking racket in the country.⁶⁰

Table 2.2 Selected State-Wise Reporting of IPC Cases of Human Trafficking (2017- 2019)

| Year | IPC | | | | | |
|------|-------------|-------------|--------------|----------------|--------------|------------|
| | Delhi | Goa | Kerala | Madhya Pradesh | Maharashtra | Manipur |
| 2017 | 95 (490) | 39 (75) | 53 (82) | 87 (179) | 310 (665) | 8 (27) |
| 2018 | 98 (658) | 55 (102) | 105 (183) | 63 (105) | 311 (795) | 3 (5) |
| 2019 | 93 (608) | 38 (90) | 180 (218) | 73 (215) | 282 (986) | 9 (189) |

Source: Crime in India Reports, 2017-2019 (within brackets are numbers of victims)

56 Singh Ramendra (2019) Madhya Pradesh Tops in Missing Kid’s Count. The Times of India. Retrieved from: <https://timesofindia.indiatimes.com/city/bhopal/mp-tops-in-missing-kids-count/articleshow/67401655.cms>. Accessed on: 8 December 2020.

57 Table 2C.2 in Crime in India Reports, 2019. p. 180.

58 Crime in India Reports for Various years; National Crime Records Bureau, Government of India.

59 Gandhi Divya and Varughese Julie Merin (2018) India’s Missing Children: The Story WhatsApp Forwards Don’t Tell You. The Hindu. Retrieved from: <https://www.thehindu.com/society/indias-missing-children-what-the-whatsapp-rumours-dont-tell-you/article24641527.ece> Accessed on: 5 November 2020.

60 Ibid.

Table 2.3 Percentage Share in Reporting of Cases of Human Trafficking (IPC only)

| States | 2017 | 2018 | 2019 |
|----------------|-------|------|------|
| Delhi | 3.33 | 4 | 4.1 |
| Goa | 1.37 | 2.2 | 1.7 |
| Kerala | 1.86 | 4.3 | 8 |
| Madhya Pradesh | 3.05 | 2.6 | 3.2 |
| Maharashtra | 10.86 | 12.6 | 12.5 |
| Manipur | 0.28 | 0.1 | 0.4 |

Source: Crime in India Reports, 2017-2019

Among the states selected for the study Maharashtra reported the highest number of trafficking cases in 2019 followed by Kerala, Delhi, Madhya Pradesh, Goa, and Manipur (see table 2.2). According to NCRB reports, Maharashtra also tops the list in the number of human trafficking cases reported for 2019. The state ranked 4th in 2016 in percentage share of human trafficking cases (IPC cases only). However for two consecutive years – 2018 and 2019 – the state has continued to be at the top of the list. With 282 cases of human trafficking registered under IPC in the year 2019, 986 people were trafficked of which 936 were women (875 above 18 years) and 95 were below 18 years (61 girls and 34 boys). The state also accounts for the majority of the victims rescued in 2019 – 1,020 of which 978 were women. Out of the total rescued victims 946 persons or 92.75 per cent were found in sexual exploitation for prostitution, 15 persons for forced labour, 13 persons for forced marriage and 39 persons for other reasons. The state is a major source, destination, and also transit location for trafficked victims where a well-organised and swift nexus of agents and recruiters work from the source district/state/country to the transit point and finally to the destination. Vulnerable women are identified and convinced of better job opportunities (at the source); government documents including Aadhar⁶¹ cards, voter cards, passports and visa gets issued (at the transit: Mumbai) and flown to Middle East (Dubai) where the immigration process is completed before transporting victims to their actual destination.⁶²

Apart from being a transit to the Middle East, with the presence of numerous brothels and/or red light areas, Maharashtra, especially its three major metros - Mumbai, Pune and Nagpur, is a hub of sex trafficking.⁶³ Mumbai, the financial capital of the country, stands as major global sex trafficking destination⁶⁴, where along with domestic victims, transnational victims from

61 Aadhaar is a verifiable 12-digit identification number issued by Unique Identification Authority of India (UIDAI) to the residents of India.

62 B. Nitin (2018) Sold as Slaves, Tortured in Middle East: The Human Trafficking Nexus in Hyderabad. The News Minute. Retrieved from: <https://www.thenewsminute.com/article/sold-slaves-tortured-middle-east-human-trafficking-nexus-hyderabad-88165>. Accessed on: 18 December, 2020.

63 Madan Neha (2020) 105 Women go Missing Every Day in Maharashtra, Most Land Up in Forced Prostitution. The Times of India. Retrieved from: <https://timesofindia.indiatimes.com/city/pune/105-women-go-missing-everyday-in-maharashtra-most-land-up-in-forced-prostitution-ncrb-data/articleshow/78755147.cms#:~:text=PUNE%3A%20As%20many%20as%20105,Madhya%20Pradesh%20and%20West%20Bengal>. Accessed on: 18 December 2020.

64 Srivastava Roli and Russel Ross (2017) How India is Cracking Down on Sex Trafficking in Mumbai. Global Citizen. Retrieved from <https://www.globalcitizen.org/de/content/india-police-strictly-fight-mumbai-sex-trafficking/>. Accessed on: 18 December 2020.

Bangladesh, Nepal, Russia, Philippines, Uzbekistan, Kazakhstan, and Bhutan are also trafficked.⁶⁵ A respondent stated that “*Mumbai is a source, destination, and transit for sex trafficking and I have interacted with all types of victims. It is very disheartening to see victims from all over India and other parts of the world brought to Mumbai for purpose of sex trafficking*” (Former Judge, Female, Maharashtra, July 7, 2020). It has been highlighted in numerous news articles and was also expressed by the interviewed respondents from the state that traffickers prey on the aspirations, dreams, and vulnerabilities of young girls and women and promise them an exuberant city life with better job opportunities. They then force them into sex trafficking, slavery or domestic servitude in and outside the country, and as mentioned by the respondent “*it is very difficult to see their situation...and their rehabilitation and reintegration process back to the society also becomes extremely difficult*”.⁶⁶

Kerala has experienced a steady rise in human trafficking cases over the years with a contribution of 8 per cent to the country’s total TIP cases in 2019 as compared to 4.3 in 2018 and 1.86 per cent in 2017. The state moved to 4th position as a contributor to TIP cases in the latest reporting year from being 7th in 2018 and 11th in 2017. About 180 IPC cases of human trafficking were registered in the state with 218 victims trafficked in the latest reporting year. Out of the total trafficked victims, 182 were women; and 177 below 18 years (22 boys and 155 girls). Total rescued victims in the same year accounted for 215 persons of which 186 were women and 29 were men. Victims rescued below 18 years were 179, of which 157 were girls and 22 were boys. Data reveals that apart from other reasons (146 persons) forced marriage (42 persons), prostitution (10 persons), and forced labour (9 persons), are the major purposes for trafficking in Kerala. It is apparent from the official statistics that minors, especially young girls, are more vulnerable in the state. Media reports and interviews conducted with the stakeholders also suggested the vulnerability of girls and young women towards getting trafficked for sexual exploitation.⁶⁷ It was revealed by a respondent that “*many a times girls are drugged or put under its addiction by the traffickers and forced into commercial sexual exploitation*” (Shelter Home, Female, Kerala, September 14 –October 5, 2020). The respondent further revealed that at times “*girls from respectable families also get influenced by ‘so called’ friends from their college – friends who also deal in drugs secretly – get addicted and are pushed into prostitution or sexual acts, when they are not in the right frame of mind.*” Besides trafficking within the country, the state, along with other southern states, continues to be a major source for trafficking of men and women to Gulf Cooperation Council (GCC) countries, much of which starts with irregular migration.⁶⁸ Unskilled and semi-skilled men and women searching for prospective job opportunities are trapped by unregistered recruiting agents/middlemen and smuggled to the GCC countries, only to be further exploited by their employers.⁶⁹ Men generally get trapped in the construction, services and manufacturing sectors⁷⁰ whereas women get trapped in domestic servitude

65 Ibid; and Information as received from primary research investigation.

66 Navalkar Priya (2020) Maharashtra Recorded Highest Human Trafficking Cases in 2019. The Free Press Journal. Retrieved from: <https://www.freepressjournal.in/mumbai/maharashtra-recorded-highest-human-trafficking-cases-in-2019>. Accessed on: 5 December 2020.

67 More Teeth for Anti-human Trafficking Units (2017). The Indian Express. Retrieved from: <https://www.newindianexpress.com/states/kerala/2020/oct/20/more-teeth-for-anti-human-trafficking-units-2212505.html>. Accessed on: 19 December 2020.

68 Uncertain Journeys – Migration from Kerala to the Arab Gulf (2019). Equidem Research & Consulting. Retrieved from: <https://www.equidemresearch.org/news/uncertain-journeys-migration-from-kerala-to-the-arab-gulf/>. Accessed on: 20 December 2020.

69 Arokkiaraj Heller (2019) How Indian Female Workers are Being Trafficked to the Gulf. The Quint. Retrieved from: <https://www.thequint.com/voices/women/indian-female-domestic-workers-migrants-labourers-gulf-countries-human-trafficking#read-more>. Accessed on: 20 December 2020.

70 Uncertain Journeys (2019).

and prostitution following extreme physical-psychological torture.⁷¹ Moreover, the *Kafala* system⁷² in these countries makes it extremely difficult for the entrapped victims to escape.

Delhi's share of total trafficking cases in the country has increased in the latest reporting year i.e., 4.1 per cent in comparison to 4 per cent in 2018 and 3.33 per cent in 2017, even though the state saw an insignificant drop in the number of cases in the latest reporting year (refer table 2.2). Among the total 608 persons trafficked in 2019, 536 were below the age of 18 (74 boys, 462 girls), and 72 adults (42 men, 30 women). In total, 504 women were trafficked in 2019. Surprisingly the state has also rescued 608 victims (similar to the numbers trafficked) in 2019 and the age-wise statistical division of the rescued victims is the same as that of victims trafficked.⁷³ It is not known whether all the victims that were trafficked were rescued in the same year, or whether there were some victims from the previous year. According to the data, the state is a major destination for forced labour (507 persons), domestic servitude (59 persons), and sexual exploitation for prostitution (9 persons).

The Capital is a destination for women from Jharkhand, West Bengal, Bihar, Chhattisgarh, North East (especially Assam), Andhra Pradesh, and Telangana, who owing to their poor socio-economic conditions get easily trapped by traffickers.⁷⁴ GB Road, the red-light district is known for trafficking from these poor states of young women and children for prostitution. In the words of a respondent, "*Most of the women in the GB Road are sold off either by their families or are trafficked. Very few to none, actually chose this life willingly, as for most women – who also belong from very poor families – their brothers (and other male members) sit idle in their village while the girls are sold off and (for few) are forced to send money back home.*" The state is also a breeding ground for fake placement agencies that entrap women and children from poorer states and coerce them into forced labour/domestic servitude.⁷⁵ These children and women are subjected to extreme psychological

71 Ameerudhan TA (2016) 'Slaves' of Gulf: Women Lured with High-paying Job Offers, Trapped by Traffickers. Hindustan Times. Retrieved from: <https://www.hindustantimes.com/india-news/slaves-of-gulf-women-lured-with-high-paying-job-offers-trapped-by-traffickers/story-4ZbfhuAZrVyQEjkTurSYwL.html>. Accessed on: 20 December 2020; Toby Antony (2018) Kerala: Trial in Nedumbassery Human Trafficking Case Reveals Nightmarish Experiences of Women. The Indian Express. Retrieved from: <https://www.newindianexpress.com/states/kerala/2018/mar/12/kerala-trial-in-nedumbassery-human-trafficking-case-reveals-nightmarish-experiences-of-women-1785650.html>. Accessed on: 20 December 2020.

72 The *Kafala* or '*Sponsorship System*' ties the legality of a worker's stay in the country only to the sponsored employer, often forcing them to work inhuman hours and on low wages. The moment a worker violates the conditions he/she is considered irregular, who may be detained and deported and in that case would not be eligible for accessing health care and other support facilities. Furthermore, for an irregular worker it becomes quite difficult to escape and return to his/her home country. However, recently Saudi Arabia announced some reforms to the *Kafala system* under which foreign workers will no longer need their employer's permission to change jobs, travel abroad or leave the country permanently. Nonetheless, that does not absolutely remove the erroneous aspects as *Kafala system* still persists. See <https://timesofindia.indiatimes.com/business/international-business/saudi-arabia-reforms-its-kafala-system-for-foreign-workers/articleshow/79053554.cms> for more information.

73 National Crime Records Bureau (2019) Crime in India Statistics: 2019. Government of India, Ministry of Home Affairs, New Delhi. p. 974-975.

74 Dutta Anand (2020) 'Sold and Raped' in Delhi, Jharkhand Woman Says She Walked over 800 KM to Reach Home. The Print. Retrieved from: <https://theprint.in/india/sold-and-raped-in-delhi-jharkhand-woman-says-she-walked-over-800-km-to-reach-home/348897/>. Accessed on: 20 December 2020; UNODC (2013) India: From Darjeeling to Delhi – Story of A Young Girl Who Was Trafficked. Retrieved from <https://www.unodc.org/southasia/frontpage/2013/Sept/india-from-darjeeling-to-delhi-story-of-a-young-girl-who-was-trafficked.html>. Accessed on: 20 December 2020; Jha Monica (2019) The Dark Hand of Tech that Stokes Sex Trafficking in India. Factor Daily. Retrieved from: <https://factordaily.com/tech-phone-calls-whatsapp-facebook-sex-trafficking-india/>. Accessed on: 20 December 2020.

75 Freedom United. Help Stop Domestic Slavery in Delhi. Retrieved from: <https://www.freedomunited.org/advocate/help-stop-domestic-slavery-delhi/>. Accessed on: 20 December 2020.

and physical duress owing to inhuman working hours. Further, hundreds of migrant labourers (men, women, and children) who leave behind their villages for a better income in the city often end up in the clutches of contractors pushing them into bonded labour conditions.⁷⁶ They are often caught in a loop of bondage due to chronic poverty and social ostracism.⁷⁷ Delhi is also a transit point for women from the neighbouring Nepal and other states of India, who are trafficked to the Middle East and GCC countries often into domestic servitude – with extreme physical and sexual exploitation.⁷⁸

Madhya Pradesh (MP) has seen an increase in the number of human trafficking cases registered in 2019. The state's share has also increased over the previous years (refer table 2.2 and 2.3). The total trafficked victims in 2019 was 215 out of which 123 were below 18 years (47 boys and 76 girls) and 92 adults (all women). The total number of victims rescued – 217 persons – in the same reporting year, surpassed the number trafficked for the same year; 109 persons were trafficked for other reasons (adoption, hawking, smuggling, terrorist activities/child soldiers)⁷⁹, 41 persons for begging, 28 for prostitution, 23 for forced marriage, and 15 for forced labour. The state is a source, transit, and destination for trafficking, especially of young boys and girls; also both intra-state and inter-state trafficking is prominent.⁸⁰ The major destinations for trafficking outside the state are – Delhi, Maharashtra (especially Mumbai), Rajasthan, Goa, and West Bengal. Being a notable tribal-dominated region, the state is one of the major hotspots for trafficking of women and girls from poor, marginalised groups for bonded labour and forced prostitution.⁸¹ Young boys and especially girls from these regions and also other parts of the state go missing in large numbers every year.⁸² Most of them are reported to be trafficked for various purposes– labour, sex, organ trade and marriage, within and outside the state.⁸³ Trafficking of girls for marriage in states/regions with a lower sex ratio⁸⁴ – such as, to Rajasthan and Haryana, is often reported. Children are also 'leased'

76 Saraswati Bhumika (2019) Modern-Day Slavery: How Dalits from Lalitpur become Bonded Labourers in Delhi. *The Wire*. Retrieved from: <https://thewire.in/labour/modern-day-slavery-how-dalits-from-lalitpur-became-bonded-labourers-in-delhi>. Accessed on: 20 December 2020.

77 Ibid.

78 Singh Pratap Karn (2019) Delhi Cops Jump into Yamuna to Catch Nepalese Human Trafficking Ring Kingpin. *Hindustan Times*. Retrieved from: <https://www.hindustantimes.com/delhi-news/delhi-cops-jump-into-yamuna-to-catch-nepalese-human-trafficking-ring-kingpin/story-L2kMhXuFbBtENQUNbMvA3K.html>. Accessed on: 20 December 2020.

79 Crime in India Reports of 2016, 2017 and 2018 does not provide details of the 'other' crime. However, the Human Trafficking yearly proforma filled by the State police include other reasons such as adoption, hawking, smuggling, terrorist activities/child soldiers.

80 Anti-Trafficking Center (2019).

81 Prabhat Chitra (2015) Human Trafficking in India, A Special Reference to Madhya Pradesh. *Periodic Research* 3:3, pp. 78 – 81. Retrieved from: <http://www.socialresearchfoundation.com/upoadreserchpapers/2/40/1506030456571st%20chitra%20prabhat.pdf>. Accessed on: 27 December 2020.

82 Anti-Trafficking Center (2019)

83 Prabhat Chitra (2015)

84 Sex ratio is defined as the number of females per 1000 males in the population and is an important social indicator to measure the extent of prevailing equity between males and females in a society at a given point of time. It may be noted that the sex ratio is expected to be almost at parity in nature. According to experts, several factors including skewed sex ratio at birth are the major contributory factors that influence changes in sex ratio. In India, sex ratio is skewed in favour of males and has continued to rise and expand in various forms (Source: https://censusindia.gov.in/2011-prov-results/data_files/mp/06Gender%20Composition.pdf). Studies have pointed out the skewed or low sex ratio as the likely cause of forced marriages (Source: <https://india.unfpa.org/sites/default/files/pub-pdf/Sex%20Ratio%20Imbalances%20and%20Marriage%20Squeeze.pdf>)

out by their parents for camel grazing in states like Gujarat, Rajasthan, and other parts of MP.⁸⁵ The parents are unaware that their children are being trafficked and assume the entire process to be legal on the basis of signing a stamp paper that the traffickers hand over to them.⁸⁶ The state is also known for the intergenerational trafficking and prostitution practised by the *Bedia* and *Banchhda* community, also known as “*caste-based trafficking*” which is very prevalent “*where buying and selling of women also takes place*” often under the garb of legal adoption of the girl child from within and outside the state.⁸⁷ According to a respondent, who works with the community and its children – “*prostitution is so normalised within the (Bedia) community... so much that not even five per cent of the people belonging to the Bedia community oppose it.*” (NGO, Male, Madhya Pradesh, July 22 and 23, 2020).

Goa saw a drop in cases of TIP under IPC in the year 2019 with 38 cases in comparison to 55 cases in 2018 and 39 cases in 2017. Of the 90 victims trafficked - all women – 88 were above 18 years and 2 below 18 years. Similar to Delhi, the total number of victims rescued in Goa was also 90 (all women). Even though official statistics are a gross under-representation of the actual scenario of trafficking – which, is evident from NGO reports⁸⁸ and news articles; data suggests the vulnerability of women to sex trafficking in the state - 89 out of 90 women were trafficked for prostitution. Goa is a destination state and an emerging hotspot for trafficking of women and girls for commercial sexual exploitation from across the country and other parts of the world.⁸⁹ The major source states for Goa are Maharashtra, West Bengal, and Delhi; and in terms of cross-border trafficking, the major source countries are Bangladesh, Nepal, and Central Asian countries.⁹⁰ According to a report by Anyay Rahit Zindagi (ARZ), the “nodal NGO” of the Integrated Anti-human Trafficking Unit of Goa Police, about 84 per cent of the trafficked victims in Goa are domestic and 16 per cent from across borders.⁹¹ Over time, both the modus operandi of trafficking and location for carrying out CSE has experienced a shift towards online platforms and in “*motels/hotels/lodges, massage parlours, house/private apartment/bungalows based (location)*” (NGO, Female, Goa, September 14, 2020).⁹² This shift from public to the private space of carrying out CSE which is also highlighted in the primary research, makes it extremely difficult for the law enforcement agencies to get information, intervene, and curb the trafficking.⁹³

In Manipur, only 9 cases of human trafficking were registered in 2019, which was an upward move from 3 cases registered in 2018. However, the number of total victims trafficked in 9 cases was 189,

85 Ibid.

86 Anti-Trafficking Center (2019)

87 Information gathered from field research in Madhya Pradesh.

88 Anyay Rahit Zindagi (ARZ) (2019) Source-Destination Consultation to Combat Human Trafficking for Commercial Sexual Exploitation in Goa. Government of Goa and ECPACT Luxembourg. p. 9. Retrieved from: https://www.arzindia.org/docs/Report_of_Source_Destination_Consultation_to_Combat_Human_Trafficking_in_Goa_2019.pdf. Accessed on: 28 December 2020. In this report ARZ is stated to have rescued approximately 400 women from CSE.

89 Gama Danuska Da. (2020) Combating Human Trafficking in Goa. The Navhind Times. Retrieved from: [https://www.navhindtimes.in/2020/08/16/magazines/panorama/combating-human-trafficking-in-go/#:~:text=Human%20trafficking%20\(mainly%20of%20women,exploitation%20happens%20in%20broad%20daylight.&text=Despite%20the%20pandemic%2C%20there%20have,human%20right%20have%20been%20violated.](https://www.navhindtimes.in/2020/08/16/magazines/panorama/combating-human-trafficking-in-go/#:~:text=Human%20trafficking%20(mainly%20of%20women,exploitation%20happens%20in%20broad%20daylight.&text=Despite%20the%20pandemic%2C%20there%20have,human%20right%20have%20been%20violated.) Accessed on: 27 December 2020. AND Department of State (2021). p. 288

90 Anyay Rahit Zindagi (2019).

91 Ibid. p. 9.

92 This information was received while carrying out the stakeholders' interviews in Goa; and ARZ (2019) p.10, 12.

93 ARZ (2019) p.10,12.

of which 154 were women. The majority of the trafficked victims – 184 persons (33 men and 151 women) - were above 18 years of age. About 188 victims were also rescued in the same reporting year. According to the Crime in India Reports, the major purposes for trafficking in the state are domestic servitude (119 persons) and forced labour (69 persons). In recent years, the state has emerged as a source for cross-border trafficking of children.⁹⁴ As many as 174 children go missing every day from the state with half of them remaining untraced.⁹⁵ The main push factors that lead to child trafficking are lack of access to quality education, better employment, and skills training.⁹⁶ The purpose for TIP is primarily bonded labour and conscription of child soldiers.⁹⁷ As mentioned by a respondent about a case in the state of Uttar Pradesh “*Where children were sent to study but they ended up being used as bonded labourers*” (Shelter Home, Female, Manipur, June 23, 2020). The traffickers are mostly local agents from the same community and village. Manipur is a major transit point for trafficking of women, especially those being trafficked from Nepal to Myanmar from where they are sent to Gulf countries such as, Dubai (UAE), Kuwait, Iraq etc..⁹⁸ They move to those places “*for economic purposes...but get trapped by the traffickers, many of whom are also big shots (people holding strong position in society and established business man) in the state*” (Shelter Home, Female, Manipur, June 25, 2020). The state capital Imphal, district Ukhrul, and the Indo-Myanmar border at Moreh are sensitive places used as trafficking transit routes.⁹⁹ Reports mention that from December 2018 to January 2019, as many as 301 persons crossed over to Myanmar from Moreh only to be trafficked to Gulf countries where they would have been recruited as construction workers or bonded labourers.¹⁰⁰

2.2.1.1 Modus Operandi of TIP

Existing literature on the subject strongly suggests that traffickers employ means like false employment promises, ‘boyfriend’ relationship, and arrangement of sham marriages to lure women and girls into sex trafficking.¹⁰¹ In the case of forced labour, debt bondage plays an important role in forcing men, women, and children into labour trafficking. These bondages often are inherited from previous generations and force victims to work in brick kilns, construction sites, agriculture, rice mills, textile industries, wire manufacturing for underground cables, biscuit factories, pickling, fish farms, floriculture, and shipbreaking.¹⁰² Further, numerous unregulated work placement agencies prey on vulnerable people and lure them into forced labour, sex trafficking, and domestic

94 Manipur New Source of Cross-Border Trafficking (2018). Business Standard. Retrieved from: https://www.business-standard.com/article/news-ians/manipur-new-source-of-cross-border-child-trafficking-118052401301_1.html. Accessed on: 10 January 2021.

95 Ibid

96 Manipur Commission for Protection of Child Rights (2016) Child Trafficking in Indo-Myanmar Region: A Case Study in Manipur. Government of India, Ministry of Women and Child development, New Delhi.

97 Iboyaima Laithangbam (2014) Child Trafficking in Manipur a Cause for Concern. The Hindu. Retrieved from <https://www.thehindu.com/news/national/other-states/child-trafficking-in-manipur-a-cause-for-concern/article6216760.ece>. Accessed on: 15 January 2021.

98 Manipur: 21 Women Rescued from Human Traffickers Sent Back to Nepal (2020). The Morung Express. Retrieved from <https://morungexpress.com/manipur-21-women-rescued-from-human-traffickers-sent-back-to-nepal>. Accessed on: 15 January 2021.

99 Ibid

100 Bachaspatimayum Sunzu (2019) Rescue of 179 Nepali nationals throws spotlight on human trafficking in a border town in Manipur. First post. Retrieved from <https://www.firstpost.com/india/rescue-of-179-nepali-nationals-throws-spotlight-on-human-trafficking-in-a-border-town-in-manipur-6173341.html>. Accessed on: 15 January 2021.

101 Department of State (2017) Trafficking in Persons Report. Department of State United States of America.

102 Ibid

servitude. Over time, the modus operandi and the places of trafficking have evolved. Along with the traditional methods of recruiting victims into trafficking, cybercrime or online trafficking is on the rise, especially in Goa and Kerala.¹⁰³ Both the dark web and surface web are being used by criminals to trap women and girls into prostitution.¹⁰⁴ The unregulated exposure of young boys and girls to social media platforms like WhatsApp, Facebook etc. is making them more vulnerable to abuse and exploitation. As mentioned by an interviewee: “*The trends of trafficking have changed and have become application (App) based. The girls are chosen through an App that has all the data of the girl stored with her photograph.*” (Director, NGO, Female, Maharashtra, July5, 2020)

According to this respondent, mobile phones have become the new ‘brothels’, where the customer and the trafficker interact directly for purchasing and selling sex. The entire transaction (money and sex) has shifted to online platforms making it difficult to detect and identify the traffickers.

2.2.1.2 The Traditional and Emerging Hotspots for TIP

As is revealed in the primary field research, the places of trafficking have shifted from the traditional brothel-based locations to i) private apartments, ii) lodge/hotels, iii) beauty and massage parlours for commercial sexual exploitation; iv) homes for domestic servitude; and v) informal workplaces for forced labour. This shift from the public to the private domain has been highlighted by most stakeholders interviewed for the study.

2.2.1.3 The Purpose of TIP

NCRB data reveals that sexual exploitation for prostitution, forced labour, and domestic servitude are among the major purposes for TIP in the country; other purposes such as forced marriage, begging, and child pornography also comprise a significant share of human trafficking and children remain most vulnerable to such crimes (refer table 2.4). It is important to note that forced labour continues to be one of prime purposes for trafficking. In fact, trafficking for forced labour accounted for the highest number of persons trafficked in 2016.¹⁰⁵

Table 2.4 Various Purposes for Trafficking in Persons 2016-2018

(Total Number of Persons)

| Purpose of Human Trafficking | 2016 | 2017 | 2018 | 2019 |
|--------------------------------------|-------|------|------|------|
| Forced Labor | 10509 | 1657 | 1046 | 1141 |
| Sexual Exploitation for Prostitution | 4980 | 1275 | 1922 | 2080 |
| Other Forms of Sexual Exploitation | 2590 | 0 | 0 | 0 |
| Domestic Servitude | 412 | 113 | 143 | 364 |
| Forced Marriage | 349 | 240 | 220 | 227 |
| Petty Crimes | 212 | 9 | 7 | 13 |
| Child Pornography | 162 | 0 | 154 | 0 |
| Begging | 71 | 358 | 21 | 68 |
| Drug Peddling | 8 | 0 | 0 | 0 |
| Removal of Organs | 2 | 0 | 6 | 4 |

103 Observation of the project team from the field research conducted from June 2020 to November 2020.

104 Prajwala (2018) Andhra Pradesh Police Training Manual on Victim-Centered Investigations in Trafficking of Persons Related Crime. Andhra Pradesh. p. 22.

105 Chapter 14, Crime in India Reports, 2016. p. 512

| Purpose of Human Trafficking | 2016 | 2017 | 2018 | 2019 |
|------------------------------|-------|------|------|------|
| Other Reasons* | 3824 | 2137 | 1745 | 2674 |
| | 23117 | 5789 | 5264 | 6571 |

Source: *Crime in India Reports of 2016, 2017, 2018, and 2019*.

* Crime in India Reports of 2016, 2017 and 2018 do not provide details of the ‘other reasons’. However, the Human Trafficking yearly proforma filled by the State police include other reasons such as adoption, hawking, smuggling, terrorist activities/child soldiers.

2.3. Gender-Based Violence

Gender-based violence (GBV) refers to harmful acts directed at an individual based on their gender¹⁰⁶ and is rooted in gender inequality, unequal power relation, and harmful norms present in society. It constitutes a gross violation of basic human rights.¹⁰⁷ Violence against women is sometimes interchangeably used with GBV, which is a broader term and is understood as ‘violence that is meted out to individuals based on their gender, with women and girls constituting the vast majority of the victims’.¹⁰⁸ The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or in private life.¹⁰⁹

Studies have shown that women face more violence than men given our patriarchal social structure and women’s subordinate position in society.¹¹⁰ One of the simplest forms of representation of the status of women can be understood from the general and the child sex ratio¹¹¹ of a country. In 2011, the general sex ratio of India stood at 940 which is an increase if compared to the 2001 census – which was 933.¹¹² The child sex ratio, however, dropped in the latest census year, i.e. 919 females in 2011 as compared to 927 in 2001.¹¹³ The decrease in the child sex ratio can be explained as due to an increase in female foeticide and infanticide.¹¹⁴ Moreover, the

106 UNHCR, *Gender-Based Violence*. Retrieved from: <https://www.unhcr.org/gender-based-violence.html>. Accessed on: 30 November 2020.

107 Ibid

108 Johnson Tina (2004) Gender-Based Violence. In: *Gender and Human Rights in the Commonwealth: Journal of Commonwealth Magistrates and Judges Association*. p. 11-135. Retrieved from: https://read.thecommonwealth-ilibrary.org/commonwealth/social-issues-migration-health/gender-and-human-rights-in-the-commonwealth/genderbased-violence_9781848598553-5-en#page3. Accessed on: 28 November 2020.

109 Article 1 of the Declaration on the Elimination of Violence against Women, 1993.

110 Mathur Kanchan (2004). *Countering Gender Violence: Initiatives towards Collective Actions in Rajasthan*. Sage Publications India Pvt Ltd.;

Bhartiya Stree Shakti (2017) *Tackling Violence against Women: A Study of State Intervention Measures (A Comparative Study of Impact of New Laws, Crime Rate and Reporting Rate, Change in Awareness level)*. Retrieved from: https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_0.pdf. Accessed on: 20 January 2021.

111 Sex Ratio is Defined as the Number of Females Per 1000 Males. The Census of India is responsible for publishing of the data on sex ratio in the country, which is based on a decennial survey conducted by them.

112 Census 2011, *Sex Ratio in India*. Retrieved from: <https://www.census2011.co.in/sexratio.php#:~:text=In%20the%20Population%20Census%20of,to%20that%20of%201000%20males>. Accessed on: 30 November 2020.

113 Ibid

114 Bansod Dhananjay W (2012) *Declining Child Sex Ratio in India: Evidence from Census 2011*. Geography and You. Retrieved from: <https://geographyandyou.com/declining-child-sex-ratio-in-india-evidence-from-census-2011/>. Accessed on: 30 November 2020; Dubbudu Rakesh (2015) *The ‘Beti’ Issue – Declining CSR (Child sex ratio) in India*. Faculty. Retrieved from: <https://factly.in/the-beti-issuue-declining-child-sex-ratio/>. Accessed on: 30 November 2020.

country's performance in the global platforms in terms of gender parity has been unimpressive, i.e. among the bottom 5 countries in the World Economic Forum's Global Gender Gap Index – ranking 112 in 2019-2020, behind its international peers and neighbours like China (106), Sri Lanka (102), Nepal (101), and Bangladesh (50).¹¹⁵

In India, GBV is well captured by the Crime in India (CII) Reports that have a separate segment – “Crime against Women” (CAW) – highlighting different forms of violence that women are subjected to. As per the Crime in India Reports, a total of 405,861 cases of CAW were registered in 2019¹¹⁶ - an increase of 7.3 per cent (378,277 cases) over 2018, 12.7 per cent (359,849 cases) over 2017, and 19.7 per cent (338,954 cases) over 2016. The majority of the cases under the IPC in 2019 were registered under the offences of ‘Cruelty by Husbands and Relatives’ (30.9 per cent), followed by ‘Assault on Women with Intent to Outrage her Modesty’ (21.8 per cent), ‘Kidnapping & Abduction of Women’ (17.9 per cent) and ‘Rape’ (7.9 per cent). The crime rate registered per 100,000 women population in 2019 is 62.4 as compared to 58.8 in 2018, 57.9 in 2017 and 55.2 in 2016.¹¹⁷ Among the selected states, Maharashtra tops the list with the maximum cases of CAW in 2019. The state also ranks third in the country with 37,144 cases of CAW, contributing 9.2 per cent to the share of total reported cases, only after Uttar Pradesh (14.7) and Rajasthan (10.2 per cent). Madhya Pradesh follows with 27,560 reported cases of CAW, and a percentage share of 6.2, ranking 6th in the country; Delhi accounts for 13,395 reported cases of CAW, contributing 3.3 per cent to the share of total reported cases; Kerala reported 11,462 cases of CAW contributing 2.8 per cent to the share of total reported cases of CAW in the country. According to the Crime in India Reports, Goa and Manipur showed fewer instances of CAW with 389 and 266 cases reported respectively and accounting for 0.1 per cent share of the total reported cases.

Maharashtra tops for almost all the major forms of offences as per the CII Reports (‘Cruelty by Husband’, ‘Kidnapping and Abduction of Women’, ‘Assault on Women with Intent to Outrage her Modesty’) except for ‘Rape’. In terms of crime rate, Delhi is the worst among the selected states with 40.8 per cent for ‘Cruelty by Husband’, 39.5 per cent for ‘Kidnapping and Abduction of Women’, 25.3 per cent for ‘Assault on Women with Intent to Outrage her Modesty’, and 13.5 per cent for ‘Rape’.

The statistics in the Box 2.1 on the types of crimes committed against women points to the magnitude of the GBV experienced by women in India. The data, however, represents only a small section of the actual magnitude of violence experienced by women, since most of the crimes remain grossly underreported due to social stigma and ineffective formal mechanisms to address violence.¹¹⁸

115 India Slips to 112th Rank on Gender Gap Index; In Bottom 5 on Health, Economic Fronts. *BT Economy*. Retrieved from: <https://www.businesstoday.in/current/economy-politics/india-slips-to-112th-rank-on-gender-gap-index-bottom-5-health-economic-fronts/story/392184.html>. Accessed on: 30 November 2020; Ghosh Sayan and Sen Suman (2020) Where does India Stand in the Global Gender Gap Index? *The Hindu*. Retrieved from: <https://www.thehindu.com/data/data-where-does-india-stand-in-the-global-gender-gap-index/article30494545.ece>. Accessed on: 30 November 2020.

116 See table 3A.1 in Crime in India Reports, 2019. p. 195.

117 See table 3A.2, Crime in India Reports, 2019. p. 195

118 Dreze, Jean and Khera Reetika (2000) Crime, Gender, and Society in India: Insights from Homicide Data. *Population and Development Review* 26:2, p. 335-352. Retrieved from: <http://www.jstor.org/stable/172520>. Accessed on: 6 July 2020; Jain Shruti (2020) How should We Read NCRB Data on Violence Against Women across States?. *The Wire*. Retrieved from: <https://thewire.in/women/ncrb-data-rape-uttar-pradesh-rajasthan>. Accessed on: 5 December 2020.

Box: 2.1**Facts on Total Reported Crimes Committed Against Women 2019***

IPC (Indian Penal Code) Crimes

- 283 cases of murders with rape and gang rape (Sec. 376); crime rate – 0.0.
- 7,115 cases of dowry deaths (Sec. 304B); crime rate – 1.1
- 125,298 cases of cruelty by husband or relatives (Sec. 498A); crime rate -19.3
- 72,780 cases of kidnapping and abduction for various purposes (Sec. 364 / 364A / 366 / 366A / 366B / 363A / 365 / 367 / 368 / 369 IPC); crime rate – 11.3
- 966 cases of human trafficking (Sec. 370 & 370 A); crime rate – 0.1
- 22 cases of selling of minor girls (Sec. 372); crime rate–0.0
- 8 cases of buying of minors (Sec. 373); crime rate - 0.0
- 32,033 cases of rape (Sec. 376) of which 4,940 cases were of minors (girls under 18 years); crime rate – 4.9
- 3,944 cases of attempt to commit rape (Sec. 376/511); crime rate – 0.6
- 88,367 cases of assault on women to intend to outrage her modesty** (Sec.354) of which 4,228 cases were committed against girls below 18 years of age; crime rate – 13.6
- 6,939 cases of insult to the modesty of women (Sec. 509); crime rate – 1.1

SLL Crimes (Special & Local Laws - SLL)

- 13,297 cases under the Dowry Prohibition Act, 1961; crime rate – 2.0
- 1,185 cases under the Immoral Traffic (Prevention) Act, 1956, out of which a) 432 cases are of procuring and inducing children for the sake of prostitution (Sec. 5); b)155 cases of detaining a person in premises where prostitution is carried on (Sec. 6); c) 153 cases of prostitution in or in the vicinity of public places (Sec. 7); d) 62 cases of seducing or soliciting for the purpose of prostitution; overall crime rate – 0.2
- 553 cases under the Protection of Women from Domestic Violence Act, 2005
- 46,005 cases (girl child victims only) under the Protection of Children from Sexual Offences (POCSO) Act, 2012, out of which a) child rape (Sec. 4 and 6 POCSO Act & Sec. 376 IPC) cases are 25,934; b) child sexual assault (Sec. 8 and 10 POCSO Act & Sec. 354 IPC) cases are 16,139; c) child sexual harassment (Sec. 12 POCSO Act & Sec. 509 IPC) cases are 1,866; d) use of children for pornography or storing child pornography material (Sec. 14 & 15 of POCSO Act) cases are 1079; e) POCSO Act (Sec. 17 to 22) / Other offences of POCSO Act cases are 951; f) POCSO Act read with Sec. 377 IPC / Unnatural Offences cases are 36- overall crime rate 7.1
- 23 cases under the Indecent Representation of Women (Prohibition) Act, 1986.

* Table 3A.2 (i) and (ii), Crime in India Reports, 2019. p. 195.

** These offences include - Use of assault or criminal force to woman with intent to outrage her modesty; sexual harassment; assault or criminal force to woman with intent to disrobe; voyeurism; and stalking.

Whilst highlighting the violence faced by women, it is also important to recognize that men can also be victims of GBV and women can be perpetrators.¹¹⁹ Intimate partner violence, which is a major form of GBV is pervasive in homosexual relations also, where men/and or women

119 Johnson Tina (2004)

become both the perpetrators and the victims.¹²⁰ Also, widely ignored and not reported due to social norms, shame and stigma attached, spousal violence against men is a reality and has been frequently covered in the media.¹²¹ Violence against men in the domestic sphere is not recognized by law, because of the general perception that “men cannot be victims of violence.”¹²² Another section of the population that remains hidden as victims of GBV are transgenders. There is no dearth of articles and news reports that highlight the extreme forms of violence faced by transgender persons just because of their identity which is “non-conforming” to societal norms. From facing physical and sexual assault at the hands of partners and family members to getting raped and even murdered due to their identity, most of these cases remain under-reported or not reported at all.¹²³ Until recently, there was no stringent law dealing with violence against the transgender community in the country. However, the new Transgender Persons (Protection of Rights) Act, passed in the year 2019 gives some recognition to the crimes committed against them by providing punishment against the perpetrators.¹²⁴

Hence, GBV is indiscriminate and cuts across the boundaries of age, sex, ethnicity, caste, and sexual orientation.¹²⁵ It is a reflection of structural inequality and systematic discrimination that an individual experiences in an unequal society. However, the intensity and the magnitude of violence that women and girls experience due to their gender both in the private and public domain is extreme, severe, and brutal. This is reflected in the myriad forms of violence – physical, sexual, emotional, psychological, economic, social, etc., – and also the barbarity with which it is meted out.¹²⁶ This is among the reasons why GBV is mostly understood as violence against women.

2.4 Trafficking in Person and Gender-Based Violence

2.4.1 Conceptual Clarity

Trafficking in Persons – Although conceptual clarity about TIP among the stakeholders (LEOs and service providers) exists where majority of them relate it with – *buying and selling of beings; involving force and exploitation for different purposes; forgery leading to entrapped situation especially by fake placement agencies, trading and transport of the human beings, etc.* – yet there is a bias towards understanding TIP as mostly commercial sexual exploitation or sex trafficking or prostitution, and women [some respondents though mentioned both women and children] as constituting the major proportion

120 Bhartiya Stree Shakti (2017)

121 Desai Dhvani (2017) When Husbands Are Victims of Domestic Violence. Retrieved from: <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/when-husbands-are-victims-of-domestic-violence/articleshow/26031858.cms>. Accessed on: 6 November 2020; Malik Jagbir Singh and Nadda Anuradha (2019) A Cross-Sectional Study of Gender-Based Violence Against Men In Rural Area of Haryana, India. *Indian Journal Community Medicine*, 44:1. pp. 35-38. Retrieved from: <http://www.ijcm.org.in/article.asp?issn=0970-0218%3Byear%3D2019%3Bvolume%3D44%3Bissue%3D1%3Bpage%3D35%3Bepage%3D38%3Baulast%3DMalik#ref4>. Accessed on: 6 November 2020.

122 Desai Dhvani (2017)

123 Aqsa Shaikh (2020) The price that Transgender Folk Pay to Accept and Assert Their Identity. *Youth Ki Awaz*. Retrieved from: <https://www.youthkiawaz.com/2020/02/violence-against-transgender-persons-the-truth-we-dont-want-to-talk-about-but-we-must/>. Accessed on: 6 November 2020.

124 Gopinath Vishnu (2017) On Transgender Day of Remembrance: The Screams that India Ignored. *The Quint*. Retrieved from: <https://www.thequint.com/neon/gender/transgender-day-of-remembrance-tracking-violence-against-lgbt-community-in-india#read-more>. Accessed on: 6 November 2020

125 Johnson Tina (2004)

126 Bhartiya Stree Shakti (2017)

of the victim cohort - *“TIP is mostly prevalent amongst women with traffickers luring them on pretext of better life opportunities and later forcing them into various trades”* (Police, Male, Madhya Pradesh, July 28, 2020). A fair number of stakeholders were aware of the definition of TIP as provided by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking Protocol) 2000, and had knowledge of the different forms and nuances of trafficking such as cross-border/domestic trafficking, trafficking for the purpose of commercial sexual exploitation, bonded labour/forced labour/domestic servitude, child marriage, child labour, child soldier, begging, drug peddling, organ trading; and trafficking of – men/women/children/transgenders. As asserted by some respondents: *“Age, gender, and poverty are the basic intersection that creates vulnerability for trafficking for (child) labour, sex etc.”* (Police, Male, Madhya Pradesh, July 18, 2020).

“There is a very big network of trafficking operational through false promise of good jobs that put men and women under inhuman working conditions” (Prosecutor, Male, Delhi, July 12, 2020).

“Removal of a person from home to another place where the person can be exploited for different purposes – such as sex, labour etc. – which is not in the interest of the person and hence force is used to accomplish the motive” (Shelter Home, Female, Manipur, June 23, 2020).

“The definition of trafficking includes everything - whether a person is willing or not does not matter... there could be any type of exploitation within trafficking such as - sexual, financial, labour, etc.” (NGO, Female, Madhya Pradesh, June 26, 2020)

“Trafficking happens not only for sexual exploitation but also for labour” (Government Official, Male, Maharashtra, July 1, 2020).

Then there are the stakeholders, especially the LEOs where the dominant knowledge is *“girls are sold off and boys are kept safe so that they could take the family name ahead...these girls also face a lot of violence since childhood and become aversive to society finally ending up into prostitution...”* (Judge, Female, Delhi, July 18, 2020). The reason for this biased understanding can be explained as *“certain cases we just understand by the nature of the work done – like those women working in massage parlour, beauty parlour, red-light area (for example, Sonagachi¹²⁷)...we identify those cases of trafficking easily...however, apart from that other cases are hardly identified”* (Deputy Inspector General (DIG), BSF, Male, West Bengal, December 23, 2020).

Victim’s Perception – Victims interviewed for the study displayed a good understanding of the activities involved in trafficking. The following are some illustrative quotes from the interviews:

“...to lure a person on the pretext of work or any other aspirational need, and then to force her into inappropriate activities [“galat kaam karwana”]” (GBV Victim, Female, Delhi, August 14, 2020)

“...due to pressure of marriage, dowry demands or due to overall poverty, women wish to run away and often get trapped in the web of trafficking” (GBV Victim, Female, Delhi, August 20, 2020)

“...TIP means buying and selling of a person after luring her away from her home on some pretext” (GBV Victim, Female, Madhya Pradesh, August 28, 2020).

127 *Sonagachi* is a red-light area situated in Kolkata, West Bengal.

“...women and girls are sold off at GB Road; sometimes the traffickers get caught sometimes they roam scot-free. These traffickers may be known or unknown (strangers) to the persons trafficked” (TIP Victim, Female, Delhi, August 21, 2020).

Three victims (all three were TIP victims) did not have an adequate understanding of trafficking. One of them denied having any understanding of TIP, two victims understood TIP but were unable to explain it. However, their understanding is extremely biased towards TIP for the purpose of CSE which is reflected in the above excerpts and also application of terms such as – *“galat kaam karwana* (literally, making a person do wrong/bad things) implying “selling off a person by another person for ‘*wrong reasons*’; forcing the person to walk on a ‘*wrong path*’.

Gender-based violence (GBV) - There are very few stakeholders, mostly NGOs and government officials who hold a broader understanding of the term gender-based violence, and according to whom the term GBV constitutes committing violence against someone because of their gender or discrimination on the basis of gender, where gender constitutes men, women, children, and persons belonging to the third gender or other gender. However, it was also accepted that the violence experienced by men and the third gender is seldom talked about due to lack of ‘social acceptability’, ‘social division of feminine and masculine types of behaviour and stereotypes attached therein’, ‘stigma attached with the transgender community’. Further, as mentioned by the respondents, the widespread ignorance about the abuses and violations experienced by them is due to their lower numeric representation in the total population, which often renders them ‘voiceless’ and ‘invisible’. It was also observed that the respondents were aware of various forms of violence – physical, sexual psychological and economic, and yet most of them relate it with the abuse faced by women mostly at the hands of men, [and also at the hands of other women] especially in a domestic setup – as violence inflicted upon wife/daughter-in-law by husband and/or mother-in-law. As explained by an NGO representative, GBV can be *“simply understood as a mother-in-law inflicting violence on her daughter-in-law... and it is in every family”* (Female, Maharashtra, 2nd July 2020).

The majority of the respondents, therefore, understand GBV as violence against women and “women/girls facing domestic violence” i.e. - *“in a classic domestic setting for example the whole household setting becomes an enemy, so you are living in an enemy territory within the house which is very traumatic and challenging. People get mad in such situations, as you are tied up in a prison which is your own home”* (Police Academy, Male, Madhya Pradesh, July 18, 2020). As per another respondent, GBV is *“male dominating over women and committing violence”* (NGO, Female, Goa, September 14, 2020). The service providers however, showed a greater degree of inclusiveness in understanding GBV than the interviewed LEOs and victims. Even though an increased degree of bias towards women facing violence was evident, few service providers also included men in the spectrum of GBV –

“Women face it mostly due to inequality or not being able to enjoy equal rights that other members (mostly men) of the families enjoy. However, sometimes men also face violence” (Shelter Home, Male, Manipur, July 12, 2020)

“GBV is not something just happening to women but to men as well... it’s about gender roles based on their physical structure” (NGO, Female, Madhya Pradesh, June 24, 2020).

All the victims interviewed (20) except five, correlated GBV with domestic violence (mostly) – “GBV implies violence and abuse within homes, like the abuse women face at the hands of their in-laws, their husband, etc., violence they face due to dowry demands and the like” (GBV Victim, Female, Madhya Pradesh, August 24, 2020) or simply as “violence inflicted at home by family members” (TIP Victim, Female, Delhi, August 28, 2020); and violence against women and girls – “A woman is the only gender who suffers (...aurat ko hi bhubatna padta hai).” (Victims, Female, Delhi, August 14, 2020).

It can be deduced from the above discussion that TIP is understood to some extent as carried out for the purpose of CSE whereas GBV is predominantly understood as violence against women or an act of domestic violence. However, even with the existing anomalies in understanding the concept of TIP and GBV, it must be noted that women constitute an overwhelming percentage as victims in both the crimes – more so for GBV – and face extreme violence and severe discrimination due to their gender and the subordinate position in the society. This in part explains the biased understanding among the stakeholders of GBV.

2.4.2 Intersection between TIP and GBV

Case Study 1 - Intersection between TIP and GBV

This story of Mona (name changed) originates from an interview with a TIP victim, conducted as a part of this study during field research in New Delhi in October 2020. The facts as mentioned in the case study were narrated by the respondent, and are being presented as here, without substantiating the veracity of the same.

Mona is a 35-year-old woman who now lives in a brothel on GB Road (the largest red light area in Delhi) with her daughter. Originally, she is from Kolkata, West Bengal where she used to live with her family, consisting of her stepmother and two brothers. She was never supported by her family and they often ill-treated her. To escape her conditions, when she was promised a job of watering plants in a house by a lady, she immediately grabbed the offer and left her abusive home seeking a “peaceful” life. However, she ended up in a brothel in Delhi, where she was trafficked and forced into prostitution.

In 2001 when she was rescued by the police and put into a shelter home, a *didi* (Hindi term for sister), sent a person to get her out of the shelter home. He approached the shelter home and requested the authorities running the shelter, to send her along with him. He also expressed an interest in marrying Mona. She agreed to his proposal thinking that she would not have to continue with prostitution thereafter. But after they got married, her husband started torturing her, physically, mentally, and sexually. He forced her to earn money through prostitution. Later, he was arrested, and she left him. As she had no other means of livelihood, and the added responsibility of bringing up a child, she was left with no other option but to return to the brothel at GB Road.

The sequence of events in this case clearly reflects the intersections between GBV and TIP, and the impact that one has on the other. Family-related vulnerabilities became the push factor for Mona to take the first job opportunity, which would take her away from home, but which got her trafficked into prostitution. In the second instance, violence and abuse within the marriage again led her back to a life of prostitution. The experiences of violence, abuse, and exploitation run in a continuum for the affected person, whether within the family situation or as a victim of trafficking.

Trafficking in persons is amongst the worst forms of GBV¹²⁸ that affects individuals from all walks of life regardless of age, sex, gender, race, sexual orientation, or socio-economic status, with women and children being the most vulnerable.¹²⁹ Not only does different forms of GBV – such as domestic violence, intimate partner violence, mental/physical/sexual/emotional/economic abuse, abuse due to sexual orientation, etc. – increase the vulnerability of a person to trafficking, but, once trafficked, a victim is again subjected to various forms of violence, abuse, and exploitation. All the 20 victims interviewed (8 TIP and 12 GBV) as part of the study unequivocally expressed that GBV creates more vulnerability to trafficking. The major factors asserted are – (i) socio-economic disadvantage – as mentioned by 11 victims (5 out of 8 TIP and 6 out of 12 GBV victims); (ii) aspirational migration – as mentioned by 7 victims (4 TIP and 3 GBV victims); (iii) physical abuse within the family, as asserted strongly by 16 victims (5 TIP and 11 GBV victims) – which often forces the abused to evade the situation and fall into the trap set by the traffickers - *“I wanted to escape from my abusive-alcoholic husband... so one day getting an appropriate opportunity I ran from my home and later got trafficked by an unknown person into prostitution”* (TIP Victim, Female, Delhi, August 28, 2020). Hence, evading violence is an overarching reason leading to TIP, as often the person in an such extreme condition lacks appropriate awareness about the erroneous decisions that they are taking; and (iv) unfounded trust on outsiders mentioned by 8 GBV victims – as a result of extreme violence faced at hands of spouse and /or family members and loss of faith in the same as mentioned by a victim *“women trust outsiders when they face violence at home or they have no one to trust within family”* (GBV Victim, Female, Madhya Pradesh, September 2, 2020). Two victims of GBV, also mentioned emotional abuse and mental trauma as important causal factors that lead to trafficking.

Box: 2.2

Socio-Economic Profiling of Interviewed Victims of GBV and TIP

A total of 20 female victims of GBV and TIP have been interviewed for the purpose of the study, out of which 8 were victims of TIP and 12 of GBV.

TIP Victims –The age of the victims, at the time of interview, ranged from 20 years to 61 years, with two victims falling in the 20-29 years age-group; one in the 30-39 years age-group; four in the 40-49 years age-group, and one victim in the 60-69 years age-group. It is important to note that not all respondents were recent victims of trafficking and some (especially those belonging to the higher age cohorts) were trafficked into CSE much before the interviews. Experience of recent and older/prior victims of trafficking helped the research in its analysis of services provided to them.

Information on the origin state of the victims reveals diversity among the respondents which highlights the spread and extent of trafficking networks in the country. Two victims belonged to Andhra Pradesh, while the remaining six victims belonged to Jharkhand, Bihar, West Bengal, Tamil Nadu, Karnataka, and Maharashtra. One victim belonged to a middle-income household, while the rest came from poor to very poor households. This further

128 Sorensen Jennifer, and et al. (2012) Addressing Inter-Linkages between Gender-Based Violence and Trafficking in Persons to Prevent Reinforcement of Inequalities. Winrock International.

129 Asia Pacific Institute on Gender-Based Violence (2016) Intersection of Human trafficking, Domestic Violence and Sexual Assault. Apigbv. Oakland. p. 1. Retrieved from: <https://s3.amazonaws.com/gbv-wp-uploads/wp-content/uploads/2019/02/13011536/Trafficking-DV-SA-Intersections-2016-formatted2019.pdf>. Accessed on: 8 December 2020.

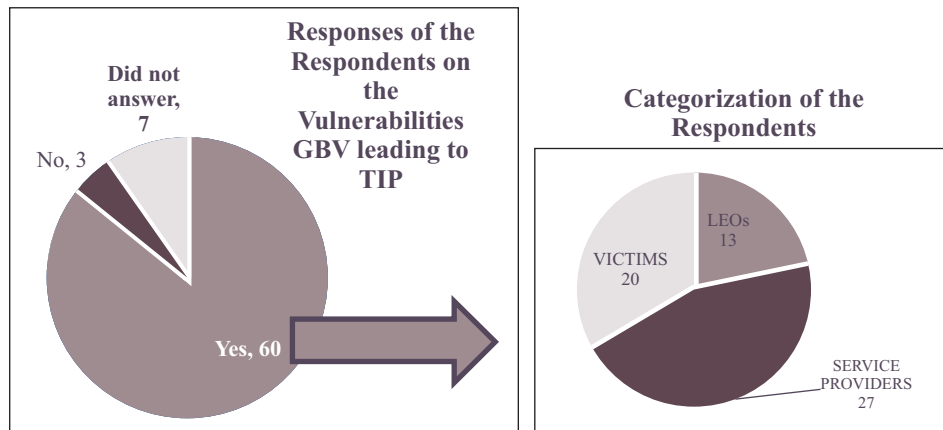
attests to poverty being an important driving factor for trafficking. Information on marital status revealed that one victim was married, one widowed, two separated, and four unmarried. Information on educational background shows that most of the victims were uneducated with only one respondent having a high school education, one middle school, while the remaining did not have any education (four victims) or had only non-formal education (two victims). Except for two, all the victims had large families with 7-10 members.

GBV Victims – The age of the victims ranged from 20 to 40 years with six victims falling in the 20-29 years age-group, five falling under the 30-39 years age-group, and one under the 40-49 years age-group. The age-wise division reveals the vulnerability of younger women to gender-based violence and domestic violence. Six victims were from Madhya Pradesh, two from Delhi, two from Uttar Pradesh and one each from Chhattisgarh and Nepal. Economically most of the victims belonged to middle-income backgrounds (10 victims), and two came from poor income households. The marital status of the victims reveals that eight victims were married, two unmarried and two separated. Interestingly all the victims of GBV were well educated with the educational level ranging from elementary school (one victim) to university education. The socio-economic background of the GBV victims reveals that violence cuts through all segments of society, be it high or low income and debunks the notion that only uneducated and poor experience GBV.

The profile of the interviewed trafficked victims indicates the intersection of situations such as poverty, age, lack of education, dysfunctional family environment and social component (marital status) constructing vulnerabilities to trafficking. Some respondents (trafficked victims) said that their yearning to live a violence free life forced them to run away from their abusive homes only to be trapped by traffickers and forced into prostitution.

Similarly, a majority of the interviewed LEOs and service providers pointed towards an obvious link between GBV and TIP. Of the 50 interviews (20 LEOs and 30 service providers), 40 (13 LEOs and 27 service providers) stated that GBV induces TIP and the driving factors are (i) socio-economic reasons, - *“in India though majorly women get trafficked but there are also instances where men and young boys are trafficked for labour work, they come from very impoverished background”* (Prosecutor, Male, Delhi, December 27, 2020); (ii) aspirational migration, (iii) societal norms and pressure - *“trafficking in marriage is a problem in this region and it is related to social norms and traditions. Bride ordering, mainly from tribal/ remote areas to places with lower sex-ratio is very much prevalent here”* (Police, Male, Madhya Pradesh, July 18, 2020); and/or (iv) physical and other forms of abuse, especially sexual abuse within the family/ or by known persons. Of the 10 stakeholders (seven LEOs and three service providers) who did not conform to the above view, three respondents (two LEOs and one service provider) rejected any probable link between GBV and TIP and mentioned– ‘both the crimes are different and one need not lead to the other’; seven respondents (five LEOs and two service providers) did not answer the question.

Chart 2.2



Case Study 2: ‘Rape’ and ‘Sham Marriage’ leading to Trafficking

This story of a tribal girl, from Karnataka, is from an interview conducted as part of this study with a judge (female) from Maharashtra in July 2020. The case study is based on facts narrated by the judge, who presided over the case in a special court under the Immoral Trafficking (Prevention) Act (ITPA) in Maharashtra, and are being presented here, without substantiating the veracity of the same.

A girl who was rescued from a brothel in Mumbai was 19 years old, but was trafficked when she was still a minor. At 15 she was raped by a man who also belonged to the same community and hamlet where she and her family lived. After the incident the accused absconded. The victim’s parents with the help of a local NGO managed to lodge a police complaint under Sec. 376 IPC and with the assistance of legal service and the government authorities managed to get a compensation amounting to Rs 100,000 (approximately \$1,377). The moment she got the compensation her parents wanted to get her married. At that time a 45-year-old man from the same hamlet and community agreed to marry her under the condition that he should be given the rape compensation amount along with the girl. The girl’s parents readily agreed to the condition. The man after marrying the girl stayed with her for a few months, exploited her, and finally sold her to a brothel in Mumbai. She was rescued after two years and was rehabilitated in a shelter home.

This incident reflects how GBV (as the girl was a victim of rape) led to the girl being trapped in other situations of abuse only to be finally trafficked. The strong social stigma which attaches to a woman ‘losing her virtue’ forced her parents to take the decision to get her married to a man three times her age, without questioning/ suspecting the true intentions of the man.

It is quite evident from the field research and also secondary literature that gender discrimination and gender violence are among the major causal factors for trafficking.¹³⁰ The extreme forms of violence i.e. physical, sexual, financial, and/or psychological force women, children, men, and transgender persons to end up in traps laid by the traffickers. Also, socio-cultural pressures and norms such as fear of forced marriage, stigmatization faced by women/girls after sexual

130 Burke Marry. C. et al (2020) Sex Trafficking as Structural Gender-Based Violence: Overview and Trauma Implications. In: The Palgrave International Handbook of Human Trafficking. Palgrave Macmillan, [John. Winterdyk and Jackie Jones, eds]. Palgrave Macmillan, Cham.

abuse, bride burnings,¹³¹ or witch hunting,¹³² and dowry deaths have pushed many young girls and women to escape their dysfunctional situations only to fall prey to trafficking and end up in further exploitative situations.¹³³ Child marriage and sham marriages also lead to trafficking where the traffickers mostly trap poor families and arrange marriages without dowry, only to carry out their hidden motive¹³⁴, hence “*marriage intersecting with poverty along with gender bias and inequality creates high probability for a female to become vulnerable to trafficking*” (Police, Male, Madhya Pradesh, July 18, 2020). Such marriages often take place without the bride’s family gathering much information about the groom, thereby increasing the vulnerability of girls once such sham marriages are solemnised [*Case study 2* is an illustrative example of a sham marriage leading to trafficking along with sexual abuse leading to the same unfortunate outcome].¹³⁵ Child marriage is also associated with coerced/forced marriage where children are trafficked to states with lower sex-ratios, also known as bride-ordering for marriage. Such cases are not uncommon among tribal people or in marginalized areas. The vulnerability of such girls increases manifold as they are prone to re-trafficking.¹³⁶

The process of trafficking in many cases involves extreme violence as force is often used to accomplish the traffickers’ agenda, thereby, causing GBV within a TIP situation as mentioned by a respondent “*Once you go through the conduit of trafficking there is a chain of violence*” (Honorary Secretary, Shelter home, Female, Delhi, July 10, 2020). However, it was observed throughout the research that there appears to be a lack of understanding or knowledge among the respondents about trafficking leading to gender-based violence.

Only four (3 TIP and 1 GBV) out of 20 victims were able to draw the link between gender-based violence and trafficking, whereas the other replies were either ‘*don’t know*’ or an expression of ‘*no response*’. Among the LEOs and service providers, the responses were equally divided; 24 respondents (7 LEOs and 17 service providers) suggested that after getting trafficked the victim certainly experiences GBV where the violations can be extreme. Certain trafficking network operate through “*fake placement agencies which under the garb of false promises of good jobs put men and women under inhuman working conditions, which in itself is a form of GBV*” (Prosecutor, Male, Delhi,

131 Bride burning is a form of domestic violence, associated with dowry death and takes place when a woman is murdered by her husband and/or his family over the issue of either non-payment of or less payment of dowry demanded at the time of marriage. The husband and/or his family, murders or attempt to murder the bride in order to make him (the husband) available for remarriage – where they could again demand dowry – and, to punish the bride and her family. For detailed information please refer - Jutla Rajni K. and Heimbach David (2004) Love Burns: An Essay about Bride Burning in India. *Journal of Burn and Care Rehabilitation*, 25:2. p. 165-170.

132 It is a form of abuse experienced mostly by women that is carried out under the caveat of superstition. Still prevalent in many parts of the country, more so in the rural parts, witch-hunting or *dayan/dakan* (regional connotation for witch-hunting) is often used by men to oust a woman either from property or some land/asset that she is holding. Deeply rooted in the caste system and the patriarchal culture, witch-hunting is a convenient way to lay blame on females for any misdeeds or mishap that has occurred either in a family or an entire village. Under the caveat of witch-hunting many people also carry out their personal grudges against a particular family or woman.

133 USAID (2009) Literature Review of Trafficking in Persons and Gender-Based Violence 2009 In: Nexus between Gender-Based Violence and Human Trafficking. Coalition to End Violence against Women and Girls (2015). Retrieved from: <https://s3.amazonaws.com/fwvcorp/wp-content/uploads/20160121110654/Nexus-Between-GBV-and-Human-Trafficking-2015.pdf>. Accessed on: 30 November 2020.

134 Trafficking in Persons Report (2019). p. 234 – 240; Sarkar Siddhartha (2016) Child Marriage Trafficking in India: Victims of Sexual and Gender-Based Violence. *Anthropology Now*, 8:3, p 62-70.

135 Sarkar Siddhartha (2016)

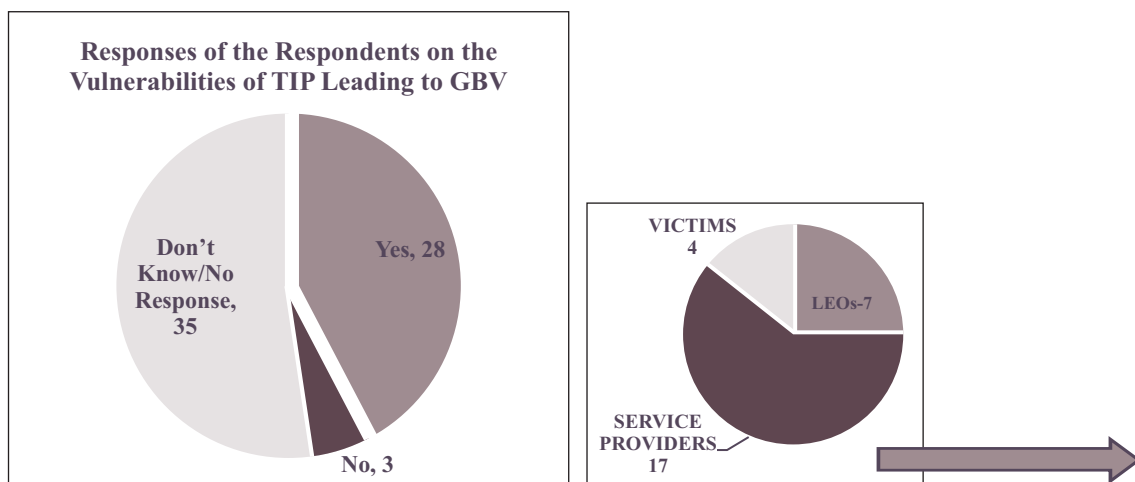
136 Ibid

July 12, 2020). Drawing the inter-linkages, another respondent stated that “*not only does GBV cause trafficking, a TIP victim is also prone to various forms of GBV in their entire journey of getting trafficked and until being rescued. Again, it is important to understand that exploitation or abuse does not happens in case of CSE only, but also in labour trafficking*” (Government Official, Male, Maharashtra, July 1, 2020) and that “*extreme violence is experienced in bonded labour condition, where women are paid even less than men, and children are not paid at all*” (Government Official, Male, Maharashtra, July 2, 2020).

Hence, the exploitation happens in terms of “both sexual and wage theft” (Manager, NGO, Male, Madhya Pradesh, July 18, 2020). Some interviewees identified violence experienced by a victim within a TIP situation as “*fantasies of the customers buying sex*”; “*TIP itself is GBV*”; “*abuse faced by both men and women*”; “*in sex trafficking, there is an entire cycle of abuse the victim goes through*” and so on. An interviewee who works with the trafficked victims rescued from the brothels on GB Road in Delhi said that women who are trafficked for sexual exploitation on an average have at least five abortions throughout their exploitation period. However, the project team observed that understanding of GBV in sex trafficking is pervasive, but is missing in other forms of TIP, especially among the LEOs. Very few respondents (mostly service providers) had an inclusive understanding of GBV in different forms of trafficking, especially in forced or bonded labour conditions.

The other half of the respondents (13 LEOs and 13 service providers) who lacked an understanding of GBV in TIP situation either said– “*only GBV leads to TIP*”; or “*there is no prevalence of GBV in prostitution*” or; “*only the other situation – i.e. GBV leading to TIP – is true*” or did not answer the question at all.

Chart 2.3



However, the FGD¹³⁷ conducted with the service providers pointed towards a strong link between GBV and TIP. According to the respondents, trafficking germinates from GBV; and any form of deprivation is violence, which leads to trafficking. Likewise, the preponderance of violence in trafficking was also highlighted. In the discussion, it was stated that any victim (of any gender) of any form of trafficking also experiences GBV – which can be sexual or non-sexual in nature.

137 The FGD with the service providers (NGO, Shelter Home and Government Officials) was conducted on 7th October 2020 and was joined by 7 respondents. Out of the 7 respondents - 3 were government officials, 2 shelter home representatives and 2 NGO representatives.

While discussing the commonality of experiences between the victims of TIP and GBV the majority of the respondents pointed towards a probable shared experience. As mentioned by a victim of TIP:

“*Dono mein hi marna-peatna aur pareshani hai...samaj donon ko hi izzat nabin deti*” [in both situations, there is violence and harassment, and that society does not give respect to victims of either TIP or GBV] (Female, Delhi, October 14, 2020).

Another important factor highlighted in the victim interviews is that in both situations there is no one to explain the consequences and way out, leaving them to suffer alone. Lack of trust has also been highlighted as a major commonality between both the victims – as in most cases, for both, the very first accused is an intimate/known person. Moreover, there is a feeling of being misjudged among the victims. Hence, there is mistrust and also a feeling of not being trusted. Other commonalities of experiences mentioned were various forms of exploitation such as psychological, physical, sexual, labour, wage-related, stress, perpetrators (which is mostly male), use of force, lack of self-worth, lack of control over one’s life, and lack of family support. In the FGD with service providers, it was pointed that the very basic commonality of experience is that both are *victims*. Apart from experiences, the discussion also emphasised the commonality of needs of both GBV and TIP victims such as trauma counselling.

However, even though fewer in number, there is a certain degree of digression among respondents who highlighted certain differences. According to them, the journey of the victims of both is not same and it is much more painful for those who are trafficked. Moreover, trafficked persons, especially women, often experience violence at the hands of numerous persons who are mostly outsiders, whereas in the case of GBV victims, the perpetrators are limited and insiders.

2.5 Understanding of Trafficking, Migration, and Human Smuggling

Human trafficking and human smuggling are criminal acts, whereas migration is the movement of persons from one place to another. Yet, frequently human trafficking and human smuggling are wrongly conflated or understood interchangeably¹³⁸ due to their similarities with irregular migration and/ or the clandestine movement of people.¹³⁹

The first attempt towards defining these separate categories of crimes was made by the two Protocols in the United Nations Convention against Transnational Organized Crime¹⁴⁰ (UNTOC). UNTOC has three supplementary protocols, and the two relevant to this study are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women

138 United States Department of State Office to Monitor and Combat Trafficking in Person (2017). Civilian, Security, Democracy, and Human Rights - Human Trafficking and Migrant Smuggling: Understanding the Difference. USAID. Washington DC. Retrieved from: <https://www.state.gov/wp-content/uploads/2019/02/272325.pdf>. Accessed on: 30 November 2020.

139 Burke Carolyn (year not available) Smuggling versus Trafficking: Do the U.N. Protocols have it Right? Topical Research Digest in Human Rights and Human Trafficking. Retrieved from: <https://www.du.edu/korbel/hrhw/researchdigest/trafficking/UNProtocols.pdf>. Accessed on: 28 November 2020.

140 United Nations Office on Drugs and Crime (2004) United Nations Convention Against Transnational Organized Crime and The Protocols Thereto. United Nations, New York, pp. 54-55.

and Children (*hereinafter* UN Trafficking Protocol); and the Protocol against the Smuggling of Migrants by Land, Sea, and Air (*hereinafter* UN Smuggling Protocol).¹⁴¹

2.5.1 Defining Human Trafficking and Human Smuggling

Human Smuggling: According to Article 3 (a) of the UN Smuggling Protocol - “*Smuggling of Migrants*” shall mean the procurement, to obtain, directly or indirectly, a financial or other material benefits, of the illegal entry of a person into the State Party of which the person is not a national or a permanent resident.

“*Illegal Entry*” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.

This definition establishes human smuggling as a mutual financial agreement between the smuggler and the migrant where the former undertakes the illegal transportation of the latter or an acquaintance across an international border.¹⁴²

Human Trafficking: The UN Trafficking Protocol defines Trafficking in Persons in Article 3 (a) as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

This Protocol further states that the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the above-stated means have been used. Also, the recruitment, transportation, transfer, harbouring, or receipt of a child for exploitation shall be considered “trafficking in persons” even if it does not involve any of the means outlined in the above definition.

On May 5, 2011, India ratified UNCTOC and its three Protocols. Currently, there is no national law on human smuggling in the country. However, Punjab enacted the Punjab Prevention of Human Smuggling Act, 2012, renamed as Punjab Travel Professionals Regulation Act in 2014 which is specific to the state. The major purpose of the Act was to prevent “unscrupulous persons/travel agents from carrying out illegal activities by giving false promises to the citizen, especially the youth for getting them settled abroad by charging huge amounts”.¹⁴³ Although the Act did not define human trafficking, it did provide for “launching systematic and focused campaign against any illegal/unauthorized/fraud travel agents and persons involved in human trafficking activity”.¹⁴⁴

141 The third supplementary Protocol is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts and Components and Ammunition.

142 United States Department of State Office to Monitor and Combat Trafficking in Person (2017).

143 Department of Home Affairs & Justice (2017) Advisory on Effective Implementation of Law & Rules for Regulation of Travel Agents in Punjab – Regarding. Government of Punjab. Retrieved from <https://cdn.s3waas.gov.in/s3274ad4786c3abca69fa097b85867d9a4/uploads/2018/06/2018061433.pdf>. Accessed on: 8 December 2020.

144 Department of Home Affairs & Justice (2017)

Migration: The International Organization for Migration (IOM) defines migration as “encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes.”¹⁴⁵ It is an umbrella term used to distinguish persons that move away from their usual place of residence, whether intrastate or interstate or across international borders, temporarily or permanently.¹⁴⁶ In India, the definition of migration is provided by the census according to which a migrant is defined as a person who is “enumerated in census at different place than his/ her place of birth”¹⁴⁷, or the place in which he/ she is enumerated during the census is other than his/ her place of immediate residence.¹⁴⁸ A wide array of socio-economic and political factors induces migration. Migration due to marriage (for females) is an important factor in India.

2.5.2 Intersections or Commonalities between “Human Trafficking”, “Human Smuggling” and “Migration”

One of the biggest obstacles to establishing distinctive boundaries between human trafficking, human smuggling, and migration is the fact that elements of exploitation and abuse can arise at any point during the persons’ movement, or upon reaching the destination, for both the smuggled person and the migrant. While migration and smuggling of migrants is characterized by movement and mobility; movement is not a necessary element in trafficking. It is a crime that can be committed against an individual who has never left his or her hometown¹⁴⁹.

The UN Office of the High Commissioner for Human Rights (OHCHR), while elucidating both the crimes argued that “*the distinction between the two is primarily legal and it is difficult to clearly separate these concepts in practice. Trafficking and migrant smuggling are often interrelated and almost always (involve) shifts, flows, overlaps and transition. An individual can be smuggled one day and trafficked the next.*”¹⁵⁰ Moreover, traffickers and smugglers might take the same route for carrying out their illegal activities, which can also intersect with regular migration. Hence, the client, the victim, and the migrant may travel together, and the difference might not be perceptible to the border guard.¹⁵¹ Interviews with border officials show that there is a lack of clarity and appropriate knowledge among them regarding the three terms. According to an official, “*the border guards are unaware of the nuances of human trafficking, human smuggling, both of which are serious crimes*” (Border Security Force, Male, Delhi, July 26, 2020). It is one of the reasons why “*all the three events occurring at the borders are measured with the same yardstick*”, therefore, “*Everybody who crosses the border are nabbed/ detained and no distinction is made between trafficking victims and migrants (regular or irregular)*” (Border Security Force, Male, West Bengal, December 23, 2020).

145 Chibba M (2013) Human Trafficking and Migration: Concepts, Linkages and New Frontiers. Global Policy Essay. Retrieved from: <https://www.globalpolicyjournal.com/sites/default/files/Chibba%20-%20Human%20Trafficking%20and%20Migration%2C%20Concepts%2C%20Linkages%20and%20New%20Frontiers.pdf>. Accessed on: 8 December 2020.

146 IOM, *Who is a Migrant?* Retrieved from: <https://www.iom.int/who-is-a-migrant>. Accessed on: 8 December 2020.

147 https://censusindia.gov.in/Census_And_You/migrations.aspx

148 Singh Manju and Shandilya Seema (2012) Internal Migration in India. *Journal of Business Management & Social Sciences Research*. 1:3. p. 66-69. Retrieved from: <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.403.527&rep=rep1&type=pdf>. Accessed on: 9 December 2020.

149 <https://www.state.gov/wp-content/uploads/2019/02/272325.pdf>

150 Chibba M (2013).

151 Silvia Scarpa (2020).

This respondent further stated that “*those officials who are working at the ground level and are the first responders to anybody crossing the borders are devoid of proper training*”, which is extremely crucial for screening and identification of trafficking victims. As a result, “*the officials detain everybody crossing the border and fail to make any distinction between a trafficked victim or smuggled person or a migrant*”, which often leads to discovering of alternative routes for crossing borders by individuals who migrate abroad for work. According to the respondent, “*approximately 40 per cent of the cases at the Indo-Bangladesh border in West Bengal are of TIP, 5-10 per cent [approx.] cases are of migration and rest are human smuggling*”. Therefore, all the three events occurring at the border, especially human trafficking, should be dealt with in a skilful manner, which is hardly the case at present.¹⁵²

Further, though most of the migration occurs legally, some of the greatest insecurities for migrants are associated with irregular migration. In India, Kerala (and other southern states) has been a major source for men and women migrating to the Gulf for over four decades now.¹⁵³ Though remittances received from migrating workers has helped in the socio-economic development of the state, not all migration takes place through safe and secure processes. Several hundred thousands of men and women are subjected to exploitation, abuse and irregularity.¹⁵⁴ The tightening of the emigration rules and regulation through introducing “e-Migrate”¹⁵⁵ in May 2015 and setting up minimum referral wage (MRW)¹⁵⁶ as an approach towards safeguarding the wellbeing of blue collar workers in the Gulf, has increased both trafficking and irregular migration of women to these countries.¹⁵⁷ Unskilled and semi-skilled men and women searching for prospective job opportunities are trapped by unregistered recruiting agents/middlemen and smuggled to the GCC countries, only to be exploited further by their employers.¹⁵⁸ Men generally get trapped in the construction, services, and manufacturing sectors¹⁵⁹ where as women mostly get trapped in domestic servitude following extreme physical-psychological torture.¹⁶⁰ Moreover the *Kafala* system in these countries makes it extremely difficult for the entrapped victims to escape, despite recent reforms to the system.

Nonetheless, it is important to understand that not all smuggling ends up as trafficking; neither physical nor sexual abuse means that the smuggled person is a victim of trafficking. Trafficking might happen to some smuggled migrants and a smuggled migrant becomes a victim of trafficking only when he/she is forced to and the purpose of exploitation is established – be it sexual or physical.

152 Information provided by the interviewed Border Security Force officials.

153 Uncertain journeys (2019).

154 Ibid.

155 E-Migrate is a website introduced by the Government of India on May 2015 to regulate overseas employment. Emigration clearances and visas for workers need to be channelized through this website.

156 Calabrese John (2020). India-Gulf migration: A testing time. MEI@75. Retrieved from: https://www.mei.edu/publications/india-gulf-migration-testing-time#_edn28. Accessed on: 20 December 2020.

157 Ameerudhan TA (2016)

158 Heller Arokkiraj (2019)

159 Uncertain Journeys (2019)

160 Ameerudhan TA (2016); Toby Antony (2018).

2.6 Conceptual clarity on different categories of TIP Victims

Victims of human trafficking have no single profile. They can be children, young adults, men, women, transgenders; citizens of the country, foreign nationals; found in urban, suburban, or remote areas, exhibit diverse socio-economic backgrounds and educational levels.

The legal definition of victims is provided in Sec. 2(a) of the Criminal Procedure Code, 1973, - "*Victim*" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "*victim*" includes his or her guardian or legal heir.

A person may be victimised during all the three stages of trafficking – recruitment, transit/ transportation (though transportation or movement is not always mandatory to prove the crime of trafficking), and when exploited for various trafficking purposes. Trafficked persons (and people facing gender-based violence) often do not recognize themselves as victims of crime. They may lack an understanding of victimhood and lack trust in the legal system. Fear retaliation from the trafficker/ perpetrator, psychological bondage [Stockholm Syndrome] with the trafficker, and stigma associated with forced prostitution may prevent a victim from accepting that he or she is being exploited.

Available literature on trafficking mentions different categories of victims. *At-risk populations* are people who usually face disempowerment, social exclusion, and economic vulnerability, or suffer due to natural disasters, conflict and political turmoil weakening their already tenuous social protection measures. These exacerbate the vulnerabilities of such populations to getting trafficked. Some UN agencies also describe at-risk populations as *potential victims*, to mean a person who has not been trafficked yet, but due to other exigent circumstances and prior vulnerable condition, is at higher risk of being trafficked.¹⁶¹ Similarly, a *presumed victim* is a person whose circumstances indicate that he or she may have been trafficked, but no final determination has yet been made, perhaps pending further inquiries. In the interim, they are often treated as victims and provided immediate protection and assistance¹⁶². And lastly, an *actual/ confirmed victim* classification is designated by law enforcement agencies to mean a person identified as a result of a police investigation. The trafficking "victim" can thus appear at any place on a victim "continuum" or pyramid. But what are the identification mechanisms and responses in place, is the moot question.

These different terms create fundamental issues in defining a 'victim' – and the complexity surrounding the identification and screening of people as victims of TIP. For instance, due to the ban imposed on Indian women from migrating for domestic work to the GCC countries (considered *at-risk populations*), women emigrate without obtaining proper emigration clearance, or travel on a tourist visa to stay back to work illegally, thus leading them to undertake irregular

161 UNODC, *Protection under the Protocol against Trafficking In Persons*. Retrieved from: <https://www.unodc.org/e4j/en/tip-and-som/module-8/key-issues/protection-under-the-protocol-against-trafficking-in-persons.html>. Accessed on: 18 December 2020.

UNODC, *Trafficked persons as victims*. Retrieved from: <https://www.unodc.org/e4j/en/tip-and-som/module-8/key-issues/trafficked-persons-as-victims.html#:~:text=A%20presumed%20victim%20is%20a,provided%20with%20protection%20and%20assistance>. Accessed on: 18 December 2020.

162 Ibid.

migration and get trafficked into forced labour.¹⁶³ In this media report¹⁶⁴, women from Hyderabad were shown to travel to the Gulf via Mumbai airport despite the availability of international connecting flights from Hyderabad. Unregistered recruiting agents and middlemen, operating at different levels, are the chief arbiters in aiding (and sometimes trafficking) undocumented Indian female workers to reach the Gulf countries. Initially, the brokers provide them with two visas for their transportation. The first one is a tourist visa for countries like the United Arab Emirates (UAE) or Sri Lanka, while the second visa is to enter other Gulf countries like Kuwait, Saudi Arabia, etc. for domestic work.

Likewise, Nepal's restrictive migration policy for women makes brokers/ agents bring the aspirant women migrant workers to India and arrange their flights from here to destination countries. As per a 2012 report, 3,200 Nepali women had been intercepted at New Delhi airport within a few months after the government of Nepal requested Indian authorities to stop Nepali women in transits en route to the Gulf on visitor visas¹⁶⁵. Case Study no. 3 carries more details on how a large group of Nepalese men and women were presumed to be 'victims' of trafficking.

The common reasons cited for restrictions on women migrating abroad are 'protection' and women being a 'at-risk population', which also categorizes all of them as 'potential' victims. Non-reporting of cases also ensures that many trafficked victims never come to the attention of the authorities. Further, there is disagreement around who is a victim of trafficking and at what stage a victim should be recognized as such.

Case Study 3 – Presumed Victims of Trafficking

The event mentioned here is of a rescue operation of 179 Nepalese citizens in 2019. performed by a team of Manipur Police, FXB India Suraksha, representative from Department of Social Welfare, and few local NGOs in Manipur. The case study is drawn from '*Report on Rescue and Repatriation of Persons belonging to Nepal from Manipur*' by FXB India Suraksha, and submitted to the Special Monitor, National Human Rights Commission, New Delhi.

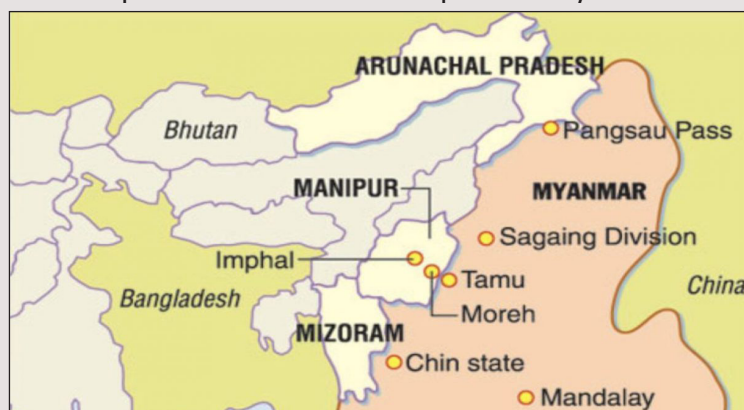
FXB India Suraksha, in a joint rescue operation with various state authorities, intercepted 179 Nepalese men and women from Imphal and Moreh (from hotels, airports, and road frisking) in a two-day search operation held on February 1-2, 2019. This group was presumed to be victims of trafficking by the Manipur police. The rescue operation was conducted in two segments after getting the information from the city police and tip-off on the 181 helpline. Considering the unusually large contingent of Nepalese nationals at the India-Myanmar border, swift action was taken by the Manipur police. In the absence of any national SOP or protocol for screening and identification of victims of human trafficking, no formal screening procedure was used, and the intercepted persons were also not individually interviewed.

163 Arokkiaraj Heller (2019)

164 Ibid.

165 Pyakurel Uddhab Pd (2018) Restrictive Labour Migration Policy on Nepalese Women and Consequences. *Sociology and Anthropology*, 6:8, p.650-656. Retrieved from: https://www.researchgate.net/publication/340919715_Restrictive_Labour_Migration_Policy_on_Nepalese_Women_and_Consequences . Accessed on: 15 December 2020.

Map No. 2.1 Border of Manipur and Myanmar



First, 60 persons were intercepted on February 1 and 2, 2019 from Moreh, a bordering town of Tengnoupal district that shares its border with Myanmar, after a tip-off received on the 181 helpline (Women Helpline service run by the Department of Social Welfare). The tip-off was regarding the illegal detention of a few women by officials of the Integrated Check Post (ICP) and Assam Rifles, who suspected the women to be trafficked from Nepal – to be taken to Gulf countries - transiting through India and Myanmar. The border officials also detained two (suspected) agents who, according to the information shared by the Women Helpline, had already sent 180 persons from Nepal to Myanmar about a month ago, and none of them ever returned.

Followed by the Moreh rescue, the Department of Social Welfare and Anti Human Trafficking Unit, Imphal received information from the city police regarding many other Nepalese persons staying at different hotels across Imphal and were suspected to have been trafficked from Nepal. Accordingly, rescue operations were conducted on February 1 and 2 in Imphal, where 119 persons were rescued and six persons were arrested. However, as the information of the rescue operation spread throughout the district, many other potential/presumed victims of human trafficking managed to escape from the district.

After the rescue operation the Deputy Director of the Social Welfare Department requested the Officer In-Charge, Imphal Police Station to take cognizance of the case and initiate a First Information Report (FIR). Accordingly, FIRs were registered in four different police stations with FIR no. 30(2) 2019 under Section 370(3) IPC at Imphal Police Station; FIR no. 14(2) under Section 370/34 IPC at City Police Station; FIR no. 25(2) under section 370(3)/34-IPC at Lamphel Police Station; and FIR no. 7(2) 2019 under Sections 120B/ 366B/ 370/ 34 IPC and Sec 5 of the Immoral Traffic (Prevention) Act of 1986 at Moreh Police Station. As per the information received from the statements of the rescued people and the arrested persons, it came to light that the men and women were supposed to be taken to Gulf countries through India and Myanmar. From Myanmar, they were supposed to take the sea route to the Gulf countries where they were promised better job opportunities.

The 179 suspected/presumed victims of trafficking were rescued from Moreh and Imphal and were given shelter in nine different shelter homes, including a youth hostel for rescued men in Imphal, Kakchin, Wangabal, and Bishnupur till they were repatriated to Nepal on February 17, 2019. Six people were arrested including two from Manipur in this case.

However, all of them were released on bail due to lack of testimony (as informally shared by the police officer from Imphal). The Imphal police is yet to file the charge-sheet in this case.

This case study is an example where such a large number of people in transit were automatically presumed to be trafficking victims, before a proper inquiry/ investigation was conducted. This case also highlights the intersections of various issues – migration, human smuggling and human trafficking. Since, the Nepalese nationals (adults) were in India legally, and had proper travel documents for onward travel to Myanmar, they could be deemed to be simply migrating/ transiting from India. On the other hand, certain facts emerged that they were to be taken to the Middle East through the sea-route – which brought in the element of smuggling of migrants. Even before a proper investigation / inquiry was conducted, the Nepalese nationals were intercepted and repatriated under the presumption of them being trafficked.

Whereas screening of possible cases of trafficking (at the border areas) is a positive step, however the presumption of the Nepalese nationals to be ‘trafficking victims’ and their repatriation to Nepal impacted their freedom of movement, which was perhaps not based on a sound footing. Further follow-up actions of completion of investigation and charging of offenders could not be taken to its logical conclusion, establishing this case firmly as a trafficking case as all the Nepalese nationals were immediately repatriated to Nepal.

Interviews with stakeholders suggested that there is a dearth of understanding among many of them of different terms – at-risk populations, potential victims, and presumed victims. A NGO working in Madhya Pradesh with the Bedia community shared a succinct understanding of the situation and added:

“We rather try to stop trafficking than rescue victims of trafficking”. (Program head, NGO, Male, Madhya Pradesh, July 22, 2020)

The NGO rescues potential children and adolescent girls and boys from the *Bedia community* [who carry out community-based prostitution, where the male family members work like pimps for their daughters/ wives, pushing them into prostitution]¹⁶⁶ and also works in helping the youth in the community with education.

The process involved in the identification of the potential victims as stated by the above interviewee is (i) maintaining a follow-up of girls attending the NGO’s awareness and education sessions. In case a girl misses 2-3 consecutive sessions, the NGO assumes some foul play. Following this, information about the girl is gathered from the community children and immediate action is taken to rescue the girl, as girls in the *Bedia community* are pushed into prostitution overnight; (ii) When a girl from the community is suddenly sent to a relative’s place so that she can be moved into prostitution from there, the NGO workers immediately trace the girl and rescue her.

Interviewed border officials mentioned identifying potential victims of trafficking through regular interception of individuals crossing the borders. Respondents shared that everybody passing through the borders of the country should be intercepted and questioned about their

166 Jolly Asit (2013) Sex as Trade and Tradition: For Bedia Families, Sex is A Family Business Where Young Girls Engage in Prostitution with The Consent of the Community. India Today. Retrieved from: <https://www.indiatoday.in/magazine/society-the-arts/story/20131028-sex-trade-and-tradition-family-business-bedia-families-768084-1999-11-30>. Accessed on: 20th January 2020.

travel, destination, and purpose of crossing over, even if they are travelling legally, as trafficking can also be carried out through legal migration. Though certain gaps in the functioning of the Integrated Check Posts¹⁶⁷ (ICP) (both India-Nepal and India-Bangladesh border) were pointed out by the respondents, highlighting instances of people travelling without passport escaping without being intercepted, it was also reiterated that interception of every individual crossing the border is important not only to prevent trafficking but also to stop irregular migration. Therefore, the interceptions do not always emerge out of doubt of trafficking only, but also to prevent other criminal activities at the border. After the travel documents of the migrants are thoroughly scrutinized by the officials, in cases where an incomplete document or forged document is discovered, and a probable trafficking angle is suspected, the case is handed over to the local police for further inquiry. Often demarcation of individuals as potential victims of trafficking and their detention at the borders do impact the migration of individuals abroad for work. In such cases, as is revealed in the key informant interviews (border officials and victims), diverse routes or different transits are used by the women for migrating. As elaborated by an LEA interview (BSF, Male, Delhi, July 26, 2020), the geographical area of the Indo-Bangladesh border falling in West Bengal is commonly used for cross-border travelling as it is very poorly fenced (according to the respondent only 40 per cent of the border is fenced), very poorly lit (according to the respondent at least 20 per cent of the border area not lit properly), there is preponderance of human settlement on the border and the border is intersected with various routes such as rivers, roads, rails, nalas (channels), and conduits, all of which makes changing routes (legal/illegal) for migration easy.

Victims' perspective: A similar question on the 'the restrictions on women for international travel for work' was also asked to the victims, but majority of them were unaware of such rules. Only six, out of 20 victims (2 TIP and 4 GBV) were aware of such restrictions. However, even though majority of them were unaware, 16 victims (6 TIP and 10 GBV) stated that such restrictions are beneficial and "*should be imposed for the safety of women since the places [abroad] are completely unknown to them*" (TIP Victim, Female, Delhi, August 28, 2020), and, "*it [the restrictions] could prevent human trafficking to some extent*" (GBV Victim, Female, Madhya Pradesh, August 25, 2020). Out of the four victims, two GBV victims were against such restrictions as they thought that "*the police should first enquire if their reasons [for stopping women] are legitimate or not...as women who wish to go out of country to find work or study should not be stopped, because it is their need*" (GBV Victim, Female, Madhya Pradesh, September 2, 2020), and that "*outside restrictions to keep women safe are secondary since women are unsafe within their own families*" (GBV Victim, Female, Delhi, September 1, 2020). But none of them were aware about any new and diverse routes to avoid the migration ban, although very few stated (5 GBV) that women may be doing this possibly "*to save themselves from being caught by police and unnecessary harassment*" (GBV Victims, Female, Madhya Pradesh, 21st August 2020).

2.7 Screening and Identification of TIP and GBV Victims and its Challenges

Screening and identifying of victims is the first step to combat TIP, to stop exploitation, to prevent reoccurrence of violence (also in cases of GBV), and restore the rights of the victims. Yet the most challenging aspect of addressing the issues of TIP and GBV is screening and

167 Six such ICP exists between India and its neighboring countries i.e. Nepal, Pakistan, Bangladesh, Myanmar and the respondent's view was inclusive of all the ICPs

identification of the affected persons as victims. The following methods are used by the respondents for screening and identification of the victims of TIP and GBV:

- i. *Screening and identification of victims by Law Enforcement Officials (LEOs):* LEOs screen victims of TIP on the basis of complaint made by NGOs, investigating cases of runaway and missing children, raid and rescue operations carried out at the hotspots (such as hotels, massage/beauty parlours, brothels, private apartments, informal work places, factories¹⁶⁸, etc.), intervening in [also with the help of Anti-human Trafficking Units (AHTU)] cases where groups of/or any person or children seem suspicious and through local/community information. LEOs and AHTUs mostly do ‘reactive investigations’ whereas, early identification of victims requires robust proactive screening. The border officials mostly detain anybody travelling without a proper identity document and/or forged identity document and hand over the individual to the local police. In some cases, the border officials take help from local NGOs in screening and identification of the trafficking victims.

For GBV victims, the identification is primarily based on complaints lodged by victims or their family members. However, complaints are also received from other stakeholders such as NGOs, One Stop Crisis Centres, Helplines (dial 100) and volunteers within the community.

- ii. *Screening and identification of victims by the Service Providers:* The response of the service providers (NGOs, shelter homes and government officials) in screening TIP victims includes – *no screening done* by the concerned stakeholders to *screening done* (by some stakeholders) with help of police and AHTUs, raid and rescue operations, victim counselling, information from child welfare committees, village panchayats (local governing body) and through community information.

In case of GBV, victims mostly seek help directly from service providers. However, there are also instances where few respondents (NGO and shelter homes) screen victims of GBV themselves with the help of volunteers, outreach programs in the community, field visits (and identification), and through advertisements which help the victims or any known person to inform the concerned shelter home/NGO/or helplines about instances of GBV in their surroundings. This mode of advertisement (of the helpline numbers) is used by the ‘Gauravi Sakshi Centre (OSCC in Madhya Pradesh) which has been claimed by the respondents of the OSCC as a successful endeavour. Other sources from where the victims are received by the service providers are courts, police, NGOs, social workers, and child welfare committees.

- iii. *Self-identification by the Victims-* Most of the victims of GBV themselves approach the police/shelter home/NGO for assistance rather than the agencies screening them. After this, various procedures are followed by the recipient of the complaint in establishing the facts. Out of the 12 interviewed victims of GBV, five approached the police first, six approached an NGO first, and one called the helpline. Out of the eight interviewed victims of TIP, six were either rescued by the police or NGOs first, while one victim each approached the helpline and an NGO first.

168 One of the respondent, a police officer from Manipur, even mention of rescuing victims of bonded labor from factories in South East Asia.

Apart from methods mentioned above, various identification signs or indicators are used by the stakeholders such as – for TIP victims, some of the indicators are - the location where found, physical injuries, way of speaking, dialect, economic condition, lacking identity documents, suspicious behaviour (moving around a place aimlessly/confused or fearful). For GBV victims, some of the indicators are physical injuries, way of speaking/walking, fear, body language, defensive about family, being shy, and inconsistent retelling of their story.

In terms of the location, most respondents gave equal weightage to urban, rural, and semi-urban areas for the screening and identification of GBV victim. However, for TIP cases the screening location was skewed towards urban areas such as brothels, massage parlours, beauty parlours, private apartments (used for sex trafficking), hotels, homes (for domestic work, etc.), factories, informal workplaces. Stakeholders identified these as emerging hotspots for TIP, though a small numbers of respondents mentioned brick kilns and farms as hotspots for trafficking.

Challenges to Screening and Identification of the Victims of TIP and GBV

- i. Perception as barrier to identification:* Interviews with stakeholders and victims suggest that gender prejudices among the LEOs affect appropriate identification of the victims. Rather than believing the victim's narrative, the LEOs often question the authenticity of the incident. *"The biggest problem is that the LEOs do not believe that a victim is a victim. There still exist confusion on understanding the terminology victims in general"* (NGO, Female, Maharashtra, July 2, 2020). For TIP victims, the raid and rescue operation led by the police and NGOs is the tool that leads to their identification. However, TIP victims mention that often they were also arrested by the police on false charges made by a 'customer' or the owner of the brothel. In the case of GBV, the dominant idea among the police is that *"kya hogaya ek thappad hi toh hai"* [so what? It's just a slap]. It was inferred from the interviews that gender stereotypes strongly exist among the LEOs who rather than helping the victims more often ask them to *"compromise"*.
- ii. Absence of appropriate protocols:* Another major challenge to screening and identification observed during the field research was an absence of clear protocols with indicators for the stakeholders responsible for the identification of the victims.
- iii. Gender biases and social norms as an obstacle to appropriate screening –* Gender imbalance in screening/identification of the victims was pointed out by majority of the interviewees during the primary research as much of this is skewed towards women and children. This is influenced perceptions among the stakeholders as well as patriarchal social norms, which forbids men (and transgenders) from seeking help.
- iv. Lack of meticulous training of law enforcement officials:* Barring a few, the majority of the LEOs stated that they had not received any training prior to working on GBV and/or TIP. Most of the respondents (police officers, prosecutors, and border officials) asserted their "dedication" towards the issues as being out of "self-interest". However, except for the border officials, other LEOs interviewed, especially police officials shared that such training has recently increased. Training programs are being conducted by the government of India and NGOs. However, officials unequivocally suggested the need for more rigorous training to increase the efficiency and promptness while handling TIP and GBV cases. It was further pointed out that training should be more focused and, apart from legal provisions, should also include topics on gender sensitization, protocols, and procedures of proper identification

and appropriate handling of the victims, mandates of different stakeholders, knowledge on services available, etc. Also, prosecutors and lawyers should be given such training to make the justice delivery system efficient during court trials. In case of border forces, an absence of any such training was highlighted by the officials interviewed. As pointed by a respondent (BSF, Male, Delhi, July 27, 2020) “*only Sec. 14 of the India Passport Act is briefed to the officials, which is inadequate in instilling sensitivity among the officials, and in increasing their border handling and/or managing capacities... it is important to enlighten the officials that international borders are also used for trafficking of individuals apart from just crossing over by the migrants.*” He also stated that most of the border officials at ground zero are not aware of the modus operandi of human trafficking or human smuggling. Only those officials who have spent some time in service gain such an understanding.

- v. *Lack of cooperation among the stakeholders*– All respondents spoke about the tendency among stakeholders to work in silos which adversely affects the identification process. The police pointed out the non-cooperative nature of the NGOs, whereas the NGOs spoke of less interest and strong patriarchal mindsets influencing the efficiency of the police officials in screening and identification of the victims. The border officials along with asserting lack in appropriate approach (towards trafficking) by the border guards also pointed out lack of commitment from local police (those who are responsible for investigating the cases identified at the border) and the NGOs in working at volatile border areas. According to a Border Security Force (BSF) official (Male, West Bengal, December 23, 2020) the network at the Indo-Bangladesh border is huge and an efficient local police could have ensured efficient handling of the issue. The respondent added that better connection and cooperation among NGOs at the India-Nepal and India-Bangladesh borders¹⁶⁹ would make the identification of trafficked women and tracing of the traffickers’ swift. The respondent highlighted that there is a difference between border guarding and border management. The BSF is responsible only for border guarding where the dominant mentality as pointed out by the respondent is “*ayenge jayenge, goli chalayenge*” [we will conduct surveillance of the border area and shoot in case any criminal activities are discovered] – “whereas, border management is a holistic process which involves – civil agencies, local police, judiciary, local NGOs, local media, civil society, local administrative body (panchayati raj), political system, intelligence agencies and Bangladesh border guards. Therefore, failure in managing the border is a responsibility of the all actors involved in the process of management and not only of the BSF”.
- vi. *Lack of cooperation from victims and the local community*: Victims turning hostile and non-cooperative during the process of screening and identification and also in the courts is a major problem. At the border areas, the lack of support and cooperation from the local community is a challenge for border officials in managing trafficking cases.
- vii. *Victims’ perception on barriers to screening and identification*: Victims’ perception on the probable barriers to screening and identification stress the lack of awareness among the responders /victims, and lack in effective working of the legal and institutional machinery. Table 2.5 highlights the key factors that were pointed out by the interviewed victims as barriers to screening and identification.

169 Since the border official interviewed was posted at Indo-Bangladesh border in West Bengal, his suggestions involved progression and strengthening of both Indo-Nepal and Indo-Bangladesh borders.

Table 2.5 Victims' Perception on Barriers to Screening and Identification

| Stakeholders | Legal framework | Uneven law enforcement | Institutional responses | Complicity of government agencies | Lack of appropriate identifying protocols | Lack of awareness among responders and victims | Safety Concerns |
|--------------|-----------------|------------------------|-------------------------|-----------------------------------|---|--|-----------------|
| Victims | 11 | 11 | 12 | 2 | 13 | 18 | 15 |

Source: Field Research under the project

Box: 2.3

Some 'other' factors identified by the interviewed victims, affecting proper screening and identification:

- Extreme pressure from brothel owners.
- Pressure from police for not lodging complaints or taking action against the abuser/ brothel owner/ client.
- Fear of stigma and unhelpful attitude of neighbors.

GBV –

- Refusal of the police in trusting victims' side of the story.
- Lack of proper medical examination of suspected GBV/TIP victim.
- Lack of empathy and sensitivity of the police.

Source: Field Research, 2020

It is evident that these 'other' factors cited by the victims are the reflection of their *experiences while either being screened or identified by the concerned authorities*. Interviews with the victims revealed that a majority of them (7 TIP and 9 GBV) had unsatisfactory experiences with the police. Only two GBV victims mentioned having a satisfactory experience with the police, one TIP victim reported not coming in direct contact with the police and one GBV victim chose not to respond. Most of the victims described their experiences with the police as 'worst', 'a night mare', 'very unsatisfactory', 'frustrating', etc. One of the TIP victims mentioned that *"the police are most uncooperative and interested only in taking bribes, which is why I took direct help from the NGO"* (Female, Delhi, August 28, 2020); another GBV victim mentioned that *"the police were very uncooperative... all of them work under the presumption that, it is the women who are at fault, and hence refused to lodge my complaint until I approached a policeman whom I knew through personal contacts"* (Female, Madhya Pradesh, August 26, 2020). However, while talking about their experience with the NGOs and social workers, all the victims, except five (3 TIP and 2 GBV) shared that LEA's response was 'good', 'very satisfactory', 'very supportive'. The victims further stated that the authorities, especially the police, should be vigilant and knowledgeable towards the *certain signs or indicators that the victims exhibit* such as 'mental stress', 'trauma', 'blurry speech', 'stammer', 'unintelligible thoughts', 'physical scars', and 'injuries' to increase their ability to screen and identify TIP and GBV victims and to deal with them in a more empathetic and practical manner.

It is evident from the discussion above that there are gaps in appropriate identification of victims. This explains the under-reporting of the number of TIP and GBV incidents. It is very important to understand that proper screening and identification of TIP and GBV victims is the main step towards their rescue and removal from exploitative and violent circumstances

and to set the criminal justice system in motion. Hence, it is imperative that the first responders (police/NGOs/ border and immigration officials) recognize the importance of screening and identification and their significance in ensuring justice to the victims.

2.8 COVID-19 and its Impact on TIP and GBV

During the data collection phase of this study, the COVID-19 pandemic brought the world to a standstill. The pandemic is a global health crisis which not only exposed the inequalities in society but also exacerbated them.¹⁷⁰ The imposition of a nationwide lockdown, travel bans, enforced quarantine, limitations on economic activities, increased police surveillance were crucial steps towards flattening the infection curve to stop the spread of the disease. However, they had an adverse impact on TIP and GBV situation in the country. GBV saw an unprecedented rise during the pandemic and has disproportionately affected women and girls.¹⁷¹ During the lockdown, there has been a surge in calls to helplines and police stations reporting GBV. The National Commission for Women (NCW) recorded an increase of more than twice the number of domestic violence complaints compared to those in normal times. The complaints rose from 116 in the first week of March (March 2-8, 2020) to 257 in the last week i.e. March 23-April 1, 2020.¹⁷² Overall, the NCW received 13,410 complaints of crimes against women between March and September 2020, of which 4,350 were cases of domestic violence.¹⁷³ Further, the increase of domestic violence cases in the districts with stringent restrictions in mobility was 131% higher than the areas which had fewer restrictions.¹⁷⁴ It has been estimated that the filing of domestic violence complaints experienced a 10-year high during the first four phases of the lockdown.¹⁷⁵ Complaints of rape or attempt to rape also experienced a surge during this uncertain time. The total number of complaints of rape and attempted rape increased from 2% to 13% during the initial phase of the lockdown (March 2 to April 1, 2020).¹⁷⁶ However, these numbers are gross under-representations since most of the women in India do not seek help (86% in case

170 Todres Jonathan, and Diaz Angela (2020) Covid-19 and Human Trafficking – The Amplified Impact on Vulnerable Population. Jama Network. Retrieved from: <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2770536>. Accessed on: 9 December 2020; UN Women (2020) The First 100 Days of the COVID-19 Outbreak in Asia and The Pacific: A Gender Lens. UN Women Regional Office for Asia and the Pacific. Bangkok. Retrieved from: <https://asiapacific.unwomen.org/en/digitallibrary/publications/2020/04/the-first-100-days-of-the-covid-19-outbreak-in-asia-and-the-pacific#view>. Accessed on: 9 December 2020

171 Narasimha Vranda Mysore and Moorkath Febna (2020) Responses to Sexual and Gender-Based Violence against Women during Covid-19. Indian Journal of Psychological Medicine 46:6. Retrieved from: <https://journals.sagepub.com/doi/full/10.1177/0253717620966735>. Accessed on: 9 December 2020.

172 Chandra Jagriti (2020) Covid-19 Lockdown, Rise in Domestic Violence, Policy Apathy: NCW. The Hindu. Retrieved from: <https://www.thehindu.com/news/national/covid-19-lockdown-spike-in-domestic-violence-says-ncw/article31238659.ece>. Accessed on: 9 December 2020.

173 Mitali Nikore (2020) With Covid-19, comes the “Shadow Pandemic”: How the Surge of Domestic Violence Gripped India’s Women in 2020. Times of India. Retrieved from: <https://timesofindia.indiatimes.com/blogs/irrational-economics/with-covid-19-comes-the-shadow-pandemic-how-the-surge-of-domestic-violence-gripped-indias-women-in-2020/>. Accessed on: 9 December 2020.

174 Ibid.

175 Radhakrishnan Vignesh, Sen Sumant and Singaravelu Naresh (2020) Domestic Violence Complaints at A 10-Year High during Covid-19 Lockdown. The Hindu. Retrieved from: <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>. Accessed on: 9 December 2020.

176 Chandra Jagriti (2020).

of domestic violence) or have no means to complain or lack the opportunity to do so.¹⁷⁷ The reason behind the rise in the cases, as revealed in the field interviews, is the increased access of perpetrators to families as a result of mobility restrictions, loss of jobs, economic uncertainty and increased frustration. The rise was also fuelled by predators getting away with abuse, as the support system became more inaccessible to victims. In such situations, often no help is received from the community. The victims who are forced to live with their abusers find it extremely difficult to get out of their adverse situation to a safer zone (preferably maternal house, or a shelter home). Also, the victim's fear of facing increased abuse post a complaint compels her to silently accept it. Service providers shared that due to a lack of proper communication, the victims could not physically reach them for help. Nonetheless, some interviewed stakeholders shared that the police did address cases of GBV sensitively during this time.

The pandemic has created more favourable conditions for the traffickers by exacerbating the existing vulnerabilities, creating new ones, and by pushing people in an already disadvantageous economic condition into even more exploitative situations.¹⁷⁸ The lockdown had an adverse impact on children pushing up child marriages and vulnerability to child labour.¹⁷⁹ Due to the closing of schools and workplaces, millions of children were deprived of the mid-day meal they received in schools and many adults lost their jobs.¹⁸⁰ Many children enrolled in residential schools had to return to their homes. With the uncertainty of reopening of schools, thousands of girl children were put at risk of forced child marriage over the next five years.¹⁸¹ Increase in poverty restricts access to already strained resources for a girl child.¹⁸² The decreasing cost of marriages due to the strict limitation levied on the number of people at a wedding and restriction to mobility worked as a catalyst for poor families leading to an increase in number of cases of child marriages during the pandemic.¹⁸³ The traffickers, as mentioned in the interviews with the stakeholders, are on the constant lookout to exploit the desperate condition of such poor families to entrap women and children. The rise in the use of the internet by children and adolescents during the pandemic as a result of mobility restriction and due to online classes has exposed them to traffickers. According to an NGO about 1,127 suspected child victims of trafficking were rescued across the country, and 86 alleged traffickers were arrested, between

177 Covid-19 creating risks for human trafficking crisis, say anti-trafficking leaders from over 50 countries in joint OSCE-Council of Europe meeting (2020). Retrieved from: <https://www.coe.int/en/web/anti-human-trafficking/-/covid-19-creating-risks-for-human-trafficking-crisis-say-anti-trafficking-leaders-from-over-50-countries-in-joint-osce-council-of-europe-meeting>. Accessed on: 10 December 2020.

178 Ibid.

179 Information received during field research and also has been reported in various news articles.

Covid-19 Pandemic has Created A Second Crisis in India – The Rise of Child Trafficking (2020). News18. Retrieved from: <https://www.news18.com/news/india/covid-19-pandemic-has-created-a-second-crisis-in-india-the-rise-of-child-trafficking-3004136.html>. Accessed on: 10 December 2020.

180 Ibid

181 Panicker Lalita (2020) Covid-19 has Led to a Rise in Child Marriages. Hindustan Times. Retrieved from: <https://www.hindustantimes.com/columns/covid-19-has-led-to-a-rise-in-child-marriages/story-G7ocQKTiERb7tBPxdaWhhM.html>. Accessed on: 22 January 2021.

182 Ibid

183 Ibid

April and September 2020.¹⁸⁴ Also, Childline's 1098 national helpline for distress calls, tracked 1.92 lakh interventions between March and August, and 27,00,000 distress calls.¹⁸⁵ Nonetheless, interviews with stakeholders suggest that the impact of the pandemic on the trafficking cases in the country is still unknown. Most stakeholders anticipated that the pandemic would bring back the vulnerabilities to TIP which NGOs and service providers had been able to reduce over the years.

184 Kochar Anjali (2020) The Pandemic has Created a Second Crisis in India – The Rise of Child Trafficking. Retrieved from: <https://satyarthi-us.org/the-pandemic-has-created-a-second-crisis-in-india-the-rise-of-child-trafficking/>. Accessed on: 9 December 2020.

185 Ghose Dipankar (2020) Untold Story of Lock Down: Sharp Surge in Child Trafficking. The Indian Express. Retrieved from: <https://indianexpress.com/article/express-exclusive/covid-abuse-child-trafficking-6721333/>. Accessed on: 9 December 2020.

CHAPTER 3

Legal Frameworks on Trafficking in Persons and Gender-Based Violence

3.1 Introduction

This chapter deals with an analysis of the existing laws and gives a brief account of the government schemes and policies that are operational in the context of Trafficking in Persons (TIP) and Gender-Based Violence (GBV) in India. The endeavour is also to look into the gaps and challenges in the existing laws and the legal provisions as are applicable to TIP and GBV. The chapter concludes by providing a brief purview of some landmark judgments delivered by the higher courts on TIP and GBV.

3.2 Existing Laws on Trafficking in Persons in India

3.2.1 International Legal Framework

The Government of India has signed and/or ratified key international conventions as are relevant to TIP and GBV, and are given below:

Table 3.1 Ratification of Key International Conventions

| International Instruments | Status of Ratification |
|---|------------------------|
| ILO Forced Labour Convention No. 29, 1930 | Ratified in 1954 |
| Convention on the Elimination of All Forms of Discrimination against Women, 1979 | Ratified in 1993 |
| The ILO Minimum Age Convention No.138, 1973 | Ratified in 2017 |
| United Nation's Convention on the Rights of the Child, 1990 | Ratified in 1992 |
| ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 | Ratified in 2017 |
| Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 | Ratified in 2011 |
| Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict, 2000 | Ratified in 2005 |
| Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography, 2000 | Ratified in 2005 |
| The ILO Domestic Worker's Convention No. 189, 2011 | Not Ratified |

| International Instruments | Status of Ratification |
|--|------------------------|
| South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 | Signed in 2002 |

3.2.2 National Legal Framework on Trafficking in Persons

The Constitution of India, 1950, prohibits trafficking in persons. Article 23 (1) of the Constitution prohibits ‘Traffic in human beings and *beggar*¹⁸⁶ and other similar forms of forced labour’. It further states that the ‘contravention of this provision shall be an offence punishable in accordance with law’. Article 24 of the Constitution states that ‘no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment’. The commitment to address the problem of human trafficking is also reflected in various laws/legislations, enacted by the Government of India along with the relevant schemes and policies. The Indian Penal Code (IPC) since 1860 contains more than 20 provisions relevant to trafficking and imposes criminal penalties for offences like kidnapping, abduction, buying or selling of a person for slavery or labour, buying or selling of a minor for prostitution, importing and procuring a minor girl, rape, etc. Other laws that deal with human trafficking are listed as hereunder.

3.2.2.1 Immoral Traffic (Prevention) Act, 1956

India’s main legislative tool for preventing and combating human trafficking for sexual exploitation is the Immoral Traffic (Prevention) Act, 1956 (ITPA), which was enacted by Parliament, after the ratification of the United Nations International Convention for Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Other, 1950.¹⁸⁷ The law was initially known as the Suppression of Immoral Traffic in Women and Girls Act (SITA), 1956 and has been amended twice. In 1986 it was renamed the Immoral Traffic (Prevention) Act, 1956. Its prime purpose is to prevent the trafficking of women and girls for the purpose of prostitution as an organized means of living. The ITPA aims to curb commercial sexual exploitation of any person by criminalizing the procurers, traffickers, and profiteers of the sex trade; and stipulates the setting up of special courts for speedy trial of offences under the Act. The law also has provisions for the rehabilitation and protection of sex trafficking victims. However, the law falls short in defining the act of trafficking per se, and also focuses on only one type of trafficking i.e., trafficking for commercial sexual exploitation.

3.2.2.2 Indian Penal Code

Given the shortcomings of the ITPA, Parliament enacted the Criminal Law (Amendment) Act, 2013, and amended and/or introduced certain new provisions to the Indian Penal Code (IPC). Section 370 of the IPC was amended to provide a definition of the offence of ‘trafficking’ and the punishment thereof.

The definition of ‘trafficking’ is in line with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (hereinafter UN Trafficking

186 *Begar* was a system of forced labour practised in pre-independence India, in which some people were compelled to perform unpaid work for the government. Source: [https://en.wikipedia.org/wiki/Veth_\(India\)](https://en.wikipedia.org/wiki/Veth_(India))

187 Introduction to the ITPA, 1956

Protocol). The amendment also addresses other shortcomings of the ITPA, which is dealt under section 3.4 of this chapter.

Definition of TIP under Section 370 IPC¹⁸⁸ is: Trafficking of Person :

(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by –

First — using threats, or

Secondly — using force, or any other form of coercion, or

Thirdly — by abduction, or

Fourthly — by practising fraud, or deception, or

Fifthly — by abuse of power, or

Sixthly — by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1 - The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2 - The consent of the victim is immaterial in determination of the offence of trafficking.

Under this section, penalization of a wide range of trafficking-related crimes is provided. It criminalizes all persons involved at each stage of the trafficking process, including those who exploit/ employ the trafficked persons. The law holds significant potential to increase trafficking-related prosecutions and act as a strong deterrent.

Section 370A IPC deals with the punishment for exploitation of trafficked person and states that:

- (i) Whoever engages a trafficked minor for sexual exploitation in any manner shall be liable to punishment for a minimum term of five years and maximum term of seven years with a fine.
- (ii) Whoever engages a trafficked adult for sexual exploitation in any manner shall be liable to punishment for a minimum term of three years and maximum term of five years with a fine.

There are other offences and punishments provided in IPC, which can be used to charge related offences in trafficking cases (*refer Box 3.1 below*).

188 The definition was added by the Criminal Law (amendment) Act, 2013. Albeit primarily concerned with targeting rape and sexual assault, the various amendments incorporate a range of other offences dealing with violence against women many of which the IPC, 1860 did not envisage.

3.2.2.3 Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences (POCSO) Act 2012 is the first comprehensive law that deals with child sexual abuse cases. Provisions of this law can also be invoked in cases of child sex-trafficking along with other relevant legislations. This Act aims to protect ‘children from the offences of sexual assault, sexual harassment, and pornography while safeguarding the interests of children at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, and investigation of speedy trial of offences through designated Special Courts’.¹⁸⁹

The Act defines a child as any person below the age of 18 years and also provides definitions of different types of sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment, and pornography. It further deems a sexual assault to be ‘aggravated’ under certain circumstances, such as when an abused child is mentally ill or ‘when the abuse is committed by a person in a position of trust or authority *vis-a-vis* the child like a family member, police officer, teacher, or doctor’.¹⁹⁰ The Act also provides for stringent punishments which are graded according to the gravity of the offence, with a maximum term of rigorous imprisonment for life, and a fine. The amendment to the POCSO Act in 2019¹⁹¹, along with other changes to the law, introduced the death penalty as a punishment for aggravated penetrative sexual assault.

In line with the international child protection standards, the Act also provides for mandatory reporting of child sexual offences (Sec. 19), failing which any person who has an apprehension or has knowledge of a child being sexually abused and not reporting it is liable to be charged under the Act. The Act is based on a child-centric approach during the investigation and trial, in its provisions dealing with medical examination, of establishing Special Courts that conduct trials *in-camera*¹⁹², without revealing the identity of the child and in a child-friendly manner.¹⁹³

3.2.2.4 Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection) of Children Act (JJ Act), 2015, is the most comprehensive law enacted by Parliament for the protection of children.¹⁹⁴ The Act ‘consolidates and amends the law relating to children alleged and found to be in ‘conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation...’.¹⁹⁵

189 Ministry of Women and Child Development (MWCD) (2013) Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012. Government of India, MWCD, New Delhi. Retrieved from. <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>. Accessed on: 15 August 2020.

190 Ibid. p. 4.

191 MWCD Website: <https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>. Accessed on: 26 January 2021.

192 “In camera” proceedings are those proceedings held before a Judge in private either in Court or in his chamber and the press or other parties who are not connected with the case are not allowed to be present at the time of the hearing. “In camera” proceedings are generally held to protect the privacy of parties in a case involving sensitive issues.

193 MWCD (2013) p. 5

194 Manipur Commission for Protection of Child Rights (2016) Child Trafficking in The Indo-Myanmar Region: A Case Study in Manipur: 2016. Government of India, Ministry of Women and Child Development, New Delhi.

195 The Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2015. Source:http://legislative.gov.in/sites/default/files/A2016-2_0.pdf

Along with supplementing the constitutional provisions relating to children, as found in various Articles of Part III and IV, the Act reflects its consonance with the standards prescribed in the United Nations Convention on the Rights of the Child (CRC).

The law is especially relevant to children who are vulnerable and are, therefore, likely to be trafficked. Section 2(14) of the Act – under the category “child in need of care and protection” – defines those vulnerable circumstances. Institutions and agencies have been set up under this law, such as – the Child Welfare Committees (CWC), and others, to provide comprehensive service delivery to children.

3.2.2.5 The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

The Child Labour Act has provisions to i) prohibit child labour, ii) penalize whoever fails to abide by provisions of this law with an imprisonment of not less than six months and which is extendable up to two years, or with a fine which shall not be less than Rs 20,000 (\$ 281) and is extendable up to Rs 50,000 (\$704), or both; iii) provide rehabilitation of child and adolescent (Sec. 14).

According to the Act, ‘child’ means a person who has not completed his 14th year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more [Sec. 2 (ii)]; and ‘adolescent’ means a person who has completed his 14th year of age but has not completed his 18th year [Sec. 2 (i)]. The Act prohibits the employment of children in certain specified occupations and also lays down conditions of work for children. The Act further envisages that no child or adolescent shall be employed or permitted to work in any occupation or process which is hazardous as defined in the Act [Sec. 3]. Provisions of this law could be utilized in cases of child labour trafficking along with other relevant legislations.

3.2.2.6 The Children (Pledging of Labour) Act, 1933

This pre-Independence era Act prohibits the pledging of the labour of children and employing of children whose labour has been pledged. This Act nullifies any agreement made to pledge the labour of a child who is below 15 years of age, and further provides punishment to the parent or guardian for making an agreement to pledge the labour of the child.

3.2.2.7 Bonded Labour System (Abolition) Act, 1976

The Act provides ‘for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people’. The Act provides – i) punishment for enforcement of bonded labour; ii) punishment for advancement of bonded debt iii) punishment for extracting bonded labour under the bonded labour system. Provisions of this law may be utilized in cases of trafficking for bonded labour along with other relevant legislations.

3.2.2.8 Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

Reports of various NGOs and literature on human trafficking suggest that many victims of trafficking belong to marginalized groups. Traffickers often target such groups because of their social and economic vulnerability. This legislation provides an additional tool to safeguard women

and young girls belonging to Scheduled Castes (SC) and Scheduled Tribes¹⁹⁶ (ST) communities. It can also be used to create a greater burden on the traffickers to prove their lack of complicity in this matter.¹⁹⁷ Section 3 of the Act primarily deals with atrocities committed against people belonging to the SC and ST communities, covering certain forms of trafficking such as, forced or bonded labour (clause vi) and sexual exploitation of women (clause xi, xii). A minimum punishment of 6 months extendable up to 5 years is provided to offences covered under Section 3.

3.2.2.9 The Transplantation of Human Organs Act, 1994

Some provisions of this Act are relevant to crimes of trafficking for human organs. The Act provides 'for the regulation of removal, storage and transplantation' of human organs and tissues for therapeutic and commercial dealings. The Act provides punishment for removal of a human organ without authority (Section 18) and punishment for commercial dealings in human organs (Section 19).

3.2.2.10 The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

Along with other laws, this Act can be used to charge the principal employer and for the protection of the workers' rights when there is an element of trafficking involved in either the recruitment process or there is exploitation during employment. The Act provides institutional machinery for safe migration opportunities for labour.

3.2.2.11 The Emigration Act, 1983

The Emigration Act can be used to deal with Recruiting Agents, who indulge in trafficking for labour in the garb of providing/facilitating employment outside India.

3.2.2.12 The Information Technology Act, 2000

The Act lays down penalties for publication or transmission in electronic form of any material, which is 'lascivious or appeals to prurient interest' or if its effect is such as to tend to deprave and corrupt persons who read, see or hear the matter contained or embodied therein. The law has relevance in addressing pornography and trafficking which is done for the said purposes. The Internet Service Providers Association of India has adopted a Code of Conduct¹⁹⁸ to maintain high standards of ethical and professional practices in the field of Internet and related services.

196 Clause (24) of Article 366 of the Constitution of India defines "Scheduled Castes" - as such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution.

Clause (25) of Article 366 of the Constitution of India defines "Scheduled Tribes" - as such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.

197 Prajwala (2018) Andhra Pradesh Police Training Manual on Victim-Centered Investigations in Trafficking of Persons Related Crime. Andhra Pradesh.

198 ISPAI, Code of Conduct for Internet Service Providers. Retrieved from: <http://www.ispai.in/UI/codeOfConduct.php>. Accessed on: 9 December 2020

3.2.2.13 Other relevant laws

Some States have also taken special legislative measures to prevent trafficking. The Goa Children's Act, 2003 is the only state-level child welfare and protection Act in existence. The definition of human trafficking, as per the UN Protocol, has also been provided and is comprehensive. However, the Act applies only to Goa. The Karnataka Devadasi (Prohibition of Dedication) Act, 1982, and Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1988 makes the dedication of girls as Devadasis¹⁹⁹ unlawful in their respective States. The Maharashtra Control of Organised Crime Act, 1999, may be used in trafficking cases in Maharashtra and Delhi. This Act has been successfully used by the police to file charges in a sex trafficking case in Delhi.²⁰⁰

3.3 Existing Laws on Gender-Based Violence in India

3.3.1 National legal framework to address Gender-Based Violence

3.3.1.1 Dowry Prohibition Act, 1961

This Act is intended to prevent the giving or receiving of a dowry. Under this Act, dowry includes property, goods, or money given by either party to the marriage, by the parents of either party, or by anyone else in connection with the marriage. The Act and other relevant sections of IPC went through numerous amendments to make it more effective to protect female victims of dowry-related violence.

3.3.1.2 The Indecent Representation of Women (Prohibition) Act, 1986

This Act prohibits the indecent representation of women through advertisements or in publications, writings, paintings, figures, or in any other manner and for matters connected therewith.

3.3.1.3 Protection of Women from Domestic Violence Act, 2005

The Act provides for the first time in Indian law a definition of “domestic violence”, which is broad and includes not only physical violence, but also other forms of violence such as, emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to be enforced in criminal courts.

3.3.1.4 Prohibition of Child Marriage Act, 2006

According to the Act, child marriage is considered invalid and hence, null and void especially where force, inducement, kidnapping, sale, trafficking is used for the purpose of marriage.

3.3.1.5 Protection of Children from Sexual Offences Act, 2012

The Act is discussed in detail in the above section 3.2.2.3.

199 Devadasi – literally means “servant of God”. It was a ritual in which a girl was “married” to a deity and dedicated to the worship and service of the deity or a temple for the rest of her life. In addition to taking care of the temple and performing rituals, these women also learned and practiced classical Indian artistic traditions and dance forms. However, with the withdrawal of the patronage offered by the erstwhile kings, the devdasi system became exploitative. This system was later outlawed by the state specific laws.

200 For reference see Kamal Jeet Singh (In Judicial Custody) versus State Criminal Appeal No. 28/2007 and Criminal Miscellaneous Application Nos. 336 and 338/2007. Decided On: 29.01.2008

3.3.1.6 The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

This Act seeks to protect women from sexual harassment at their place of work. This law superseded the Vishaka Guidelines for Prevention of Sexual Harassment outlined by the Supreme Court of India.²⁰¹

3.3.2 Provisions under the India Penal Code (IPC)

Other than the above stated legislations, most of the gender-based violence or crimes against women come under different sections of the IPC. After the Criminal Amendment Act, 2013, various definitions under IPC were broadened and many other sections were amended/added to it. Certain serious offences could also be punished by life imprisonment or death. The Act extends the offences of sexual assaults or rape as a result of abuse of a position of trust. Under Sec. 166A, the police can also be penalized for failing to register First Information Reports (FIRs) in certain offences. The sections that may be used in GBV / TIP cases are as below.

Box: 3.1

Sections from the IPC and those added by the Criminal Amendment Act, 2013

- Section 304 B - Dowry Death
- Section 319 - Hurt
- Section 320 - Grievous Hurt
- Section 354 - Outraging the Modesty of Women
- Section 359 – Kidnapping
- Section 360 – Kidnapping from India
- Section 361 – Kidnapping from Lawful Guardianship
- Section 362 – Abduction
- Section 363A – Kidnapping or Maiming a Minor for Purposes of Begging
- Section 364 – Kidnapping or Abduction in order to Murder
- Section 365 – Kidnapping or Abduction with Intent Secretly and Wrongfully to Confine Person
- Section 366 – Kidnapping, Abducting or Inducing Woman to Compel her Marriage
- Section 366 A – Procurement of minor girl
- Section 366B- Importation of girl from foreign country
- Section 367 - Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
- Section 368 - Wrongfully concealing or keeping in confinement, kidnapped or abducted person

201 Vishaka and Ors vs State of Rajasthan and Ors - (1997) 6 SCC 241; AIR 1997 SC 3011.

- Section 369- Kidnapping or abducting child under ten years with intent to steal from its person
- Section 370 –Trafficking of Persons
- Section 370A – Exploitation of a Trafficked Person
- Section 371 - Habitual dealing in slaves
- Section 372 - Selling minor for the purpose of prostitution
- Section 373 - Buying minor for the purpose of prostitution
- Section 374 - Unlawful compulsory labor
- Section 375 - Rape
- Section 376 (1) - Punishment for Rape
- Section 376 (2) - Punishment for Rape by Government Official
- Section 376 A - Punishment for causing Death or Resulting in Persistent Vegetative State of the Victim
- Section 376 C - Sexual Intercourse by a Person in Authority
- Section 415 – Cheating
- Section 416 – Cheating by Personation

Source: *Crime In India, NCRB, 2018*

3.4 Gaps and Challenges in Laws and Legal Procedures

First, even though India has had provisions to address human trafficking since the enactment of the ITPA, 1956, it only focused on one aspect of trafficking i.e., commercial sexual exploitation, leaving other types of trafficking to be dealt with under different laws, such as the Bonded Labour Act, Child Labour Act, and others. Hence, the IPC was amended in 2013 to address other forms and purposes of trafficking, by inserting a specific definition on TIP in consonance with the UN Trafficking Protocol.

“The major challenge faced by the court prior to 2013 was that of a proper definition of trafficking, which was missing in the ITPA, 1956. Hence, one had to depend on the definition given by the UN Protocol, selecting certain sections from the IPC that were appropriate like – Kidnapping/ Abduction and so on, – to derive a judgement. The proper definition of trafficking came up only in the year 2013” (Former Judge of the Special Court for ITPA, Female, Maharashtra, July 7, 2020).

Another respondent mentioned (Government official, Male, Maharashtra, July 1, 2020) that the “concept of the ITPA itself is not clear. Other forms of trafficking are ignored by the Act, also the hidden aspects of trafficking that are carried out through illegal adoption is overlooked by the Act”. According to the official, ITPA not only lacks a proper definition of human trafficking but is also inherently contradictory – whilst Section 8 criminalises *seducing or soliciting for purpose of prostitution at or within the vicinity of public places*, thereby, treating a person like an ‘accused’, other provisions within the Act seek to rehabilitate them while treating them as ‘victims.’ Most of the interviewed stakeholders asserted that the gaps in ITPA are to a certain extent addressed by Section 370 IPC. According to majority of the respondents, the laws are well defined. The problem lies in the interpretation and implementation of these. “Laws in general are very progressive however, there is always scope for addition of new laws as issues related to gender, vulnerabilities, victimization and their

intersections are not covered the way they should be.” (Deputy Director, Police Academy, Male, Madhya Pradesh, July 18, 2020).

India officially ratified the Palermo Protocol after signing the United Nations Convention against Transnational Organized Crime (UNTOC) in 2011, which formally indicated the country’s consent to be bound by the terms and provisions of the UNTOC and its Protocols. However, since India has a dualist regime on international law and international treaties, ratified treaties do not automatically have the force of law in domestic courts. They must be enacted through national law.

With the amendment of the IPC through the enactment of the Criminal Law (Amendment) Act, 2013, for the very first time specific provisions were introduced on human trafficking in Indian legislation (*refer section 3.2.2.2*). These reforms reflect a step towards aligning the country with its obligations under the Palermo Protocol.

Further, the Government of India in 2018 introduced a Bill²⁰² in order to enact a comprehensive trafficking law. Though the Lower House of Parliament (Lok Sabha) passed the Bill, it could not be introduced in the Upper House of the Parliament (Rajya Sabha) due to the dissolution of the Lok Sabha in 2019 for fresh elections. Since the Bill is yet to become a law, and although the government is planning to introduce it again in the Parliament, currently India does not have a comprehensive standalone law dealing with all aspects of human trafficking.²⁰³

Second, there is inconsistency in the laws regarding the legal age limit that determines whether a victim is a child or not. Whereas POCSO, 2012 and JJ Act, 2015 define a child as a person who has not completed 18 years of age, the Child Labour Act, 1986, defines a child as a person who has not completed 14 years of age. The latter Act further defines an adolescent as a person who is between 14 and 18 years. This inconsistency creates more confusion than clarity among the law enforcement agencies, especially in cases of trafficking of children for labour.

Third, in the absence of a comprehensive TIP law, using different sections from the IPC in human trafficking cases poses challenges for law enforcement and prosecution. Amendments to the IPC by the Criminal Law (Amendment) Act, 2013, have led to overlaps with the other existing IPC Sections. For example, Sec. 370 which added a specific definition and offence of TIP overlaps with Sections 363A (Kidnapping or maiming a minor for purposes of begging) 366A (Procurator of minor girl)/ 366B (Importation of girl from foreign country)/ 367 (Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.)/ 371 (Habitual dealing in slaves)/ 372 (Selling minor for the purpose of prostitution, etc.) / 373 (Buying minor for the purpose of prostitution etc.).

Fourth, there is also a great deal of confusion among the first responders in understanding the term “*consent*”, which was mentioned by an interviewed judge (Former Judge of the Special Court for ITPA, Female, Maharashtra, July 7, 2020), and a senior police official of an investigating

202 PRS Legislative Research, The Trafficking of Persons Prevention, Protection and Rehabilitation. Bill No. 89. 2018. Retrieved from: <https://prsindia.org/billtrack/trafficking-persons-prevention-protection-and-rehabilitation-bill-2018>. Accessed on: 20 January 2020.

203 PTI (2020) Government working on ‘most stringent law possible’ on trafficking of women and children: Smriti Irani. The Times of India. Retrieved from: <https://timesofindia.indiatimes.com/india/government-working-on-most-stringent-law-possible-on-trafficking-of-women-and-children-smriti-irani/articleshow/78024843.cms>. Accessed on: 20 January 2020.

agency (Male, Delhi, 20th February 2020) during the field research as *“complex and which, can be interpreted differently by different individuals”* and *“clarity is there, but the difference is in interpretation”* (Prosecutor, Female, Madhya Pradesh, October 17, 2020). The complexity as pointed out by the senior police official is not only in terms of understanding its definition but also due to the *“varied Indian culture and tradition which makes the implementation of laws and understanding of the term consent difficult”*. Further, the differential cognition of the laws as pointed by an inspector (Female, Madhya Pradesh Police Academy, July, 29, 2020) is also due to differential readings by different agencies such as the police and the court. She further asserted *“we are law enforcers, but as police we do not get enough time to read, understand, and analyse laws for their better implementation”*.

Section 370 IPC (Trafficking of Persons) immaterialises consent of a victim in determination of the offence of trafficking. However, a lack of understanding of the term during implementation has been pointed out in the stakeholder interviews, especially with the law enforcement officials. The police’s preconceived notion, according to a former judge, ITPA court (Female, Maharashtra, July 7, 2020), often prevents them from registering human trafficking cases when a suggestion of consent is observed. She further pointed towards the social perception about women willingly engaging in prostitution— *“if a person has given consent to prostitution, then that should not be stopped, or understood as commercial sexual exploitation or sex trafficking— this understanding largely prevails among LEOs and also gets reflected in the judgements, especially from the trial courts”*. Besides, as remarked by the respondent, even in case of minors, police often book 16–17-year-old girls under different sections of ITPA and produce them before the court and Juvenile Justice Board (JJB).

A point of digression from the previous statement, is also put forward by few stakeholders (both LEOs and service providers) according to whom the lack of realisation among the victims about their victim status and also their non-cooperative or hostile behaviour makes it *“difficult for the police to proceed with their work...who otherwise have been proactive in handling the cases of GBV and TIP”* (Administrator One Stop Crisis Centre, Female, Ukhrul Manipur, June 23, 2020). On similar lines, an Additional Superintendent of Police (Male, Manipur, July 10, 2020) suggested that, *“the implementation of legal provision, more so, that of consent becomes difficult for the police when an adult [whether the concerned individual is a he or she and is involved in any type/form of trafficking] – says that the consent was out of their own will”*.

However, contradicting the above perspective, a former judge of the Special Court for ITPA (Female, Maharashtra, July 7, 2020) suggested that, *“consent received, need not always be through force, it can be situational, circumstantial and there are layers of various factors which ultimately take the shape of consent; nonetheless it should not be treated as true consent at all”*. Furthermore, as reiterated by an honorary secretary of a shelter home (Female, Delhi, July 10, 2020) – *“if a person is overpowered by a trafficker the concerned person is totally under control of the trafficker, then how can the survivor or the victim not consent to the act?”* According to the respondent, even if a contract is signed by a victim (in case of forced labour or domestic servitude or other types of trafficking) that should not matter at all, if that is attained through force or through manipulation. However, in case of GBV the same respondent stated that, *“GBV is quite broad, therefore defining it is an extensive endeavour”*. Nevertheless, she emphasised the necessity of defining the truest meaning of GBV and *consent* in the context of GBV. She reiterated her argument with problematic questions around GBV such as *“Did the victim resist to the rape? Who will testify that? Did the victim have strength to resist violence? Was the victim mentally strong enough to resist?”* *“Since consent is immaterial; there should be no question of confusion at all”* (Programme Manager, NGO, Female, Goa, 14th September 2020).

Further, the legal age limit to “consent” is different for a married girl child and an unmarried girl. There is a gap of three years between the two as per *Exception 2* of Section 375²⁰⁴ IPC which states ‘sexual intercourse/acts by a man with his own wife, the wife not being under 15 years of age, is not rape.’ Though it has been argued that the rationale behind increasing the age (from 16 to 18 years) of “consent” by the Criminal Law (Amendment) Act, 2013, was the immaturity of a girl under 18 to decide on the consequences of sexual act, then the marriage of a girl between 15-17 years does not make her mature enough, mentally or physically, for the purpose of “consent”.²⁰⁵

However, with respect to the Exception (2), Sec. 375, IPC, on September 11, 2017, the Supreme Court²⁰⁶ increased the age of consent for sexual intercourse within marriages to 18 years. Prior to the ruling, sexual acts by a husband on his wife, where the wife was above 15 years of age, did not constitute rape in law. This led to a legal anomaly as the age of consent is 18 years, both in the IPC and various special statutes enacted for children, notably the POCSO Act, 2012.

Speaking on the lack of clarity on the term ‘consent’, the former judge of ITPA Special Court (Female, Maharashtra, July 7, 2020) asserted:

“Section 90 of IPC gives a broad definition of the term consent. Hence, there was no need for further clarification in Section 375 and Section 370 of IPC. Since, it is always helpful to have one single definition of a term rather than constantly changing or re-defining it in various sections, a problem in appropriate understanding of the term ‘consent’ still prevails to this day”.

The immediate implication of a lack of understanding of the concept of ‘consent’ of a victim of trafficking can prove to be limiting, especially in charging crimes under Sec. 370, IPC. Even though Explanation (2) of Sec. 370 expressly states that the consent of a victim is immaterial in determination of the offence of trafficking, there seems to be a general consensus among respondents on the difficulties in its application to trafficking cases.

Fifth, the legal provisions are women-centric. Apart from children, there is a huge gender gap in laws and other provisions for male and transgender (adult) victims. As pointed out by a respondent “sections are there to deal with violence and, offences can be covered under those sections but there is no clear focus on violence against male and other gender” (Female Inspector, Madhya Pradesh Police Academy, July 29, 2020). This gap has been addressed by a recent law, Transgender Persons (Protection of Rights) Act, 2019 which penalises among other acts of discrimination²⁰⁷, act of forced or bonded labour, harming, injuring or endangering the life, safety, health and wellbeing (both mental and physical), physical, sexual, verbal emotional and economic abuses against a transgender person. As discussed above and also highlighted by a majority of the respondents, the laws, especially on GBV, are not “male victim-oriented at all”.

204 Exception (2) of Section 375, IPC -Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

205 Bhardwaj Prachi (2017) Can the increase of age of consent to 18 years by Criminal Law (Amendment) Act, 2013 be applied to Child Marriages?: SC to decide. SCC Online. Retrieved from: <https://www.sconline.com/blog/post/2017/09/01/can-the-increase-of-age-of-consent-to-18-years-by-criminal-law-amendment-act-2013-be-applied-child-marriages-sc-to-decide/>. Accessed on 21 January 2020.

206 Independent Thought versus Union of India; Case-Number: WP (C) 382/201. Retrieved from: <https://www.scobserver.in/court-case/exception-to-rape-within-child-marriages> Accessed on: 04 February 2021.

207 Refer Section 18 of the Act for an overall understanding of the punishable offences committed against transgender person.

“Laws are very much women centric in nature. In cases of men and transgender the legal agencies fail to accept that they are victims. The due recognition is not there!” (Senior Police Official, Male, Manipur, January 19, 2021).

“The third gender who is ostracised from the society, is that not an abuse? We are focusing too much on women only! Experiences of men (both adult and minor) and transgender – assault, rape etc. – are not accepted generally. We don’t talk about it!” (Government Official, Male, Department of Women and Child Development, Maharashtra, July 1, 2020)

It was further asserted that if a transgender person approaches the police station with a complaint of being sexually exploited, the police dismiss the complaint saying, *“tera dhanda hai woh”* [it is your profession].

On a similar note a public prosecutor shared:

“Humarey yahan toh victim male hotabi nahi” [In our country, a man is never considered a victim] (Public Prosecutor Male, Delhi, December 27, 2020). He further mentioned that at present though laws are being amended, yet, in India *“as per law, rape is only committed by a man, whereas there are countries where according to the law rape can be committed by men and women both.”*

This assertion is in accordance with the rape laws under Section 375 IPC. In it a man is said to commit ‘rape’...and the victim in this section has to be a woman.²⁰⁸ Additionally, since GBV is mostly understood as domestic violence, the law related to it – The Protection of Women from Domestic Violence Act (2005) – is also women-centric as it seeks to protect women victims, overlooking male victims of domestic violence, even though in fewer numbers.²⁰⁹

In the case of human trafficking, the ITPA, 1956 uses the term ‘persons’ (which is gender-neutral) especially in the sections related to criminal activities related to prostitution. However, in its common understanding by law enforcement officials, it only deals with sexual exploitation of women, leaving out the sexual exploitation of the men/ transgender persons. However, Section 370 IPC where the victim is addressed as a *person* thus, includes men, women and third gender under its purview.

Implementation of the laws - The above discussion reflects that the enactment of various legislations for one particular crime creates more confusion than clarity in implementation. Though some of the respondents are of the opinion that apart from some lack of clarity (which is mostly related to the term *consent*), laws are otherwise adequate. However, the drawbacks are more in the areas of interpretation and implementation by the responsible authorities, which results in more acquittals than convictions. As mentioned by a founder of a shelter home (Female, Maharashtra,

208 Section 375 IPC – Rape. Retrieved from :<https://indiankanoon.org/doc/623254/>. Accessed on 23 January 2020.

209 Verma Atysh (2020) Domestic violence against men in India. Ipleaders. Retrieved from [https://blog.ipleaders.in/domestic-violence-men-india/#:~:text=Statistics%20on%20domestic%20violence%20against%20men%20in%20India,-In%20a%20study&text=51.5%25%20of%20males%20have%20experienced,in%20the%20last%2012%20months](https://blog.ipleaders.in/domestic-violence-men-india/#:~:text=Statistics%20on%20domestic%20violence%20against%20men%20in%20India,-In%20a%20study&text=51.5%25%20of%20males%20have%20experienced,in%20the%20last%2012%20months.). Accessed on 25 January 2020; Eshwar Ranjana (2019) International Men’s Day: ‘I’m a Man who Faced Domestic Abuse’. The Quint. Retrieved from: <https://www.thequint.com/news/india/stories-male-victims-domestic-violence-india#read-more>. Accessed on: 25 January 2020; Desai Dhvani (2017) When Husbands are Victims of Domestic Violence. Times of India. Retrieved from: <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/when-husbands-are-victims-of-domestic-violence/articleshow/26031858.cms>. Accessed on: 25 January 2020.

December 29, 2020) the laws are there but “*are understood, looked at, and implemented, whether by police or judiciary or the layman, as per their mindset.*”

Moreover, continuous amendments in existing legislation and the addition of new laws gives rise to legal anomalies which create more confusion than clarity among the law enforcement officials since “*amended laws do not reach the right person at the right time*” (Senior Public Prosecutor, Male, Delhi, July 12, 2020). This challenge is all the more difficult in the absence of timely training on the new provisions for law enforcement officers. Most of the respondents at the ground level felt that where stronger intervention is needed in prosecution, prevention, and protection in cases related to TIP and GBV, there is a huge gap in the (updated) legal understanding among LEAs. A significant drawback as mentioned by a senior public prosecutor (Male, Delhi, July 12, 2020) is, making every cognizable offence²¹⁰ bailable,²¹¹ therefore enhancing legal anomalies especially between the Special Laws and the Indian Penal Code. For example, the Bonded Labor System (Abolition) Act, 1976 (Section 16); Juvenile Justice (JJ) Act, 2015 (Section 26), are bailable offences. On the one hand, where the maximum punishment awarded is *imprisonment for life*, on the other, it is made bailable. According to the respondent, such anomalies reduce the power of laws and are misutilized by defence counsels who might argue that IPC is general law whereas the JJ Act and Bonded Labour Act are Special Laws. Hence, the latter should prevail over the former. In such instances, the defence lawyer can request the trial of the perpetrator under the Special Law since it is a bailable offence.

This, according to the respondent, reduces the conviction rate and does not inculcate fear of the law and legal system in the perpetrators. Therefore, most of the respondents (including victims) emphasized stronger implementation of the existing laws through more rigorous training on legal provisions and the latest amendments of the laws. The inadequacy in the training of the stakeholders, especially the LEOs dealing with both the issues is glaring when the data on the same is collated and analyzed from the interviews:

- Out of two border officials interviewed, none received training on issues related to TIP. Their personal interest on the subject matter made them undertake various workshops and training for better comprehension and knowledge on the nuances of trafficking. Also, part of their knowledge was gained through years of experience in handling cases of human trafficking.
- Among the police officers (11 interviewed) – two officials had received basic training on GBV and TIP as part of their induction program, five received training but only on topics related to GBV, gender sensitization, and women’s health. The police officers at Gulmohor Sakhi Centre which is the One Stop Crisis Centre in Madhya Pradesh and Madhya Pradesh Police Academy seem to have had more organized training covering a wider range of topics compared to other officers who just underwent basic training in the induction programs. The officers at Gulmohor Sakhi Centre also spoke about receiving training whenever there is an amendment to existing laws, continuous scrutiny by the trainers on appropriate

210 “Cognizable Offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant (Sec. 2 (c), Criminal Procedure Code, 1973).

211 “Bailable Offence” means an offence which is show as bailable in the First Schedule, or which is made bailable by any other law for the time being force (Sec. 2 (a), Criminal Procedure Code, 1973).

implementation of the laws, along with appreciation and awards for good work. Four police officers stated that they had not received any training on either of the issues. Their passion for and personal interest in the subject matter helped them in “*learning and progress professionally*”.

- Out of the four prosecutors interviewed, none received any training prior to working on the stated issues. Their knowledge developed on the job. One prosecutor mentioned receiving training on gender sensitization and victim-centric approaches in the Judicial Academy (Public Prosecutor, Female, Delhi, February 26, 2020), while the other two claimed they had not received any training or even heard about the topics during their joining period or their initial days in the profession.

However, majority of the law enforcement officials had attended some training during the course of their profession, either conducted by government agencies (Women and Child Development, Lal Bahadur Shastri National Academy of Administration) or NGOs (FXB India Suraksha, Prerna, etc.). According to respondents, trainings have increased in the last five to six years. Yet, the respondents believe that more rigorous and robust trainings are still required to have an impact in dealing with GBV and TIP cases.

- Among the 30 service providers interviewed, eight of them (3 shelter homes, 3 government officials and 2 NGOs) mentioned not receiving any training prior to working on the issues related to GBV and TIP; 22 of them had received training on the subject matter. Of these, none of the service providers had received informal/in-house training (8 NGOs and 1 shelter home) while the rest received formal training conducted either by their own organization or other agencies.

Therefore, training of stakeholders responsible for handling GBV and TIP cases remains an area for stronger intervention. Even though trainings, especially with the police officials, have increased in the past few years, it is still insufficient compared to the scale of the problem of human trafficking and gender-based violence. According to a respondent “*those responsible for the implementation of the laws need to be conscious about how to deal with cases of GBV and TIP. These cases need special attention and cannot be treated at par with other types of crime*” (Prosecutor, Male, Delhi, December 27, 2020).

A more holistic and single legislation dealing with the offences of human trafficking and GBV respectively, is strongly recommended by most stakeholders, especially LEOs. A respondent highlighted the importance of adopting a holistic approach saying, “*In a country like ours, or in those countries where high incidence of poverty exists, one cannot just make laws and start enforcing it. It would be myopic to do so. What we need is to look at everything from the human security perspective*” (Senior Police Official, Male, Madhya Pradesh Police Academy, July 18, 2020). As per this respondent, along with a holistic legal approach, a holistic security approach should also be considered, that is, laws should be made from the standpoint of “*human rights to human security*”. Those kinds of laws will then “*remain viable and would not only be for the LEOs to enforce, such as the police, but for the entire criminal justice system and the development machinery, who would get integrated in one way or the other*”.

3.5 Landmark judgments from the higher courts on TIP and GBV

The Supreme Court (SC) and the various High Courts (HC) in their appellate jurisdictions as well as while exercising their jurisdiction for enforcement of fundamental rights laid under the Constitution have given landmark judgments for strengthening the institutional machinery and government response in combating human trafficking and addressing gender-based violence in India. The SC has also set up various panels and committees to ensure that there are different monitoring mechanisms and proper implementation of the laws relating to TIP and GBV. The following are some of the proactive landmark judgments given by the higher courts on TIP and GBV:

Forced labor defined *People's Union for Democratic Rights v. Union of India* [(1982) 3 SCC 235]

The SC defined the meaning of forced labor vis a vis Articles 23 and 24 of the Constitution of India in this judgement. The judgement stated, "...Any factor, which deprives a person of choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and any labour or service which is compelled as a result of such 'force', it would be 'forced labour'...".

"...Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word 'forced labour'... as described in Article 23 of the Indian Constitution".

Guidelines to check inter-country adoption *Laxmi Kant Pandey v. Union of India* [(1984) 2 SCC 244]

The SC while supporting inter-country adoptions stated "that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents..." The court, in this judgement, laid down procedures to check and monitor inter-country adoptions so that the children don't end up getting trafficked. However, this judgement is more than three decades old, and India has now more stringent procedures for adoption as laid down under the Juvenile Justice Act, 2015 and the Central Adoption Resource Authority (CARA) guidelines.

Rehabilitation of bonded labor and setting up of vigilance committee- *Bandhua Mukti Morcha v. Union of India and others* [AIR 1984 Supreme Court 802]; and *Neerja Chaudhury v. State of Madhya Pradesh* [AIR 1984 Supreme Court 1099]

The SC gave directions on the rehabilitation of bonded labourers. It stated that rehabilitation must follow in the quick footsteps of identification and release. Delay in rehabilitation would drive the released bonded labourers into poverty, helplessness, despair, and serfdom once again. It also directed social action groups operating at the grassroot level to be fully involved in identification and release of bonded labourers. The apex court also directed reorganization and activation of vigilance committees in the district or sub-divisional level, as provided for in the Bonded Labor Act.

Release certificates for released bonded laborers- *Santhal Pargana Antyodaya Ashram v. State of Bihar and Others* [1987 (Supplementary) Supreme Court cases 141]

The judgement directed the district collectors to issue a release certificate to each of the persons released from bondage. Each was to be paid a sum of Rs 3,000 (approximately \$41) by way of interim relief, and they were to be rehabilitated by the State government on a permanent basis.

Formation of advisory committee ordered for all Union and State Governments to combat trafficking- *Vishal Jeet v. Union of India* [(1990) 3 SCC 318]

The SC while noting the growing exploitation of young women and children for prostitution and trafficking, directed the Union and State Governments to constitute an Advisory Committee to frame measures to eradicate child prostitution, welfare programs for victims especially children or young girls and set out rehabilitative schemes for their care and protection.

In-camera trial, anonymity of victim and no questions on victim's character- *State of Punjab v. Gurmit Singh* [(1996) 2 SCC 384]

Dealing with rape and its traumatic effect on a victim, the SC stated, "We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process". The Court ruled that the anonymity of the victim must be maintained as far as possible throughout the investigation and trial. It also ruled for in-camera trials to ensure privacy and dignity of the victim, whilst directing that wherever possible, trials in cases involving female victims of sexual assault should be conducted by female judges.

Imposing fines against employers of child labor- *MC Mehta v. State of Tamil Nadu* [1996 6 (SCC) 756]

In this Public Interest Litigation, the SC laid down measures to provide support to the child labourers and their families - the premises of each offending person employing child labour needs to be sealed and they be directed to pay a fine of Rs 20,000 (approximately \$272) to be used for the rehabilitation of the child victim. The Court also directed a national- level survey on child labour.

Coordination committee at the Central Government level formed to frame the National Plan of Action- *Gaurav Jain v. Union of India* [(1997) 8 SCC]

While clearly stating the violation of Right to Life of trafficked victims the SC ordered the Union Government to form a committee to frame the National Plan of Action and to implement it in mission mode. It ordered the constitution of a committee to undertake an in-depth study into trafficking related issues and evolve suitable schemes for rehabilitation of trafficked women and their children.

Guidelines for sexual harassment at workplace- *Vishaka & Ors v. State Of Rajasthan & Ors* [AIR 1997 Sc 3011]

In this landmark judgment, the SC laid down guidelines to ensure prevention of sexual harassment of women at workplace. It also directed the constitution of complaint committees in workplaces to ensure that a mechanism to file complaints is established and fair procedures for a gender equal space are followed. Subsequently, the government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

First conviction under IT Act, 2000- *Tamil Nadu v. Subas Katti* [Criminal Complaint No. 4680 of 2004; decided by Court of Chief Metropolitan Magistrate, Egmore, Tamil Nadu]

This case led to the first conviction under Section 67 of the Information Technology Act, 2000. The victim was being harassed by the accused by posting offensive and defamatory messages over the internet and sharing her number and obscene messages on various groups with an intention of making people believe that she was soliciting for prostitution. The victim filed a complaint in 2004 and within seven months the accused was convicted.

Guidelines for search of missing children (kidnapped girls) - *Hori Lal v. Commissioner of Police, Delhi & Ors Respondents* (decided on 14.11.2002)²¹²

The Court laid out the five important steps to be followed as guidelines by investigating officers of all the States followed by another set of guidelines as follow-up actions to recover missing children.

Guidelines for trafficked children in need of care and protection and decisions of Child Welfare Committee as final in terms of care and protection of children- *Prerna v. State of Maharashtra* [2003 (2) Maharashtra Law Journal 105] & *Munni v. State of Maharashtra* [Criminal Writ Petition No. 227/2011(Bombay High Court)]²¹³

The Division Bench of the Bombay High Court in a petition filed by Prerna (an NGO) for child victims of trafficking, issued guidelines to ensure that the ‘children in need of care and protection’ must be dealt with bearing in mind the possibility of reformation and rehabilitation. One of the guidelines issued was that no advocate would appear before the Child Welfare Committee seeking custody of child victim rescued under Immoral Traffic (Prevention) Act, 1956. The Court also ruled that advocates appearing for pimps and brothel owners cannot appear in the same case for the victim as well.

The High Court also declared the Child Welfare Committee as the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the ‘children in need of care and protection’ as well as to provide for their basic needs and protection of human rights.

Trafficking of children for domestic labor and the role of placement agencies– *Bachpan Bachao Andolan & ORS. v. Union of India & Others* [WP (Crl.) No.82 of 2009]; *Shramjeevi Mahila Samiti v. State & Others* [WP (Crl.) No.619 of 2002]; *Kalpana Pandit v. State* [WP(Crl.) No.879 of 2007]

The Court issued guidelines for regulation of placement agencies not only in Delhi & NCR (National Capital Region) but also in other States. The guidelines had given special emphasis on recruitment of domestic workers and that the police and the concerned sub-divisional magistrate must ensure that no child below 18 years is recruited as a domestic worker.

212 Supreme Court of India Record of Court Proceedings (2002). Retrieved from: <http://nlrd.org/wp-content/uploads/2012/02/horilal-order-missing-children.pdf>. Accessed on: 21 January 2020.

213 In the High of judiciary at Bombay Bench at Nagpur, Nagpur. Retrieved from: <https://indiankanoon.org/doc/1025378/>. Accessed on: 30 November 2020.

Also, on March 2, 2009 (*W.P.(Cr)* 249/2009²¹⁴) the Delhi High Court had suo motu taken cognizance of newspaper reports pertaining to missing children and ordered the Delhi Police to immediately upload information of missing children on the Delhi Police's web-based Zipnet program. It asked the Home Ministry to notify the neighbouring states to do the same. The order also mandated Delhi Police to share copies of missing children FIRs with DLSA (District Legal Services Authority) along with the contact details of their parents or families. The DLSA then constituted a committee comprising a lawyer and a social worker who will follow up the missing cases with Delhi Police and as well as provide legal aid to the parents or families of the missing children.

Closure and eviction of brothels to prevent repetition of offence - *Geeta Kancha Tamang v. State of Maharashtra* [*Criminal Appeal No. 858 of 2009*]

In this case under Section 6, ITPA, the Bombay High Court rejected the appellant's plea for suspension of sentence on the grounds that 1) trafficking, which is prohibited by the Constitution is the "grossest violation of the rights of the victim child", and 2) the offence is prone to repetition as the brothel was still operating and the same offence was likely to be repeated on other persons requiring steps for closure of the brothel or for eviction of the offenders from the brothel premises..."

Panel to monitor and suggest rehabilitation scheme for trafficked sex workers and trafficked victims– *Budhadev Karmaskar v. State of West Bengal* [(2011) 11 SCC 538]

In this case, the SC while dismissing an appeal by the accused in a case of the murder of a sex worker, stated that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as the "prostitutes" as they too have the right to live with dignity under Article 21 of the Constitution. The Court further directed the government to prepare schemes for giving technical/vocational training to them; appointed a panel of NGO activists and lawyers to study, research and suggest a scheme for : (1) Prevention of trafficking (2) Rehabilitation of sex workers who wish to leave sex work, and (3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity.

Rehabilitation of children rescued from circuses– *Bachpan Bachao Andolan v. Union of India* [2011 SCC (5) 1]

In a writ petition concerning the exploitation and trafficking of children in circuses, the SC directed the formation of a special scheme for rehabilitation of children rescued from circuses. The Court laid down steps for the institutional rehabilitation of rescued children in care and protective homes till 18 years or to restore them to parents willing to take them back.

Registration of FIRs in cases of missing children–*Bachpan Bachao Andolan v. Union of India & Others* [*Writ Petition (Civil) 75/ 2012*]

The SC directed that in case of a complaint received in a police station with regard to missing children the same has to be reduced to a First Information Report, and appropriate investigation

214 The High Court of Delhi on "Court on its own Motion Vs. State." Retrieved from https://dlsa.org/wp-content/uploads/2015/07/Missing_Children.pdf. Accessed on: 16th September 2020.

has to be taken up immediately. In case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless this is proved otherwise in the investigation.

Upholding the dignity of rape survivors- *Lillu v. State of Haryana (Criminal Appeal No. 1226 of 2011)*

The SC held that the ‘two-finger test’ conducted on a victim in rape cases is a violation of the victim’s right to privacy and dignity. The two-finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity, and dignity. The Court held that rape survivors are entitled to legal recourse, and medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment, and health should be of paramount consideration while dealing with gender-based violence.

Ban on sale of acid and direction to ensure treatment, aftercare and rehabilitation of acid attack victims- *Laxmi v. Union Of India &Ors [Writ Petition No. 129 OF 2006, decided in 2015]*

Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victims. Taking cognizance of the rise in number of cases relating to acid attacks against women, the SC imposed stringent regulations on the sale of acid in 2013. The Court also laid out directions for proper treatment, aftercare and rehabilitation of victims of acid attacks. It also directed the State Legal Services Authority to coordinate with the State Governments to ensure Rs 3 lakhs (approximately \$4,066) as the minimum compensation for such victims.

Judgement on triple talaq– *Shayara Bano v. Union of India & Others [Writ Petition (C) No. 118 of 2016, decided in 2017]*

The SC declared the practice of instant triple talaq (divorce) as unIslamic and against the basic tenets of the Quran. The Court also directed the Government to bring legislation to this effect within six months. The Government has since enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019.

Sex with minor girl to be considered as rape even if the act was committed by her husband- *Independent Thought v. Union of India [Writ Petition No. 382 of 2013 decided in 2017]*

In a landmark ruling to protect child brides, the SC of India declared that sex with a minor girl under the age of 18 would be considered rape regardless of whether the man is her husband or not. The Court finally put to rest the anomaly in different legal provisions over the age of consent to sexual relations in the context of child marriages. This is a major step forward in protecting victims of child marriage in India and discouraging the practice.

Right to freedom of religion for women- *Indian Young Lawyer’s Network v. State of Kerala &Others [Writ Petition (Civil) No 373 of 2006 decided in 2018]*

The Sabarimala Temple case is one of the most important cases that initiated the debate between Right to Equality and Right to Freedom of Religion as enshrined in the Constitution. The temple in Kerala – a shrine to Lord Ayyappa – had an age-old tradition of not allowing women

of menstruating age to enter its premises. The practice was questioned through a petition and in September 2018, the SC ruled that women of all age groups can enter Sabarimala Temple. The Court initially lifted the ban and termed it as a violation of women's right to practise religion before going on to place it for review before a larger bench in November 2019.

Consensual sex between adults of any gender in private no longer an offence– *Navej Singh Johar & Ors. v. Union of India through Secretary, Ministry of Law and Justice [Writ Petition No. 76 of 2016 decided in 2018]*

In a landmark decision, the SC in 2018 decriminalised all consensual sex among adults, including homosexual sex. The verdict was hailed as a landmark decision for LGBT rights in India. Elements of Section 377 of IPC relating to sex with minors, non-consensual sexual acts such as rape and bestiality remain in force. The Court in its judgement stated, “History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. This was on account of the ignorance of the majority to recognize that homosexuality is a completely natural condition, part of a range of human sexuality...”

CHAPTER 4

Services and Service Delivery Framework on TIP and GBV

4.1 Introduction

This chapter focuses on the existing services available under various government-mandated policies and schemes in India for victims of Trafficking in Persons (TIP) and Gender-Based Violence (GBV). It also tries to capture various stakeholders involved in the service delivery system. It presents the existing service delivery frameworks designed in the form of Standard Operating Procedures, Protocols, Government plans, policies, and guidelines. The chapter addresses the crucial question of the study on integrating or segregating services for victims of TIP and GBV, what are the existing practices, and if the integration of the services could be recommended or not. One of the limitations of this chapter is that the existing services and service provisions available for TIP and GBV victims could be listed but cannot be analysed for their effectiveness and challenges in implementation, since there is hardly any literature available on their monitoring, evaluation, and impact assessment. It is therefore, beyond the purview of the present study to carry out a critical analysis of all the government schemes, policies, etc., in the service delivery to TIP and GBV victims.

4.2 Services for victims of TIP and GBV

Trafficking in Persons and Gender-Based Violence leads to gross violation of human rights. Within the Indian legal framework, the term *victim* is defined under Section 2(wa) of the Criminal Procedure Code, 1973 as a ‘*person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir*’²¹⁵. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly (Resolution 40/34 of 29 November 1985) defines *victims* as:

“Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”

The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances.²¹⁶ Victims and their families face financial losses due to such crimes. The impact of crimes on the victims is long-lasting. Therefore, the agencies

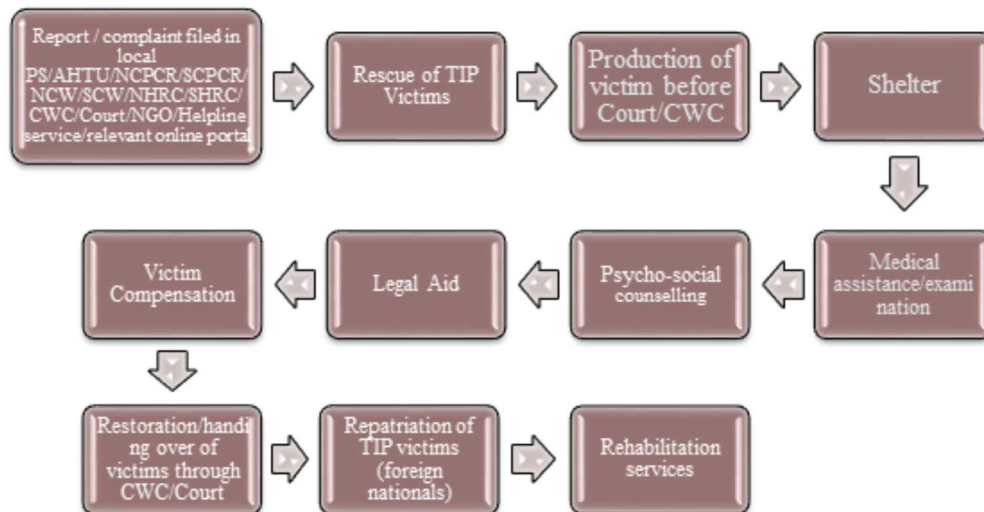
215 Inserted by Act 5 of 2009. Retrieved from: <https://legislative.gov.in/sites/default/files/A1974-02.pdf>. Accessed on: 6 December 2020.

216 Chockalingam Kumaravelu (year not available) Measures for Crime Victims In The Indian Criminal Justice System. Retrieved from: https://www.unafei.or.jp/publications/pdf/RS_No81/No81_11VE_Chockalingam.pdf. Accessed on: 5 December 2020.

of the criminal justice system should be receptive to the needs of the victims and address their issues sincerely and empathetically.²¹⁷ Some victims require specialized services for access to justice and assistance towards their rehabilitation. A web of legislative framework, schemes, and policies provides a support system for female victims of GBV and/ or trafficking.

4.2.1 Available Services for TIP and GBV

Flow Chart No. 4.1 - Available Services for TIP (and where relevant GBV) victims in India



(PS-Police Station; AHTU-Anti Human Trafficking Unit; NCPCR-National Commission for Protection of Child Rights; SCPCR-State Commission for Protection of Child Rights; NCW-National Commission for Women; SCW-State Commission for Women; NHRC-National Human Rights Commission; SHRC- State Human Rights Commission; CWC-Child Welfare Committee; NGO-Non-Governmental Organization; Helpline service-Childline/ Women Helpline/One Stop Crisis Centre).

As shown in the flow chart the very first step to receiving services is to file a complaint at the police station. However, a complaint can be received by any of the authorities other than the police, who may then file a complaint with the local police or forward the complaint received to ensure registration of a First Information Report (FIR) and commencement of further action. Once the complaint is received at the police station, victims of both TIP and GBV are entitled to receive certain services under different legal provisions. Even without formally approaching the police, victims of GBV can avail of services at NGOs/ shelter homes. In TIP cases, since recovery of the victim from the exploitative situation usually depends upon a complaint, the first action is usually to approach the police by any one of the stakeholders.

First, removal of the victim from his/her place of abuse or exploitation - In the case of TIP victims, a rescue operation is conducted by the police and other relevant stakeholders to remove them from their place of exploitation. However, in case of GBV victims, removal from place of abuse/exploitation is carried out depending upon the circumstances of the victim.

217 Legal services India. Role of Indian Judiciary in Protecting Victims' Rights (2018). Retrieved from: <http://www.legalservicesindia.com/law/article/8/5/Role-of-Indian-Judiciary-in-Protecting-Victims-Rights>. Accessed on: 5 December 2020.

Second, the victim of TIP has to be produced before the Court (when rescue is made under the Immoral Traffic (Prevention) Act (ITPA), 1956) in case of adult victims, and Child Welfare Committee (CWC) in case of minor victims to seek further directions and link them with welfare services. Child victims rescued from any form of trafficking or exploitative and abusive situation are to be produced before the CWC for all necessary actions under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter the Juvenile Justice Act, 2015).

Third, providing shelter to the victims of TIP, as they are mostly rescued from areas away from their place of origin. However, shelter is not mandatory for GBV victims as they may not necessarily seek shelter immediately after filing the complaint. There are both government and NGO-run shelters to house victims of TIP and GBV. The Government of India (GOI) has been running shelter homes for ‘children in need of care and protection’ (as defined under the Juvenile Justice Act, 2015) and for women in distress. There are government-funded homes and those run by NGOs as prescribed under various GOI schemes that are discussed in section 4.2.2 below.

Fourth, medical examination is mandatory for victims of TIP and GBV, especially those who have undergone sexual assault or rape.²¹⁸ This provides important *prima facie* evidence during trial. Although this procedure is carried out as per the order of the Court or the CWC, in case of an emergency if the victim requires any immediate medical assistance after rescue or removal from place of abuse, it can be provided even before producing the victim before the Court or the CWC. Also, there can be instances where the victim may directly contact or reach the health facility. In such cases, the health care workers are mandated to intimate the police, helpline service or NGO about the case. The latter would then be responsible for facilitating the victim’s access to services, with the involvement of the police wherever required.

Fifth, in order to address the trauma and psycho-social needs of victims, psycho-social support through counselling, therapy, and clinical treatment is provided.

Sixth, there are provisions for providing legal aid or counselling to victims. The District Legal Services Authority (DLSA) set up under the Legal Services Authority Act, 1987, has the responsibility of providing free legal aid to such victims. There are other service providers too that provide legal aid, such as, the One Stop Crisis Centres (OSCCs), shelter homes, and NGOs.

Seventh, victims or their families (in case of deceased victims) are entitled to receive victim compensation for the loss/injury/violence inflicted upon them under various compensation schemes (as mentioned in section 4.2.2). The compensation is given as financial assistance to the victims for their rehabilitation.

Eighth, victims living in the shelter home are required to be restored to their families especially in the case of child victims as per the directions of CWC. In the case of adult TIP victims of commercial sexual exploitation (CSE), the court decides whether to hand them over to the family or whether to release them based on an inquiry conducted and a home investigation report submitted to the magistrate under section 17 of the ITPA, 1956. Restoration of CSE victims to families may not be possible every time as they are either not accepted by their family or community or the victim herself may not want to go back to the family for several reasons, such as, the involvement of the family in her trafficking.

218 Section 164A Cr. PC, Medical examination of the victim of rape, Code of Criminal Procedure. Retrieved from: <https://devgan.in/crpc/section/164A/> Accessed on: 14 January 2020.

Ninth, repatriating TIP victims of foreign origin is done through coordination between different agencies such as, the Ministry of External Affairs (MEA), embassies concerned, Foreigners Regional Registration Officer (FRRO), Court, CWC, Immigration Department, Border Security Force, Sashastra Seema Bal (SSB) and NGOs.

Last, services that are available for rehabilitation of victims of TIP and GBV, include, i) financial rehabilitation through compensation, ii) counselling, iii) vocational training, iv) skill-building, v) educational support, and vi) economic rehabilitation through several government and NGO initiatives.

It is worth mentioning here, that these services under various schemes and as part of the legal framework are available only for women and children (including male children) who are the victims of TIP and/ or GBV. Although all genders are to be treated equally as per law, there are no shelter services for men and other genders, except provisions for compensation in certain cases of TIP.

4.2.2 Service Delivery Schemes

This segment briefly covers the existing government schemes on TIP and GBV that are currently operational. An elaborate description of these schemes is carried out in the other segments of this chapter. The table below presents i) existing schemes that are applicable separately for TIP and GBV victims, ii) existing schemes applicable for both TIP and GBV victims, and d) schemes that may indirectly help in preventing TIP or GBV.

Table No 4.1: Schemes and Services for TIP and GBV Victims

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|--|--|---|---|-----------------------------|
| Services for TIP Victims | | | | |
| <i>Integrated Anti Human Trafficking Units (IAHTU) Scheme*</i> | Launched in 2007 by the Ministry of Home Affairs, the comprehensive Scheme for Establishment of IAHTUs and capacity building of responders, for strengthening the law enforcement response to human trafficking in India was formulated to deal with all criminal aspects of human trafficking by creating an institutional mechanism. | Ministry of Home Affairs (MHA), State Governments, and Bureau of Police Research and Development (BPRD) | To enforce the law and liaise with other concerned agencies to prevent and rescue victims of TIP; provide post-rescue care and attention to victims; capacity building and training of police and prosecution and enhancing cooperation between law enforcement, prosecution, and NGOs. | All |

* Ministry of Home Affairs (year not available) Comprehensive Scheme for Establishment of integrated Anti Human Trafficking Units and capacity building of responders, including Training of Trainers for strengthening the law enforcement response to human trafficking in India Government of India, New Delhi. Retrieved from: <https://www.mha.gov.in/sites/default/files/Scheme-AHTU-SS-271011.pdf>. Accessed on: 6 December 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|---------------------------------|--|--|--|---|
| <i>Ujjawala Scheme**</i> | Launched in 2007 by the Ministry of Women and Child Development (MWCD), the scheme aims at prevention, facilitate the rescue, provide rehabilitation, facilitate re-integration and repatriation of victims of trafficking for CSE. | Department of Social Welfare/ Women and Child Welfare Department of State Government/ Women's Development Corporations/ Women's Development Centres/ Urban Local Bodies/ Public/Private Trust or Voluntary Organizations | Provides shelter, healthcare, psycho-social care, food, nutrition, clothing, skill-based training, legal aid, and rehabilitative support to victims of TIP for CSE. Prevention is also a very important component of the scheme. | Females who are vulnerable to trafficking and victims of trafficking. |
| Services for GBV Victims | | | | |
| <i>Swadhar Greh***</i> | Launched in 2001-02 by the MWCD, the scheme caters to the primary needs of women who are in difficult circumstances. The scheme envisions a supportive institutional framework for women victims so that they can lead their life with dignity and conviction. | Same as above | Provides shelter, healthcare, psycho-social care, food, nutrition, skill-based training, legal aid, counselling, economic rehabilitation. | Female |

** Ministry of Women and Child Development (2016) Ujjwala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation. Government of India, New Delhi. Retrieved from: <https://wcd.nic.in/sites/default/files/Ujjawala%20New%20Scheme.pdf>. Accessed on: 12 September 2020.

*** Ministry of Women and Child Development (2015) Swadhar Greh: A Scheme that caters to primary needs of women in difficult circumstances. Government of India, New Delhi. Retrieved from: <https://wcd.nic.in/sites/default/files/Revised%20Guidelines%20Swadhar%20Greh%202015%20%28%20English%29.pdf>. Accessed on: 12 September 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|--|---|--|--|-----------------------------|
| Services for TIP and GBV Victims | | | | |
| One-Stop Center Scheme (OSCS) [§] | Popularly known as ‘ <i>Sakhi</i> ’, a centrally sponsored Scheme by the MWCD launched in 2013, intends to provide support and assistance to women affected by violence, both in private and public spaces. | MWCD and State level Women and Child Development/ Social Welfare | An integrated service provision under one roof providing police facilitation, legal counselling, psycho-social counselling, medical aid, video conferencing for court proceedings, and temporary shelter. | Female |
| <i>ChildLine Service</i> [†] | ChildLine, the toll-free number 1098, is a 24-hour telephone service run under the aegis of the MWCD, available to all children in distress or adults on behalf of children in distress | MWCD | Helpline service for children, receiving complaints, immediate care, and support, rescue of TIP victims, police facilitation, counselling, work in coordination with relevant stakeholders, prevention through awareness | Children |
| Women Helpline Scheme [‡] | Launched in 2013 by the MWCD, this scheme is intended to provide 24 hours immediate and emergency response to women affected by violence through referral (linking with appropriate authority such as police, OSCS, hospital) and information about women related government schemes/ programs across the country, through a single uniform number. | MWCD and State level Women and Child Development/ Social Welfare | Receiving complaints over the phone, immediate care, and support, rescue of TIP victims, police facilitation, counselling, work in coordination with relevant stakeholders, prevention through awareness. | Female |

§ Ministry of Women and Child Development (2015) One Stop Center Scheme. Government of India, New Delhi. Retrieved from: <https://wcd.nic.in/sites/default/files/ProposalforOneStopCentre17.3.2015.pdf>. Accessed on: 12 September 2020.

† Childline 1098. Retrieved from: <https://www.childlineindia.org/>. Accessed on: 12 September 2020.

‡ Ministry of Women and Child Development (year not available) Universalisation of Women Helpline Scheme. Government of India, New Delhi. Retrieved from: https://wcd.nic.in/sites/default/files/Schemedocumentwebsite_2.pdf. Accessed on: 12 September 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|--|---|---|--|------------------------------|
| Mahila Shakti Kendra Scheme [^] | Launched in 2016-17, the MWCD envisages to empower rural women through community participation and creating an environment, where they will realize their full potential. It will provide an interface for rural women to approach the government for availing their entitlements and will also empower them through training and capacity building programs. ^{^^} | MWCD and State level Women and Child Development/Social Welfare | Skill-building training | Female |
| Central Sector Scheme for Rehabilitation of Bonded Labourer ^{^^^} | In order to assist the State governments in the task of rehabilitation of identified and released bonded labourers, this Scheme of Ministry of Labour and Employment was amended in May 2016, increasing the financial assistance for all the beneficiaries. The revised scheme also has considered trafficking for labor as extreme cases of deprivation and marginalization and hence, fixed a higher compensation amount for such victims. | Ministry of Labour and Employment and State Governments | Financial rehabilitation, compensation, education of children, and awareness to eradicate bonded labour. | Female ; male ; transgenders |

[^] Ministry of Women and Child Development (year not available) Mahila Shakti Kendra Scheme. Government of India, New Delhi. Retrieved from: <https://wcd.nic.in/sites/default/files/About%20MSK%20scheme%20.pdf>. Accessed on: 15 September 2020.

^{^^} Literally, Women Empowerment Scheme.

^{^^^} Ministry of Labour and Employment (2016) Central Sector Scheme for Rehabilitation of Bonded Labourer – 2016. Government of India, New Delhi. Retrieved from: https://labour.gov.in/sites/default/files/OM_CSS_Rehab_BL_2016_1.pdf. Accessed on: 8 December 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|---|--|---|---|-----------------------------|
| <i>Compensation Scheme for Women Victims of Sexual Assault/ other Crimes</i> [#] | The MHA has notified this Scheme in 2015 complementing the victim compensation schemes already set up by the States/ Union Territories; and to continue the financial support to victims of various crimes, especially crimes against children, human trafficking, and sexual offences including rape. | District Legal Services Authority | Compensation | Female and children |
| <i>Scheme for Working Women Hostel</i> ^{##} | Introduced in the year 1972-73 as a Central Sector Scheme by the MWCD, it envisages provision for safe and affordable Hostel accommodation for working women along with day-care centre for children. Hostels would be set up in urban, semi-urban, or even rural areas where employment opportunity for women exists. | MWCD and State Department for women and child Development/ Social Welfare | Victims in the course of their rehabilitation may utilize these hostels. As victims of TIP and GBV can neither continue to stay in a shelter home forever nor may sometimes return to their families, this scheme helps them in acquiring an accommodation whilst being employed. | Female |
| Integrated Child Protection Scheme (ICPS) | Launched in 2009 by the MWCD, it is a centrally sponsored scheme aimed at building a protective environment for children in difficult circumstances, as well as other vulnerable children, through Government-Civil Society Partnership. ^{###} | MWCD and State Department for women and child Development/ Social Welfare | Rescue/ removal from place of abuse, psych-social care, and support, legal counselling. | Children |

National Legal Services Authority (2018) Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes. Retrieved from: https://wcd.nic.in/sites/default/files/Final%20VC%20Sheme_0.pdf Accessed on: 16 September 2020.

Ministry of Women and Child Development (year not available) Scheme for Working Women Hostel. Retrieved from: https://wcd.nic.in/sites/default/files/Working%20Women%20Hostel_about_revised_about.pdf. Accessed on: 15 September 2020.

Ministry of Women and Child Development (year not available) The Integrated Child Protection Scheme (ICPS) A Centrally Sponsored Scheme of Government-Civil Society Partnership. Government of India, New Delhi. Retrieved from: <https://wcd.nic.in/sites/default/files/revised%20ICPS%20scheme.pdf>. Accessed on: 15 September 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|--|--|--|--|-----------------------------|
| <i>Scheme for Welfare of Working Children in Need of Care and Protection</i> | This Scheme was launched in the year 2009-10 and is being implemented by the MWCD under the ICPS program and provides opportunities for non-formal education and formal training to working children to facilitate their entry/re-entry into mainstream education and break the cycle of continued or future exploitation. The scheme further provides support for the holistic development of child/potential child workers, especially those with a non/in-effective family system (children of slum, pavement dwellers, drug addicts, etc.) | MWCD and State Department for women and child Development/Social Welfare | Rehabilitation through education | Children |
| <i>Nirbhaya Fund^a</i> | The Fund has been set up in 2013 following the events leading up to the rape and death of a young woman ^b and is applicable to projects specially designed to improve the safety and security of women. The MWCD is in charge of choosing, recommending, and monitoring projects and schemes under the Nirbhaya Fund. | Department of Economic Affairs under the Ministry of Finance, MWCD | A fund to support initiatives that ensures protecting dignity and ensuring women safety. | Women |

a Ministry of Women and Child Development, Framework of Nirbhaya Fund. Government of India. Retrieved from: https://wcd.nic.in/sites/default/files/Approved%20framework%20for%20Nirbhaya%20Fund_0.pdf. Accessed on: 8 December 2020.

b TOI-online (2019) What is Nirbhaya Case. The Times of India. Retrieved from: <https://timesofindia.indiatimes.com/india/what-is-nirbhaya-case/articleshow/72868430.cms> Accessed on: 8 December 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|--|---|---|--|-----------------------------|
| <i>National Child Labour Project Scheme</i> ^{&&&} | The scheme was launched in 1988 to rehabilitate child labour. In 2016 the scheme was revised with two major components (i) To eliminate all forms of child labour (ii) To contribute to the withdrawal of all adolescent workers from Hazardous Occupations / Processes and their skilling and integration in appropriate occupations and facilitating vocational training opportunities. | Ministry of Labour and Employment and State Departments of Labour | Prevention, Rescue and rehabilitation through vocational training. | Children |
| <i>National Child Labour Project Scheme</i> [§] | The scheme was launched in 1988 to rehabilitate child labor. In 2016 the scheme was revised with two major components (i) To eliminate all forms of child labor (ii) To contribute to the withdrawal of all adolescent workers from Hazardous Occupations / Processes and their skilling and integration in appropriate occupations and facilitating vocational training opportunities. | Ministry of Labour and Employment and State Departments of Labour | Prevention, Rescue and rehabilitation through vocational training. | Children |

&&& Child Labour Division (year not available) National Child Labour Project Scheme (NCLPS) Guidelines revised. Ministry of Labour and Employment, Government of India, New Delhi. Retrieved from: <https://labour.gov.in/sites/default/files/Revised%20NCLP%20Guidelines%20from%2001.04.2016.pdf>. Accessed on: 20 October 2020.

§ Child Labour Division (year not available) National Child Labour Project Scheme (NCLPS) Guidelines revised. Ministry of Labour and Employment, Government of India, New Delhi. Retrieved from: <https://labour.gov.in/sites/default/files/Revised%20NCLP%20Guidelines%20from%2001.04.2016.pdf>. Accessed on: 20 October 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|--|---|--|--------------------------------------|-----------------------------|
| <i>Witness Protection Scheme</i> ^{\$\$} | The scheme was launched in 2018 by the MHA to provide witness protection to victims of any crime by providing police escort or arranging a technological audio-video session or more extraordinary measures in complex cases like organized crime, safeguarding the identity and life of the victim wherever necessary. | Standing Committee chaired by District and Session Judge at the district level | During court proceedings as witness. | All |
| Schemes that are relevant to TIP and GBV^{\$\$\$} | | | | |
| Beti Bachao-Beti Padhao Scheme ⁺ (literally save the daughter, educate the daughter) | This Scheme was launched by the MWCD in 2015 to address the issue of gender inequality in terms of lower girl child sex-ratio in various states in the country due to female foeticide. The scheme focuses to prevent gender-biased sex selective elimination, ensure survival, protection, and education of girl children. | MWCD and State Department for Women and Child Development/Social Welfare | Prevention and referrals | Female (girl child) |

^{\$\$} Witness Protection Scheme, 2018. Retrieved from: https://www.mha.gov.in/sites/default/files/Documents_PoINGuide_finalWPS_08072019.pdf. Accessed on: 20 October 2020.

^{\$\$\$} There are several other schemes for women and children. The schemes listed under this head, seem more relevant to the present research and has the potential to prevent TIP and GBV through its service components and activities.

⁺ Ministry of Women and Child Development (year not available) Beti Bachao Beti Padhao. Government of India, New Delhi. Retrieved from: https://wcd.nic.in/sites/default/files/About_BBBP_Scheme.pdf. Accessed on: 3 October 2020.

| Name of the scheme | About the scheme | Implemented by | Services | Gender to avail the service |
|---|---|--|--|-----------------------------|
| | A skewed sex-ratio leads to trafficking for forced marriage due to lower number of girls in the marriageable age and increased violence against women. | | | |
| Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (SABLA) ⁺⁺ | <p>This Scheme was introduced in 2011 by the MWCD for empowerment and development of girls between 11-18 years. It focuses on generating awareness on socio-legal issues, skill-building and addresses essential requirements like nutrition, education, and health of adolescent girls through adolescent girls' group formation.</p> <p>This scheme can help in preventing TIP and GBV through its program components and activities.</p> | MWCD and State Department for women and child Development/Social Welfare | Prevention through skill-building, vocational training, and empowerment of the adolescent girls. | Female (11 - 18 years) |

4.2.3 Stakeholders' Mandate

The Indian legal framework and Government schemes formulate guidelines and mandate different stakeholders to implement the services. The following table provides the list of stakeholders along with their mandates for service delivery to TIP and GBV victims:

⁺⁺ Ministry of Women and Child Development (2010) Rajiv Gandhi Scheme for Empowerment of Adolescent Girls 'SABLA'. Government of India, New Delhi. Retrieved from: https://wcd.nic.in/sites/default/files/1-SABLAScheme_0.pdf. Accessed on: 15 September 2020.

Table No 4.2: Stakeholders and their mandates

| Stakeholder | Mandate |
|---|--|
| Government Departments | |
| Ministry of Women and Child Development | It is the nodal Ministry for the prevention of trafficking and rescue, rehabilitation, reintegration, and repatriation of victims of human trafficking and gender-based violence and coordinating activities and processes at all levels. |
| Ministry of Home Affairs | Anti-Trafficking Nodal Cell was set up in the MHA in 2006 to act as a focal point for communicating various decisions and follow up on action taken by the State Governments to combat the crime of human trafficking. It conducts coordination meetings with the Nodal Officers of AHTUs periodically, provides financial assistance for setting up AHTUs, and issues various advisories to the States and Union Territories on preventing and combating TIP. Criminal justice delivery for TIP and GBV cases through implementation of various legislations also come under the MHA. |
| Ministry of External Affairs | Approvals of repatriation of victims of trafficking of foreign origin. Orders on prescribing minimum age, and travel and work restrictions for migrating workers. |
| Ministry of Labour and Empowerment | The nodal agency responsible for formulating rehabilitative measures for child labour, working women, bonded labour, etc. |
| Institutional Mechanisms - Commissions and Authorities | |
| National Commission for Women (NCW) | Established under the National Commission for Women Act, 1990, the NCW is the statutory body at the national level, to safeguard the interests of women as laid out under different legislations and the Constitution of India. |
| National Human Rights Commission (NHRC) | Established under the Protection of Human Rights Act, 1993, the NHRC overlooks the protection of the rights guaranteed by the Constitution and in other legislations. |
| National Commission for Protection of Child Rights (NCPCR) | Established under the Commissions for Protection of Child Rights Act, 2005, the NCPCR is a statutory body whose mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms align with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. State Governments also have such institutional mechanisms at the State level. |
| National Legal Services Authority (NALSA) | NALSA has been constituted under the Legal Services Authorities Act, 1987 to provide free legal services to the weaker sections of the society. It functions to impart legal literacy and awareness, undertake social justice litigations, etc. and it works in close coordination with the various State Legal Services Authorities, District Legal Services Authorities (DLSA), and other agencies. The DLSA has been entrusted with the power to award compensation to victims of certain offences under Sec. 357A of the Criminal Procedure Code, 1973. |

| Stakeholder | Mandate |
|--|--|
| Law Enforcement Agencies | |
| State Police | Conducts search and rescue operations, arrest perpetrators, investigates cases of TIP and GBV, and undertakes steps for victim-witness protection in cases of TIP and GBV. |
| Anti-Human Trafficking Units (AHTUs) | Mandated to conduct rescue operations in TIP cases, take all other steps in combating human trafficking including facilitating the rehabilitation of victims and coordinating with all stakeholders at the district level for prevention, protection, and prosecution of human trafficking cases. |
| Special Juvenile Police Units (SJPU) | Mandated under Section 107 of the Juvenile Justice Act 2015, every district should have such units headed by an officer, not below the rank of Deputy Superintendent of Police mandated to handle cases related to crimes against children. |
| Mahila Thanas or Women Police Station | Specialized Police Stations with women Police officials looking into matters related to women and children. |
| Railway Police Force (RPF) | RPF is responsible for safeguarding, preventing, and intercepting trafficking cases or any form of violence against women and children taking place in a moving train or within the railway platform area. |
| Border Guards-Border Security Force (BSF)/ Assam Rifles/ Sashastra Seema Bal (SSB) | These are para-military forces under the MHA. The Border Guards are considered as the first responders to identify and screen victims of cross-border trafficking. It is mandated to prevent smuggling, human trafficking, trans-border crimes, and internal security duties. |
| Immigration Department | A department under the MHA, they are the first responders in intercepting presumed cases of trafficking at the Airports or land routes (Integrated Check Post). |
| Central Bureau of Investigation (CBI) | CBI under the MHA is the national Nodal Authority to receive and respond to all requests for all inter-state and cross border assistance as a single point of contact and to act as liaison between the Ministry of External Affairs and other State parties on international cooperation matters of investigation. One unit in Special Crime Division of CBI has been designated as AHTU. It is also responsible for handling/ investigating inter-state TIP cases. The CBI has set up an On-line Child Sexual Abuse and Exploitation Prevention/Investigation Unit at New Delhi under its Special Crime Zone. |
| National Investigation Agency (NIA) | The National Investigation Agency Act, 2019 mandates the NIA to investigate offences related to human trafficking. The agency can also look into inter-state human trafficking cases. |

| Stakeholder | Mandate |
|--|---|
| Judiciary | |
| The District Courts, High Courts, and the Supreme Court of India | Responsible for prosecution related aspects of TIP and GBV cases, from trial to the last stage of appeal. In various public interest litigations, the High Courts and the Supreme Court have pronounced judgments for the strengthening of institutions and various statutory agencies mandated by different laws on TIP and GBV. |
| Prosecution | |
| Public Prosecutor | The state-appointed Public Prosecutors conduct prosecutions during trial and represent the State/ victims during the trial/ appeals. |
| Statutory Bodies | |
| Child Welfare Committees (CWC) | A quasi-legal body under the Juvenile Justice Act, 2015, for protecting the interest of all ‘children in need of care and protection’ (including, child victims of any crime), including children of foreign nationality. |
| Committees and Units | |
| Central Advisory Committee (CAC) for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation | A Committee constituted by the MWCD to advise the Government on preventing and combating the trafficking of women and children for commercial sexual exploitation. |
| District Child Protection Units | Constituted under the Integrated Child Protection Scheme (ICPS) of the MWCD, they are responsible for strengthening child protection mechanisms in each district. |
| District Child Marriage Prohibition Officer | Appointed under Section 16 of the Prohibition of Child Marriage Act, 2006 a child marriage prohibition officer is responsible to prevent solemnization of child marriages, counsel, make aware, and sensitize the community on the prohibition of such practices. The officer is also responsible for collecting evidence for the effective prosecution of persons contravening the provisions of this Act. |
| Anti-Trafficking Task Force | The Task Force has a limited role in coordinating the repatriation of Bangladeshi victims of trafficking from the States of Maharashtra and West Bengal to Bangladesh. |
| Civil Society | |
| Non-Governmental Organizations | NGOs are at the forefront of support service provision at all stages, safeguarding victim’s interests, ensuring their access to government services, and support government agencies. |

4.3 Service Delivery Framework

4.3.1 Plan and Policies

Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women²¹⁹: This Plan of Action was drafted by the MWCD in collaboration with MHA, Ministry of Labour and Employment, NHRC and NCW in 2007. Although some of the recommendations from the Plan found place in the form of advisories issued by the MHA, no further information exists about its adoption and operationalization even 14 years after its drafting.

National Policy for Empowerment of Women, 2001:²²⁰ This policy was formulated to promote women empowerment. However, there is no further information available till date about its operationalization or status. Secondary research shows that the MWCD made an attempt to draft a revised policy for women in 2016 addressing the issues related to women. The policy is still in its draft state and has not been brought into practice yet.

National Policy for Children, 2013:²²¹ This Policy was adopted by the MWCD to assist the implementation of programs and schemes for children all over the country. The Policy lays down guiding principles that must be followed by national, state, and local authorities in their actions and initiatives that impact children. Survival, health, nutrition, development, education, protection, and participation are key priorities. Although, the Policy is meant to be a guide to all laws, policies, and schemes related to children, its implementation is complex owing to the introduction of new laws such as the Juvenile Justice Act, 2015, and the Protection of Children from Sexual Offences (POCSO) Act, 2012.

4.3.2 Protocols and Standard Operating Procedures (SOPs)

The Government of India in partnership with the United Nations Office on Drugs and Crime (UNODC)²²² has come up with various protocols and standard operating procedures to combat human trafficking in India. These have been formulated especially for law enforcement agencies, prosecutors, NGOs, and other stakeholders. Among these are: Protocol for Pre-Rescue, Rescue, and Post-Rescue operations of Child Victims of Trafficking for Commercial Sexual Exploitation, 2007; Protocol on the structure and function of the Integrated Anti Human Trafficking Unit (IAHTU) in India, 2007; Standard Operating Procedures (SOP) on Investigating Crimes of Trafficking for Commercial Sexual Exploitation, 2007; Standard Operating Procedures (SOP) On Investigating Crimes of Trafficking for Forced Labour, 2008; Standard Operating Procedures To Counter Cross-Border Trafficking In Persons, India-Nepal For First Responder, 2017. In 2017, the Ministry of Labour and Employment formulated a Standard Operating Procedure

219 Ministry of Women and Child Development (2007) Draft Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women. Government of India, New Delhi. Retrieved from: http://www.protectionproject.org/wp-content/uploads/2010/11/NAP-Draft-India_2006.pdf. Accessed on: 16 January 2021.

220 MWCD (2016) Draft National Policy for Women 2016 Articulating a Vision for Empowerment of Women. Retrieved from: https://wcd.nic.in/sites/default/files/women%20empowerment%20poliy_Final_17May.pdf. Accessed on: 15 September 2020.

221 MWCD (2016) National Policy for Children 2013. Retrieved from: https://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf. Accessed on: 15 September 2020.

222 Refer to all UNODC publications here: <https://www.unodc.org/southasia/en/menu/publications/prevention-of-human-trafficking.html>

(SOP) for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986²²³. The NCPCR has formulated an SOP on Rescue and Post Rescue of Child Labour, 2020²²⁴. The NHRC has also formulated a national level SOP for Combatting Trafficking of Persons in India, 2018.²²⁵

To address gender-based violence, the Ministry of Health and Family Welfare has the Guidelines & Protocols on Medico-legal care for survivors/victims of Sexual Violence, 2014.²²⁶ There are other state-specific SOPs to address GBV too.²²⁷

It is evident from an analysis of the listed documents that most of the SOPs to address TIP have become outdated. They need to be revised keeping in mind the amendments to the Indian Penal Code brought about by the Criminal Law (Amendment) Act, 2013; POCSO Act, 2012; Juvenile Justice Act, 2015; other relevant legislations; and more specifically to address the change in modus operandi by traffickers and the trends in trafficking. For GBV, there is no common SOP, but guidelines have been issued by the GOI to ensure prevention, protection, and rehabilitation of victims of GBV based on relevant laws and schemes.

During the primary research and as also mentioned in Section 2.7 of Chapter 2 (Challenges in screening and identification of victims of TIP and GBV) law enforcement officials pointed out that absence of appropriate protocols for identification of TIP and GBV victims is one of the major barriers. According to them, they followed certain basic principles to identify victims of TIP and GBV, in the absence of a proper protocol for such identifications. Some officials (4 out of 11 police officials interviewed) mentioned that although protocols for identifying victims are available, they are unable to refer to them as i) they do not reach the local police stations ii) lack of time to read iii) not updated about new SOPs or advisories. The majority of service providers interviewed mentioned not having any organization-based written protocol. They said they use procedures laid down by various legislations, SOPs, and advisories. Some interviewees mentioned that SOPs are available only for issues related to TIP victims but not for GBV victims.

“I do not remember any screening tool or protocol to identify victims. But, in the case of TIP, if we see someone in suspicious situation such as in groups/ groups of women/ underage persons traveling alone, we intervene. In Manipur, the Immigration Department at the Imphal airport are vigilant in such identifications.” (Police, Male, Manipur, July 10, 2020).

223 Ministry of Labour and Employment (2017) Standard Operating Procedure (SOP) for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Government of India. Retrieved from: <https://www.childlineindia.org/uploads/files/knowledge-center/SOP-for-enforcement-of-the-child-and-adolescent-labour-prohibition-and-regulation-act-1986.pdf>. Accessed on: 11 February 2021.

224 National Commission for Protection of Child Rights (2020) SOP for Rescue and Post-rescue of Child Labour. NCPCR. Retrieved from: <http://lc.kerala.gov.in/images/pdf/Latest/sop.pdf>. Accessed on: 27 January 2021.

225 National Human Rights Commission (2017) Standard Operating Procedure for combatting Trafficking in Persons in India. NHRC. Retrieved from: https://nhrc.nic.in/sites/default/files/sop_CTPI_19012018.pdf. Accessed on: 27 January, 2021.

226 Ministry of Health & Family Welfare (2014) Guidelines & Protocols, Medico-legal Care for Survivors/Victims of Sexual Violence. Government of India. Retrieved from: <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>. Accessed on: 5 January 2021.

227 Crime Branch (2016) SOP for coordinated response to address Gender-Based Violence. Government of Odisha. Retrieved from: <http://odishapolicecidcb.gov.in/sites/default/files/misc/SOP%20on%20GBV.pdf>. Accessed on: 17 January 2021.

4.3.3 Advisories

The MHA has issued several advisories to strengthen law enforcement mechanisms to combat trafficking of women and children, and also to deal with cases of crimes against children and women. Below is the list of advisories to strengthen responses for TIP and GBV:

- Advisory on preventing and combating human trafficking in India, 2009.²²⁸
- Advisory on measures to be taken by States/Union Territories for combating trafficking of women and children for commercial sexual exploitation, 2011.²²⁹
- Advisory on missing children – measures needed to prevent trafficking and trace the children, 2012.²³⁰
- Advisory on human trafficking as organized crime, 2012.²³¹
- Advisory on preventing and combating human trafficking in India dealing with foreign nationals, 2012.²³²
- Advisory on registration of FIR irrespective of jurisdiction and zero FIR, 2013.²³³ This advisory was a re-issued titled Advisory on no discrimination on compulsory registration of FIR, 2015.²³⁴ These advisories relate to the registration of FIR by the police when they receive a call/ complaint related to a crime committed and suspected to be outside the jurisdiction of the police station concerned.
- Advisory on Hon'ble Supreme Court's direction to file FIR in case of missing children, 2013.²³⁵
- Measures to prevent acid attacks on people and for treatment and rehabilitation of survivors, 2013.²³⁶
- Advisory on expediting cases of acid attack, 2020.²³⁷

228 Retrieved from: <https://www.mha.gov.in/sites/default/files/Advisory-on-HTtrafficking%20%281%29.pdf>. Accessed on: 17 October 2021.

229 Retrieved from: <https://bit.ly/3GxYf5h>. Accessed on: 17 October 2021.

230 Retrieved from: <https://www.mha.gov.in/sites/default/files/CS-AdvMisgChd-070312.pdf>. Accessed on: 17 September 2020.

231 Retrieved from: <https://www.mha.gov.in/sites/default/files/CS-AdvHT-230812.pdf>. Accessed on: 17 September 2020.

232 Retrieved from: https://www.mha.gov.in/sites/default/files/AmdmntAdvForeign-030512_0.pdf. Accessed on: 17 September 2020.

233 from: <https://www.mha.gov.in/sites/default/files/AdvisoryFIR-290513.pdf>. Accessed on: 17 September 2020.

234 Retrieved from: https://www.mha.gov.in/sites/default/files/AdvisoryCompulsoryRegistrationFIRs_141015_2.pdf. Accessed on: 17 September 2020.

235 Retrieved from: <https://www.mha.gov.in/sites/default/files/CSAdviMissingChild-170713.pdf>. Accessed on: 17 September 2020.

236 Retrieved from: https://www.mha.gov.in/sites/default/files/AdvisoryAfterSupremeCourtOrderInLaxmCase_Short.pdf. Accessed on: 17 September 2020.

237 Retrieved from: https://www.mha.gov.in/sites/default/files/AdvisoryAcidAttackWomen_220415.pdf. Accessed on: 17 September 2020.

- Advisory on preventing & combating cyber-crime against children, 2012.²³⁸
- Advisory regarding associating SSB and BSF in crime meetings taken by the SPs (Superintendent of Police) of the district, 2015.²³⁹
- Investigative Units for Crimes Against Women (IUCAW), 2015.²⁴⁰ This advisory is issued with the information on setting up of IUCAW in 150 police districts that are crime-prone with respect to crimes against women in the country.
- Preventing human trafficking during Covid-19, 2020.²⁴¹ This advisory provides guidance to police on strengthening their mechanisms through coordination and increased vigilance to prevent trafficking of persons during the Covid-19 pandemic. The advisory further instructs for an immediate setting up of AHTUs in all the districts (of States and UTs) and also making those units functional on an urgent basis.

The above list is indicative of the proactive steps taken by the MHA, issuing advisories to guide police to strengthen their response to prevent, identify, register, investigate, and prosecute cases of human trafficking and GBV. Yet, the responses of LEOs remains inadequate in terms of implementation. Also, advisories concerning GBV are limited. The effectiveness regarding the implementation of these advisories is also not known. During the primary research, the level of understanding of such advisories was found to be more amongst the senior police officials than officials in local police stations.

Although the LEOS interviewed were implementing some of these advisories, they also suggested increased handholding and training for effective implementation of the same.

“Various advisories and guidelines concerning law enforcement are sent to the police station from time to time. But the challenge arises in its implementation. As we are entrusted with a crucial role, time management is a real challenge due to which we do not get the time to go through such documents properly.”
(Police, Female, Madhya Pradesh, July 29, 2020).

The National Legal Service Authority reported:²⁴²

“There are several SOPs and Advisories that have been developed by the MHA and other Departments.... These advisories and SOPs have not been very effective due to lack of dedicated manpower, absence of financial resources, defined roles, accountability and of coordination amongst different government departments, working of various stakeholders in silos, absence of knowledge about the SOPs, advisories, and latest laws and decisions of the High Courts and Supreme Court, lack of sensitivity and having a callous and prejudice attitude, lack of skill in

238 Retrieved from: <https://www.mha.gov.in/sites/default/files/CS-Adv-160112.pdf>. Accessed on: 17 September 2020.

239 Retrieved from: https://www.mha.gov.in/sites/default/files/AdvisoryforassociatingBSFandSSBin crimemeeting23-7-2015_1_0.PDF. Accessed on: 17 September 2020.

240 Retrieved from: <https://www.mha.gov.in/sites/default/files/CrimesagainstWomen0601.PDF>. Accessed on: 17 September 2020

241 Retrieved from: https://www.mha.gov.in/sites/default/files/Preventing_07072020.pdf. Accessed on: 17 September 2020.

242 Prajwala V. Union of India and Others (2015) Report of the National Services Authority Submitted to the Hon'ble Supreme Court of India, Writ Petition (C) No. 56/2004. Retrieved from: <https://nalsa.gov.in/services/social-action-litigation/report-of-nalsa-submitted-to-the-hon-ble-supreme-court-of-india-in-the-writ-petition-c-no-56-2004-titled-prajwala-v-union-of-india-and-others>. Accessed on: 14 September 2020.

understanding the magnitude of an event such as, a missing child or elopement or movement of people from conditions of distress and want, lack of legally binding nature of these SOPs and Advisories’.

4.4 Service Delivery to Victims of TIP and GBV

4.4.1 Access to Services

4.4.1.1 Access to services based on geographical locations

- Interviews with stakeholders and focused group discussions (FGDs) suggested that in terms of differential access to services based on geography, gender, and different forms of violence, most of them (43 stakeholders during interviews and 4 service providers during FGDs) felt that geographically the concentration of services for victims are in cities or urban areas more than rural areas, thereby limiting access to services to rural areas limited. Also, the law enforcement officials – both police and border officials – mentioned the challenges of not having shelter homes in the district. Even when available, these are located away from the remote areas within the district and are in the district headquarters, making the process of extending support lengthy and time-consuming. This leads to challenges in providing shelter to victims after their rescue or removal, especially at night. They either have to keep the victim at the police station (or women’s police station as mentioned during interview in Manipur and Madhya Pradesh) or have to travel at night to the places concerned or districts where the Court or CWC have referred the victim for shelter. However, according to police officials it becomes very challenging for them to travel along with the victim as they lack appropriate resources. Interviews with BSF officials too suggested that shelter home/ services are not available at the borders. In addition to that, border officials lack knowledge of the existing services and its provisions as there is no one to guide them. Their role gets limited to only intercepting presumed or potential victims of TIP and handing them over to the local police for further investigation and support. As mentioned by respondents, NGOs are in towns or cities, and, therefore, receiving immediate support becomes challenging for the local police.

“As police we face many challenges since in most of the districts, we do not have shelter homes. The place of rescue and the shelter homes are also located wide apart, and, in such cases, if we take the victim in our police vehicle, we will have to face lots of allegation from various agencies, even if our will is upright. We do not have other vehicles to serve victims and our resources are also scarce. Hence, in such cases our officials remain in civil dresses while escorting victims to the shelter homes.” (Police, Male, Manipur, January 19, 2021).

Interviews with victims suggest that due to lack of availability of services in rural areas people in the villages are not aware of TIP and GBV.

“Services are available but no information about the same is available in remote areas. I am from Betul, and I had to access services at Gauravi (One-Stop Centre) in Bhopal. I had to do so because I was not aware of any One-Stop Centre functioning in Betul. Had I known about it I would have definitely approached the center at Betul itself” (GBV victim, Female, Madhya Pradesh, August 25, 2020).

“Services are available in cities, perhaps even in small towns, but not in the rural areas yet. I had to walk 10 kilometres to find the nearest one-stop crisis centre to lodge a complaint.” (GBV victim, Female, Madhya Pradesh, 2nd September 2020).

During interviews with service providers, all of them, except for those service providers interviewed in Kerala, unequivocally suggested that the disparity in accessibility of shelter/services exists geographically. They further stated that the services and shelter homes are mostly concentrated in urban areas whereas the rural areas are severely deprived of such facilities. In fact, according to some of the respondents, the services and the shelter facilities are largely available only in the metropolitan cities, such as Delhi and Mumbai, *“the condition in Delhi and Mumbai cannot be compared with the rest of the country. There are no shelter homes in other places and the victims are treated unfairly. A clear rural-urban divide can be seen in terms of availability of services for victims, especially the TIP victims; as a result of which their vulnerability quotient remains unchanged even when they are reintegrated with their families after their rescue.”* (NGO, Founder, Male, Delhi, July 12, 2020).

4.4.1.2 Access to services based on gender

“People have this perception that men do not need any help. Therefore, a lot of awareness generation is required to bring in the realization that men can also be victims of violence, be it TIP or GBV. Men too need to accept that as well - that they can be victims of violence. Besides, there are also no services available, especially shelter homes, for transgender victims in the country. Hence, a lot of initiative needs to be taken by the Government of India in generating awareness and acknowledging violence against men and transgenders” (Shelter Home, Honorary Secretary, Female, Delhi, July 10, 2020).

In terms of accessing services based on gender, the service providers’ interviews stressed that shelter home/services are not available for all genders, except for children. Also, the majority of the respondents felt that due to the stigma or the preconceived notion about men being “macho” often prevented them from reporting an incident of violence. However, some shelter home respondents running OSCCs in Madhya Pradesh and Maharashtra shared that sometimes male victims, especially those facing domestic violence, do reach out to these centres and seek help. But, as the role of these centres is limited to providing services to women, they are only able to provide counselling to men or initiate conversations with the family.

The Transgender Persons (Protection of Rights) Act, 2019 makes provisions for institutions providing services to the transgender persons. But no analysis can be provided regarding the operational status of the provisions of this recent law. As mentioned by a service provider *“we do not provide shelter home services to men, but we do keep male children of the female victims with us up to a certain age. However, we do provide counselling to the family members irrespective of gender i.e., husband or other male members of a woman victim of GBV.”* (Shelter Home, Founder, Female, Manipur, June 25, 2020). A question was raised by a transgender to a Judge post-rescue from a brothel in Mumbai *“Madam ab aap mujhe kaha rakhoge? Mujhe women shelter home bhejoge yaa men shelter home mein bhejoge?”* [Madam, where would you keep me? In a shelter for women or a shelter home for men?] (Judge, Female, Maharashtra, July 7, 2020).

The Ujjawala and Swadhar Greh schemes, including OSCCs, are targeted at women victims only, and don’t apply to male and other gender victims of GBV or human trafficking. This affects the comprehensive provisions of prevention and rehabilitation services to victims of all genders. In the interception of a group of 179 Nepalese men and women transiting through the

India-Myanmar border in 2019 (more details in case study no. 2 in Chapter 2) the women were given shelter in the nine Ujjawala homes across different districts in Manipur, but there were no provisions for the men. The men were first accommodated in a hotel and were then shifted to a youth hostel the next day. The interviews with LEOs and service providers substantiated the unavailability of shelter services for male victims (except those under 18 years). Services such as shelter, psycho-social support, skill-building, education, health care and compensation are, however, available for male child victims as prescribed under the Juvenile Justice Act, 2015.

4.4.1.3 Access to services by victims of all forms of trafficking

The stakeholder interviews suggested that the LEOs give more importance to TIP cases in comparison to GBV cases. Within various purposes for TIP, commercial sexual exploitation (CSE) is prioritized due to the provisions laid out in the ITPA Act, 1956. Victims of TIP for CSE are considered to have experienced more trauma and assault while being in the adverse situation than for other purposes of trafficking. As a result, CSE often gets highlighted as the only form of trafficking by the LEOs. As has been stated by a respondent *“GBV is not treated with as seriousness as that of TIP since it is largely considered a domestic matter. Again, even within TIP, not all its purposes are given importance for example trafficking for labor. In trafficking for commercial sexual exploitation there is a chance for conviction but never with labor trafficking, in my experience.”* (NGO, Advisor, Female, Delhi, July 28, 2020).

In terms of provision of services for the returnee trafficked victims (of transnational trafficking) and returnee migrants from foreign countries, the service providers mentioned availability of the services in the same shelter homes as that of victims of human trafficking in the country. However, in most cases, these victims are unable to access all the services once they return to their original homes.

4.4.1.4 Barriers to accessing services

Based on interviews conducted with service providers, the following are barriers to accessing services:

- Inadequate response from law enforcement officials: As the very first step to accessing services is to be identified as a victim, existing gender prejudices amongst law enforcement officials affects the identification of TIP and GBV victims. This restricts the victim’s access to services. Service providers mentioned that the police response to victims of TIP and GBV is inadequate and lacks sensitivity. Often, the police do not follow proper procedures while attending to victims of TIP and GBV cases. In GBV cases, when a victim reports to a police station there are no female police officers available. Due to this, victims often are unable to provide details of their case. Also, police often deny or delay registration of FIRs in TIP and GBV cases. In the case of TIP, some police officials lack knowledge of Section 370 of the IPC. As a result, it is sometimes not included in the FIRs. Moreover, in some states, AHTUs are still not functional which affects the investigation and prosecution of the cases.
- Lack of cooperation amongst stakeholders:
“Services are not at par with the cases that are occurring or are being reported. There is a huge gap in the implementation of government schemes and services, and the stakeholders

involved in making such services accessible for the victims (both TIP and GBV victims), also lack coordination.” (NGO, Founder, Male, Madhya Pradesh, July 17, 2020).

Most service providers believed that stakeholders involved in different service delivery processes often work in silos. There is lack of proper communication and coordinated effort among them to help victims access services on time. In contrast, Child Welfare Committees set up under the Juvenile Justice Act, 2015 provide more coordinated services to children. In the case of adult victims especially GBV, the victim if not guided well, has to move from one place to another to access services. This makes the process more tedious and time-consuming. The service providers also flagged that victims don't always have access to the various compensation schemes. In sexual violence cases, victims are linked to the compensation scheme either by the court or through pro-active intervention by service providers or sometimes by the police.

- Lack of awareness on the availability of services: Interviews with the service providers and victims pointed towards a lack of awareness regarding the availability of services. As a result, women do not easily report instances of violence. Although there are various government and NGO initiatives to generate awareness about the services, accurate information on their details are not available, especially in remote areas.

“Services and awareness about them are still concentrated in big cities. In small towns and villages, women are least aware of them. There are no avenues of support for women in small town and villages; in fact, they (women) get blamed for the violence inflicted upon them in such places. Due to this setback, women prefer not seeking services especially in their place of origin.” (TIP Victim, Female, Delhi, August 18, 2020).

- Non-availability of services in remote/place of origin of victims of TIP: Of the 24²⁴³ service providers interviewed, 18 stated that all services for victims of TIP are not available in remote areas or smaller towns. Further shelter homes/services may exist in the districts or sometimes in adjacent districts making access to services quite challenging. Among the 20 victims interviewed, only five had availed of services at the place of origin. The rest either didn't avail of services where they were trafficked from, or lacked knowledge about these. The majority of victims mentioned that services may be available in some of the districts but not at the village level. A few victims also suggested that since services were available only in cities, they did not want to return to their family homes.

4.4.1.5 Reasons for not accessing services by victims

Fifteen (out of the 30) service providers identified individual factors such as ‘*not being able to identify self as a victim*’ and ‘*fear of retaliation to self-and/or family*’ as the causal factors preventing victims from seeking services, especially victims of CSE (in case of TIP) and domestic/intimate partner violence (in case of GBV).

243 Although a total of 30 service providers were interviewed (10 Shelter Home, 14 NGOs and 6 Government Officials) here only 24 service providers have been quoted because the questionnaire for Government official was different from the rest of the service providers and not all information/responses were sought from them. Hence, wherever in this Chapter, 24 service providers are quoted it is to be understood that it excludes the Government officials (6 in number) as that particular information was not sought from them.

Other service providers stated that victims did not access services either due to social pressure like *'feelings of shame or stigma'*²⁴⁴, or institutional gaps such as *'lack of social support (i.e., feeling of isolation), 'lack of knowledge about available services', 'lack of ease of access to services', 'lack of trust on the system', 'language and cultural differences', and 'fear of deportation/legal status.'* Service providers saw some norms followed by certain communities affecting access to services by people, a fact that can be substantiated by a quote from a service provider: *"...customary laws in billy areas and influential religious leaders in the valley area of Manipur create hindrance for victims of GBV in seeking services. They act as a wall between the service providers and the victims. The norms dictate that women have certain role to play in society and if she does not, she is subjected to violence, especially GBV. Moreover, the women are conditioned to believe that the violence that they are facing is their fate. In such situations, it becomes difficult for women to consider themselves as a victim. As a result, the women do not easily seek services."* (Shelter Home, Founder, Female, Manipur, June 25, 2020). However, interviews with the service providers highlighted that insufficient response mechanism and lack of support from different agencies, especially the LEOs, also deter victims from seeking services.

The victims' perspective revealed a lack of knowledge on available services, fear of stigmatization or shame, lack of knowledge about ones' rights, feelings of isolation and lack of social support as prominent reasons affecting their ability to seek services. *"Often, despite the availability of services for the victims, women facing GBV do not access services fearing their social image and/or victimization by the community or neighbourhood. They also fear that their family might break ties if they report the matter to the police or anyone else"* (GBV Victim, Female, Madhya Pradesh, August 21, 2020).

4.4.1.6 Accessibility of services during the COVID-19 pandemic

The nationwide lockdown made reporting of cases as well as seeking services by victims of GBV a big challenge since they were unable to physically reach service providers due to lack of transportation. Most of the service providers interviewed, especially the NGOs, were involved in providing emergency services of ration distribution to needy families. Apart from restricted mobility, the availability of services was also limited due to stringent guidelines of social distancing. The norms of social distancing were also directed to be followed in the shelter homes which prevented these from admitting any new victims. This adversity was further exacerbated due to limited infrastructure for providing separate quarantine rooms for new persons.

Some service providers ran emergency helpline services which experienced a surge in the number of distress calls from women during the lockdown. The calls were made particularly about instances of domestic violence. Accordingly, victims were counselled over the phone and linkages and referrals made within the available capacity and keeping in mind Covid-19 guidelines.

In case of TIP, interviews with service providers suggested that an upsurge in the number of TIP cases could be predicted due to loss of jobs and unemployment post-lockdown; however, the respondents had no personal experience to share during field interviews.

244 Shame is a feeling arising from the consciousness of something dishonorable, improper done by the person (for instance - running away with a boyfriend and then being trafficked for commercial sexual exploitation). Stigma is usually understood from the point of view of society at large – a mark of disgrace, infamy to one's reputation as viewed by society.

4.4.2 Victim referrals and place where services are accessed:

The interviews with service providers revealed that they came in contact with victims of TIP and GBV through multiple sources such as the police, community, helplines (Childline and Women's helpline), child protection agencies, victims' families, courts, as well as women's organizations and panchayats (local governing bodies).

Out of the 20 victims interviewed (12 GBV and 8 TIP), eight GBV victims received services at the place where *they made the complaint* (three at the police station, four at OSCC, and one at NGO) and four victims received services in other places (such as NGOs, shelter homes and OSCC) as directed by the police. Six victims, both of TIP and GBV, shared that although they initially went to file their complaint at the police station, they were not heard and no assistance was provided. One of the victims of GBV also shared that instead of listening to her, the police demanded a pay-off in order to lodge a complaint. Three out of eight TIP victims received services at the place of rescue, two victims received services at the place *where they requested*; and three victims received services (such as food, shelter, counselling, vocational training, etc.) either from an NGO or shelter home or OSCC as per the direction of the authorities dealing with them.

4.4.3 One-Stop Crisis Centres (OSCCs) and Shelter Homes

Under the One-Stop Crisis Centre Scheme, a total of 236 OSCCs (36 centres in the first phase, an additional 150 centres in 2016-17 and 50 centres 2017-2020) were proposed to be established. However, in a recently launched directory on functional OSCCs, it was found that 683 centres have been set up till 2020.²⁴⁵ For example, in Manipur, the OSCCs became functional only in 2019.²⁴⁶ Nonetheless, the implementation and structural functioning of these centres need analysis. A study of 11 centres conducted by the Maharashtra State Commission for Women in 2019 found that majority of them were not functioning for 24 hours as required, nine had no trained staff, many lacked appropriate infrastructure, and there were recurring issues of delayed funds from state government.²⁴⁷ During the field research, one of the respondents working in a OSCC in Manipur shared similar challenges and mentioned that the staff were not provided any training.

The US TIP Report 2020 also stated that the government allocated \$44 million to improve access to OSCCs and establish an additional 728 centres. As per the report, the Government did not state whether the 506 operational centres assisted any trafficking victims or not. Several barriers have often prevented the OSCC model from being implemented as designed and in achieving the intended result of providing high quality, accessibility, acceptability, and multi-sectoral care.

245 MWCD (2020) Resource Directory of One Stop Center, New Delhi. MWCD. Retrieved from: http://sakhi.gov.in/assets/site/main/resource_directory/1578401136_645-OSCDirectory-07.1.2020.pdf Accessed on: 17 January 2021.

246 North East Now News (2019) Centre approves One Stop Centre in every district of Manipur. Imphal, NE Now News. Retrieved from: <https://nenow.in/north-east-news/manipur/centre-approves-one-stop-centre-in-every-district-of-manipur.html#:~:text=The%20Central%20authority%20has%20approved,Imphal%20West%20district%20on%20Monday>. Accessed on: 5 December 2020.

247 Barnagarwala Tabassum (2020) Lack of Funds, Infrastructure and Training in One-Stop Crisis Centres: Women Panel Report. The Indian Express. Retrieved from: <https://indianexpress.com/article/india/lack-of-funds-infrastructure-and-training-in-one-stop-crisis-centres-women-panel-report-6210728/>. Accessed on: 7 December 2020.

Also, the existing OSCCs will likely require strategic investments to address these specific barriers before they can achieve their ultimate goal of reducing survivor re-traumatization while seeking care.²⁴⁸ Lack of trained counsellors, little access to legal aid, and failure to link these centres with helplines, reduces their effectiveness and ultimately does not serve the victims. There is little public awareness regarding the centres too.²⁴⁹

Moreover, as per the Ministry of Home Affairs, 267 projects including 133 rehabilitation homes are functioning in the country under Ujjawala Scheme and the number of beneficiaries is 5,208.²⁵⁰ Interestingly, the setting up of such homes has been very uneven across the country. For example, in Manipur, there are 16 Ujjawala homes while Delhi does not have a single Ujjawala home, even though the number of TIP victims rescued is much more in Delhi as compared to Manipur. Furthermore, Ujjawala homes just like OSCCs lack trained staff and appropriate resources either due to dearth of funds or its untimely and irregular disbursement. These challenges were pointed out during the stakeholder interviews with shelter homes in Manipur, Maharashtra, Kerala, Delhi, and Madhya Pradesh.

4.4.3.1 Types of Services provided to TIP and GBV victims

Victims' perspective: Of the 20 TIP and GBV victims interviewed, 19 said that they received shelter services for a period spanning from one month to 58 months. Apart from that, 15 received psycho-social support, 17 physical health care, 18 nutritional support, 13 life skills training, 13 vocational training and economic security, 7 education opportunities, 1 applying and receiving identity documents, 16 legal information and counselling, and 8 rehabilitations. All these services were provided to the victims either while staying in the shelter homes or through certain NGO/ OSCCs after leaving the shelter home.

Service providers perspective: The interviews with the respondents from shelter homes and NGOs (24 respondents) suggested that, 17 were providing services ranging from one day to four years, 20 were providing psycho-social support (in extreme cases, service providers referred victims to doctors or experts), 18 physical health care, 19 nutritional support, 14 life skills training, 13 vocational training and economic security, 14 education opportunities, 12 support for applying for identity documents, 16 legal information and counselling, 14 rehabilitation services, and 12 provided repatriation services to victims of TIP. These services were provided to the victims either during their stay in the shelter homes or during their association with the NGOs. At the shelter homes, the victims continue to receive services during their time of stay. It was also stated during the interviews that some of the services such as life skills training, vocational training, education opportunities, applying for identity documents, legal counselling, rehabilitation, and repatriation services were provided as per the need and situation of the victim.

A major loophole in the service provision in the country is that there is no stated protocol or service mechanism to deal with the abuse and violence experienced by male and victims of other gender. In interviews with the stakeholders, it was found that except for those in

248 Department of State (2020), p. 254.

249 Bajoria Jayshree (2017).

250 Ministry of Home Affairs (2019), Lok Sabha Unstarred Question No. 2688. Government of India, Ministry of Home Affairs, New Delhi. Retrieved from:<http://164.100.24.220/loksabhaquestions/annex/171/AU2688.pdf>. Accessed on: 7 December 2020.

Madhya Pradesh, none of the states provided services to male victims or victims of other gender experiencing violence. In Madhya Pradesh, the OSCCs in Bhopal and Gulmohar centre, in Vidisha district, were found provide only counselling services to the male victims in case of intimate partner/domestic violence cases.

Victim's preference for non-institutional care and support: Service providers highlighted that GBV victims (mostly of domestic violence) largely preferred services related to negotiation with the family or family counselling so that they could be re-integrated in the community and/or treated well in their in-laws' homes. As mentioned by a victim of GBV "they (shelter home) trained me to work as a front desk officer at the home. However, even though I am satisfied living in this shelter home, given a chance I would prefer living in the community." (Female, Delhi, August 25, 2020). Also, in most cases it was found that victims of familial or domestic violence avoid any judicial proceedings against their in-laws or husband. Key informant interviews suggest that TIP victims for CSE are left with few other choices than staying back in the shelter homes; the reasons being non-acceptance by their family post-trafficking into CSE or family conditions that led to their trafficking. In such cases, institutions are considered to be the safest place by them where there is scope for receiving services.

4.4.3.2 Challenges in service delivery

The stakeholders' and victims' interviews highlighted the following challenges during service delivery.

Lack of rehabilitation services: As shared by the service providers, rehabilitation services for victims of TIP and GBV are very limited. It can be deduced from the research that by rehabilitation, the service providers mostly meant sending the victims back to their families. However, the assessment done for such rehabilitation and re-integration are not fully implemented once the victim returns to the family, especially for the TIP victims who may return to their place of origin. Once these victims are sent back, they lose contact with the service providers in the destination state, and therefore, cannot be associated with any other services as part of their rehabilitation program. Moreover, in the case of economic rehabilitation of the victims there is an urgent need for a shift in the traditional forms of vocational or skill-building training to more focused or sustained income-generating training based on the needs of the victim. According to service providers, the Government of India should come up with a more holistic rehabilitation framework for the victims so that the service providers can link the victims to those frameworks for proper rehabilitation.

"Rehabilitation schemes or services are very limited for both victims of TIP and GBV, especially economic rehabilitation of adult victims. In cases of TIP for commercial sexual exploitation, the victims have to undergo a lot of trauma as they are either not accepted by their family or is stigmatized by people in the community due to which they have to spend most of the time in the shelter home. Also, the rehabilitation schemes available for victims are not economically sufficient for their sustenance" (NGO, Program Manager, Female, Goa, September 14, 2020).

The majority of victims pointed out that they are still deprived of various rehabilitative services such as income autonomy, being self-reliant, availing various government schemes like pension schemes, (mentioned by 3 victims), economic rehabilitation scheme, etc. The victims expressed their will to lead a self-reliant life by living in the community with or without their families.

Ineffectiveness in the delivery of services:

“The health department needs to be sensitized to handle cases of victims of sexual violence with utmost sensitivity and priority. In many cases it is seen that doctors do not handle victims of violence TIP and GBV, with seriousness and care. Victims wait for long hours to receive medical assistance or when undergoing medico-legal tests” (Government Official, Male, Maharashtra, July 2, 2020).

Service providers’ interviews shared that although services are available for victims under various schemes and guidelines, the delivery of services is not effective due to the complexities in the delivery process. Some service providers stated that although there is the provision of Anti Human Trafficking Units to handle cases of TIP, the existence of AHTUs is either only on paper or they are not effectively functional in the states where the study was carried out. Moreover, service providers (especially government officials and NGOs) felt that the quality of services provided to the victims at shelter homes was inadequate. Respondents observed that in most cases the living conditions in the shelter homes lacked quality in terms of food, clothing, hygiene, trauma-induced care, etc. Such situations were more prevalent in Government-run shelter homes according to respondents. In other homes run by NGOs, including those under Government-funded schemes, certain standards of quality were maintained even though they had constraints due to irregular disbursement of funds.

Moreover, the service providers also found services at health care centres or hospitals to be inadequate despite the Ministry of Health and Family Welfare’s 2014 guidelines on treating rape victims which directed all hospitals to set up a designated room for forensic and medical examination. The guidelines also prohibited the ‘two-finger test’ which was deemed unscientific.²⁵¹ The guidelines also stipulated that health professionals should themselves provide first-line support or ensure someone trained at the facility provides such support to the victim. This includes addressing their wellbeing, encouraging them to express their feelings and seek crisis counselling, making a safety assessment and safety plan, and involving family and friends in the healing process. However, it would be interesting to see whether the guidelines are fully implemented across all states. In the states where the study was carried out, except Delhi, there is still no provision of a designated room for victims of sexual assault.

Constraints on timely budget allocation: The lack of timely allocation of budget by the relevant ministry/ department has been pointed out by most of service providers (11 of the 24 interviewed)²⁵² as a major impediment to service delivery. It was further mentioned that budget allocation under the Ujjawala and Swadhar schemes takes much longer, which forces the shelter homes to rely on funding from other sources.

Among the 24 service providers 11 (7 shelter homes and 4 NGO officials) shared that lack of adequate funds and timely allocation of budget hinders the provision of long-term services to the victims. Interviews with service providers running Ujjawala homes and Swadhar Grehs revealed that though the scheme enables them to provide long-term services to the victims of

251 First Post (2014) Health Ministry issues fresh guidelines for treating rape victims. Retrieved from: <https://www.firstpost.com/india/health-ministry-issues-fresh-guidelines-for-treating-rape-victims-1418263.html>. Accessed on: 5 December 2020.

252 As has been already mentioned above, the numerical representation of 24 service providers is exclusive of 6 Government Officials as in certain cases they are not the exact institutions responsible for providing the stated services. Hence, they were omitted from certain specific questions. For example: *operating a shelter home*.

TIP and GBV including their rehabilitation, inadequate funds meant that such services were not always available.

“We have not been receiving funds for many months now due to which it has become very difficult for us to deliver all the services as prescribed under the scheme. During the COVID-19 lockdown, we faced a lot of problems because shelter homes were not included in the free distribution of ration by the government. We had to depend on other funding sources to buy food supplies for the residents” (Shelter Home, Female, Manipur, June 25, 2020).

The US TIP report 2020²⁵³ also revealed that there were not enough government-run and funded shelters and those that were there were facing serious shortages of space, financial resources, and trained personnel. NGOs relied primarily on donor contributions, although some received government funds. The disbursement of government funding to NGOs was sometimes delayed for years. The Ministry of Women and Child Development (MWCD) continued to provide funds to state governments for NGO and government-run shelters and rehabilitation through the Ujjawala program for female sex trafficking victims (134 shelters, compared with 148 shelters in 2018 were operating under the Ujjawala program) and the Swadhar Greh program for women in difficult circumstances (operating 413 shelters, compared to 514 in 2018 under the Swadhar Greh program). The central government allocated Rs 144 million (\$2.03 million) to the Swadhar Greh program in the first five months of 2019-2020, compared to Rs 226 million (\$3.18 million) allocated to the program in 2018-2019. The states had not utilized any of the funding as of July 2019, compared to Rs 15.9 million (\$223,940) utilized in 2018-2019.

4.4.3.3 Victim’s perception of services

- i. Level of communication with the victims: The interviews with service providers suggest that they have a fair level of communication once the victims come under the purview of their services. As soon as the victims come in contact with them, a process of rapport-building is initiated by the designated counsellor or social worker at the shelter home or NGO to make the victim feel comfortable. As mentioned by a respondent “...*everybody communicates with the victim in order to make her comfortable and included. We conduct counselling sessions and keep them engaged through different skill-building exercises and activities*” (Shelter Home, Project Director, Female, Manipur, June 23, 2020). Experiences of the service providers further highlighted that the victims tend to share authentic information with time and through trust-building. GBV victims are mostly said to share all information as soon as they come in contact with the service providers while TIP victims are typically reluctant and take time to open up. According to the service providers, the victims are always treated with care and empathy, and by the time they leave the shelter home, they have become affectionate towards the staff and maintain contact with them even after returning to their families.

Victims’ perspective: 18 of the 20 victims (11 GBV and 7 TIP) shared that they were satisfied by the level of communication maintained by the service providers with them. Their opinions and consent were always sought before associating them with any services or case proceedings. However, 3 of them (2 TIP and 1 GBV) felt they were being adequately informed about the procedures after their rescue, especially after they were placed in a

253 Department of State (2020), p. 253.

shelter home. Also, 12 victims expressed their dissatisfaction with the suggestions and the guidance they received from the lawyers and police during their case proceedings.

“Their (police) attitude was very dismissive each of the four times I approached them. I was raped; but instead of taking me seriously, they shoved me off by saying that I should “resolve” it myself with my rapist.” (GBV Victim, Madhya Pradesh, September 2, 2020).

- ii. *Tools to assess the perception of victims on the services:* Of the 24 service providers, 15 did not have any structured or written assessment tools to ascertain the perception of the victims about services. They evaluated their service delivery through interactive sessions with the victims during individual counselling, monthly meetings, or group activities carried out at the shelter home. During such sessions or activities, which were mostly through conversations between service provider and victims, the former tried to capture the mental state of the victims i.e. whether they were comfortable staying at the shelter or (in case of NGOs) comfortable accessing services from NGOs, their perception on the services received and if they need any other help or support while staying at the shelter home or while in contact with the NGO. Three service providers mentioned using structured tools such as i) feedback forms to be filled either monthly or quarterly by the victims; and ii) individual care plan. Two service providers (1 shelter home and 1 NGO) stated that they have installed a suggestion box in for victims to share their concerns in writing.

4.4.4 Rehabilitation and Re-integration of TIP and GBV victims

4.4.4.1 Procedures for rehabilitation and re-integration

16 of the 24 service providers followed some procedures for rehabilitating or re-integrating victims of TIP and GBV. However, procedures differed from organization to organization. It needs to be highlighted that by rehabilitation and re-integration, most of the service providers (19 of them) meant handing over the victims to their families. Although a few of them (4 service providers) mentioned giving individual agency to the victim, some also shared their limitations of taking any decision especially in the case where the victim is a child or had been a victim of a criminal offence. Some of the procedures that were mentioned during the interviews are:

- In case of GBV victims: Service providers shared that the individual agency of the victim is given importance before deciding whether to send the victim to her family or not. If the victim shows her willingness to go back, a family assessment is conducted to assess their capacity or willingness to accept her back. Some service providers used a family assessment questionnaire and prepared an assessment report for rehabilitating the victim, but majority of them said that they analyze the situation mostly by speaking to both the victim and her family. If the family consents to taking responsibility for the victim, the process of rehabilitation is initiated. Also, family counselling is provided by some of the service providers in order to bridge the gap between the victim and her family. Once the service providers are satisfied, victims are handed over to their families. But before that, both are required to provide a consent form. After the victims are sent back to their families, the service providers follow up with them through home visits or telephonically at short intervals. Also, if the victim needs economic rehabilitation, necessary support is provided by linking them with vocational training centres or skill-building centres. In certain cases, placement of the victims at various

workplaces after receiving vocational training during their stay at the shelter home was also pointed out during the interview.

- In case of TIP victims: In cases of victims of TIP, the decision is mostly taken by the Court especially in the matter of the duration of stay of the victim at the shelter home. Also, other rehabilitation assistance such as compensation, etc. is issued as per the directions of the Court. In sex trafficking cases, a home investigation is conducted and a report is submitted to the magistrate, ITPA Court who then decides whether to send the victim to her family or not.
- In case of child victims: All decisions regarding child victims are always initiated as per the direction of the Child Welfare Committee, which is the competent authority and as per Juvenile Justice Act, 2015 under which shelter homes prepare an Individual Care Plan for the rehabilitation of each child.

4.4.4.2 Victims' preference for re-integration

Twelve of the 24 service providers stated that the victims mostly prefer to go back to their family, or at least to the community. However, due to lack of concrete community rehabilitation structure or plans, victims continue to stay at the shelter home if their families are not ready to take them back. In the case of TIP victims, especially for CSE, due to the judicial proceedings, the victims are not left with any other choice other than staying at the shelter home for the duration ordered by the Court under the ITPA Act, 1956. If victims refuse to go back to their family, the shelter home keeps them on and links them with various support services available at the home.

Interviews with victims received similar responses; 14 of the 20 victims (9 GBV and 5 TIP) preferred staying either with their family or within the community (among the 14 victims 12 of them mentioned community as their choice). The reason cited is to lead an independent life, for which the government should help provide them jobs and accommodation to ensure economic independence. The victims who preferred to stay at the shelter home stated that they like staying there due to a sense of safety and security. Also, few of them spoke about acquiring “inner strength” due to the motivation, guidance, and psycho-social support received at the home.

4.4.5 Criminal justice delivery in cases of TIP and GBV

Non-registration of cases: As the first step to accessing services by TIP and GBV victims is to be identified as victims, it is important to look at the effectiveness of the responses provided by the police. The amendments to the Indian Penal Code brought about by the Criminal (Amendment) Act, 2013 and the POCSO Act, 2012 make it mandatory for police officials to register sexual assault complaints. Those who fail to do so can be imprisoned for up to two years. However, the police do not always adhere to these legal provisions.²⁵⁴ They resist filing the First Information Report (FIR), the first step to initiating a police investigation, especially if the victim is from an economically or socially marginalized community. Secondary research also suggests that police sometimes pressure the victim or her family to “settle” or “compromise,” especially if the perpetrator is from a powerful community.

254 Singh Manoj (2020) In UP, Rape Survivors Struggle to Get Police to Register FIRs, Let Alone Investigate Them. The Wire. Retrieved from: <https://thewire.in/women/uttar-pradesh-police-rape-fir-discrimination>. Accessed on: 8 December 2020.

Anti-Human Trafficking Units: The AHTUs, created by the Ministry of Home Affairs (MHA) but operationalized by the State governments, serve as the first responders to human trafficking crimes. Since 2007, only 334 such units have been formed even after the release of Rs 100 crore (\$1,37,21,510) from the Nirbhaya Fund, for the formation and strengthening of such units.²⁵⁵ In March 2020, the Central Government disbursed Rs 1 billion (\$13.69 million) to strengthen existing AHTUs and establish new units along India's borders with Bangladesh and Nepal.²⁵⁶

State governments and civil society agree that the majority of the AHTUs currently active are not sufficiently funded or trained, nor involved solely in investigating TIP cases. As a result, AHTUs spent their time and resources on other crimes. Recently, the MHA has directed the States and Union Territories (UTs) to expedite the setting up of new AHTUs and upgrade the infrastructure of existing ones to 'combat and prevent' human trafficking.²⁵⁷

A recent report²⁵⁸ revealed that while 51% of the AHTUs are notified with all power and resources, only 27% are operational; and 225 AHTUs are only on paper with no centralized process to notify them. Besides, most of the appointments to AHTUs were only seen as 'notional' offices occupied by near-retirees or as 'punishment postings' (appointment largely outside mainstream work). The study also found that only 7 states/ UTs (Bihar, Kerala, Nagaland, Rajasthan, West Bengal, Tamil Nadu, and Uttarakhand) have AHTUs covering all their districts. All the others either have AHTUs in half or fewer districts; 51% of the states were unresponsive to the questions regarding AHTUs.²⁵⁹

During the field research of this study, NGOs from Madhya Pradesh stated that AHTUs are not functional in the state even though they exist on paper. However, stakeholders (NGOs, shelter homes, police) interviewed in Manipur, Kerala and Goa spoke of the effective functioning of the AHTUs in their states but also recommended more training programs for sensitive handling of cases as well as efficiency in the investigation. An NGO interviewed in Delhi revealed that although AHTUs exist in certain districts, they are not effectively functional and lack sensitivity in handling TIP cases.

Victim compensation: Owing to increasing concern over compensation to victims of crimes, section 357A was inserted in 2009 (Code of Criminal Procedure, 1973), to give effect to Victim Compensation Schemes (VCS).²⁶⁰ In 2017, a report that analysed VCS of 13 states and filed RTIs in 5 states to gather data on the status of their implementation revealed that a) there was no uniformity in compensation amounts between states, b) no uniformity between the number

255 Aiyappa Vikash (2020) MHA asks States to fast-track setting up of AHTUs. One India. Retrieved from: <https://www.oneindia.com/india/mha-asks-states-to-fast-track-setting-up-of-ahtus-3119943.html>. Accessed on: 8 December 2020.

256 Department of State (2021). p.283

257 Bhardwaj Deeksha (2020) MHA asks states to set up more anti-trafficking units in wake of Covid-19. The Hindustan Times. Retrieved from: <https://www.hindustantimes.com/india-news/mha-asks-states-to-set-up-more-anti-trafficking-units-in-wake-of-covid-19/story-rGcgi5duSpfGVzvl4g27OK.html#:~:text=In%20the%20wake%20of%20the,combat%20and%20prevent%20human%20trafficking>. Accessed on: 1 February 2021.

258 Sanjog (2020) A National Study on Status of Anti Human Trafficking Units in India (2010-2019). Sanjog. Retrieved from: <https://idronline.org/wp-content/uploads/2020/10/AHTU-Watch-Status-of-Anti-Human-Trafficking-Units-in-India-2010-2019.pdf>. Accessed on: 22 January 2021.

259 Ibid.

260 Dube Dipa (2018) Victim Compensation Schemes in India: An Analysis, Indian Institute of Technology, Khargpur. Retrieved from: <http://www.sascv.org/ijcjs/pdfs/DubeVol13Issue2IJCJS.pdf>. Accessed on: 5 December 2020

of compensation applications filed and the number of victims who received compensation, c) a lack of awareness about the scheme in general and d) the application process being non victim-centric.²⁶¹ As per the US TIP Report 2020, the government did not adequately implement the Centrally Sponsored Scheme for Rehabilitation of Bonded Labour, 1978 (revamped in 2016). Whenever the states implemented the scheme, it was often due to sustained NGO advocacy; funds were also not released to states on time by the Central Government; and the budget allocated for rehabilitation under the scheme has also not been utilized. Surveys, awareness generation and evaluation studies in this Scheme has not been conducted regularly. Besides, there is lack of convergence between different government departments and its regular monitoring. The proceedings of court cases and the process of convictions have been long-drawn-out.²⁶²

4.4.5.1 Services available to victims of TIP/ GBV during prosecutions and trials

Of the 4 prosecutors interviewed, there were different responses to the services that were provided to the victims during prosecution as were required in particular cases, such as legal counselling, “preparing” victims before trial, seeking translation and interpretation services, providing support persons to child victims during trial, referring victims to other services, and providing witness protection. As mentioned by one of the prosecutors, the Delhi State Legal Services Authority has launched a toll-free number (1516) for people to seek telephonic legal advice or assistance. However, people are unaware of the service and, therefore, an awareness campaign is needed.

4.4.5.2 Challenges of investigation, and prosecutions in TIP and GBV cases

Lack of inter-agency coordination: Among the 22 law enforcement officials interviewed 14 shared that due to lack of inter-agency coordination especially under the Women and Child Development Department in the districts, the police face challenges in providing services to victims on time. Also, according to them, the police are not aware of the availability of services for TIP and GBV victims and, therefore, fail to link them to such services. Moreover, police involvement with the victims (especially in TIP cases) is till they are put in the shelter homes after recording their statement (under Section 164, Criminal Procedure Code (Cr. PC)) before the magistrate. This hampers further investigations. Moreover, in case of inter-state trafficking, the police officials highlighted a lack of coordination not only among inter-state agencies but also among inter-state police stations. Likewise, border officials also suggested that their involvement in cases of cross-border trafficking is very limited, and that they are seldom involved or updated about the cases once all the procedures are completed at the border and the victim/perpetrator is handed over to the local police. This instils “disinterest” and “lack of seriousness” among the border officials in dealing with such serious cases.

Lack of meticulous training among law enforcement officials: Interviews with law enforcement officials suggests that the police, border officials, prosecutors and judges are still in need of meticulous training on efficient investigation, prosecution, and sensitive handling of TIP and GBV cases.

261 Sanjog (2017) Uncompensate Victims, A National Report on Status of Victim Compensation for victims of Human Trafficking in India, Sanjog. Retrieved from: https://www.sanjogindia.org/wp-content/uploads/2020/06/National-Study-Report_Compensate-Victims-of-Human-Trafficking-in-India-1.pdf. Accessed on: 22 January 2021.

262 Khan Jawed Alam (2019) Opinion: How effective are the Policies for Rehabilitations of Bonded Labour in India? Centre for Budget and Governance Accountability. Retrieved from: <https://www.cbgaIndia.org/blog/effective-policies-rehabilitations-bonded-labour-india/>. Accessed on: 17 January 2021.

Gaps in the legal framework affecting investigation and prosecution: Interviews with judges and prosecutors suggest that the gaps in the legal framework often impact the efficiency of investigation and prosecution of TIP and GBV cases. As shared by a male prosecutor interviewed in Delhi, instead of focusing on increasing the conviction rates, the focus should be on efficient investigation. He further pointed out the existence of numerous anomalies in the provisions under various laws i.e., Special Laws and Indian Penal Code (see chapter 3) - weakens cases and affects the conviction rate.

Case Study 4: Efficiency and coordination amongst law enforcement agencies helps speedy trial proceedings in a case of rape

Reena's case (name changed) was shared by a public prosecutor as part of this study during the field research in New Delhi in July 2020. The facts as mentioned in the case study were narrated by the respondent i.e. the public prosecutor, who handled the case and are being presented as hereunder, without substantiating the veracity of the same.

Reena was sexually assaulted by a cab driver while returning from her workplace. The cab driver considered her "of easy virtue", based on her being out "late at night" and that she had "consumed alcohol". The accused (in this case, the cab driver) dumped her at the destination after sexually assaulting her. The victim however, managed to click a picture of the cab which successfully captured its number plate. She filed a complaint with the police regarding the incident. In this case, police were pro-active with the investigation compared to other cases. The police, in order to expedite the matter, also took the support of the Central Bureau of Investigation (CBI) to get the forensic report of the samples collected, which is a crucial piece of evidence for the case. The police investigated this case and filed the charge-sheet against the accused within few days in the court.

The trial period was considerably short as the case was heard by the court every day. The judicial officer (a male judge) in the case considered it as a "quest for the truth" and in order to avoid re-victimization of the victim rejected frivolous applications submitted by the defence team and went ahead with his decision to convict the accused, sentencing him to a life term for committing such a heinous crime. According to the public prosecutor, this was a landmark judgment as the trial was completed and judgment was given within five months.

This sequence of events in the case, is a good example of coordination and effectiveness displayed by different agencies leading to the speedy trial proceedings and quick decision.

Law enforcement officials shared recommendations to improve the criminal justice system such as a) prosecutors and the police should be sensitized on victim-friendly approaches; b) in order to tackle situations like the COVID-19 pandemic, new guidelines should be introduced by the government and the LEOs should be trained so that the improved and immediate responses are easily accessible for victims during such disasters; c) police officials should be updated about SOPs related to TIP and GBV; SOPs should be designed for different ranks of police authorities from constables at police stations to senior police officials. Apart from the police, SOPs should also be in place for other stakeholders including border officials; d) LEOs should be intimated about existing schemes and services available for TIP and GBV and a compiled booklet should be issued to police officials; e) AHTUs need to be functionalized and those officials willing to work on TIP should be recruited under such units and should be given specialized training to handle such cases; f) generate public awareness on the issue of TIP and GBV; g) strengthen

the victim protection/witness protection mechanisms; h) increased and improved coordination among LEO and other stakeholders like Women and Child Development Department/Social Welfare Department, Labour Department, NGOs etc.

“Our role starts only after the case is charge-sheeted, we do not get to meet victims before that, there should be provision for accessing victims and that victims too have the accessibility to the prosecutors.”-
(Prosecutor, Female, Delhi, February 26, 2020)

4.4.6 Integration or Separation of Services for GBV and TIP Victims

Though OSCCs are established to provide a wide array of services to women in a common location, much of the services TIP and GBV victims are provided under separate schemes and structures. For example, the Swadhar Greh program addresses women facing gender-based violence/domestic violence while the Ujjwala homes are set up for trafficked women. One of the prime objectives of the current research was to corroborate whether it would be possible to integrate the services that are provided to the victims of GBV and TIP and what would be required for achieving this. There are not many examples from India; however, there are other countries (for example, Bangladesh and Ukraine) that provide integrated services to victims of both GBV and TIP (especially in the form of common shelter homes where all the needs of the victims are addressed) since the care and support needs of both victims are similar.²⁶³ The services that are typically provided in these shelter homes are safe accommodation (shelter, foster care, community care), food and clothing, emergency health care and/or first aid, legal support (representation and information), safety planning, psycho-social support, life skills, literacy and basic education, vocational training, income generation activities, reintegration support and connect with local support.²⁶⁴ However, since the security needs of trafficking victims are more pressing, it has an overarching impact on all the shelter users who experience restricted mobility. This can be a crucial limiting factor and/or challenge in integrating services, as constricted mobility often leads to isolation and despair in the residents. This further affects the process of re-integration of the victims into the community/mainstream society.²⁶⁵

Three different strands of opinions emerged from the primary research on integration or separation of services for TIP and GBV victims from 70 (including victim) interviews:

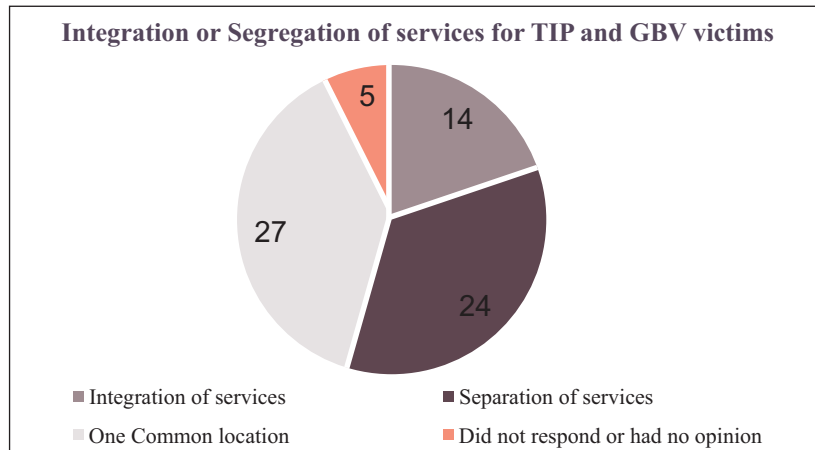
- 14 were in favour of integration of services as they saw a commonality between the needs and experiences of TIP and GBV victims.
- 24 suggested keeping services separate for TIP and GBV victims as respondents considered the victims had differing needs and experiences. According to them, the intensity of violence experienced by TIP victims differs from that of GBV victims. However, some interviewees suggested the possibility of integration of some services like legal aid and medical facilities.
- 27 suggested separate services but keeping them under one common location for both GBV and TIP victims so that access to services becomes smooth and less time-consuming.
- 5 of them either did not respond to the question or had no opinion.

263 Sorensen Jennifer, Piazzano Sara, Di Pretoro Olga, Donnell Carolyn O' (2012) Addressing Inter-linkages between Gender-Based Violence and Trafficking in Persons to Prevent Reinforcement of Inequalities. Winrock International. Retrieved from: <https://winrock.org/wp-content/uploads/2016/03/Addressing-inter-linkages.pdf>. Accessed on: 6 November 2020.

264 Ibid, p. 12

265 Ibid.

Chart 4.2



Respondents understood integration of services for TIP and GBV as keeping both TIP and GBV victims in common shelter homes. According to them, victims should not be categorized and should be treated equally. An integrated intervention by keeping them in a common shelter home would help them recover from their trauma as well as get access to services such as legal support, counselling services, medical services, vocational or skill-building training, etc., at the shelter home itself.

The interviewees who advocated the separation of services for TIP and GBV victims, believe that as both the victims have their own needs and experiences, both cannot be viewed through the same lens. Hence, their interventions should also be kept separate. The experiences and forms of exploitation that victims undergo under TIP may vary from person to person and the purposes for trafficking too may differ. While GBV victims may differ from one another in comparison to TIP victims, the needs of these victims would not be as extensive. Intervention with TIP victims needs to be strategic and extensive as in trafficking the victim is harmed not just by one person but various persons and at various levels. This is especially true for those rescued from CSE. Common shelter homes would further stigmatize TIP victims (especially CSE) and, therefore, the victims interviewed suggested that they should be kept separate. Psycho-social support, medical support, rehabilitation services, etc., may also differ from case to case among TIP victims.

Victim’s perspective on integration vis-à-vis separation of services:

Of the 20 victims interviewed, 10 (8 GBV and 2 TIP victims) were in favour of integration of services, 6 victims (1 GBV and 5 TIP victims) were in favour of segregation of services and 4 victims (3 GBV and 1 TIP Victim) were not sure about either.

“The common thing here is violence...both the victims have gone through different forms of violence. Therefore, by staying together they will understand and share each other’s pain, empathize with one another, draw strength from one another and most importantly will learn about potential risk factors to both the categories. This would help both the victims of TIP and GBV recover from trauma together.” (GBV Victim, Madhya Pradesh, August 24, 2020).

Similarities and differences in the needs of the victim of TIP and GBV: Among the 24 service providers interviewed, 14 of them identified similar needs among TIP and GBV victims as need for safe and protective environment, skill-building or vocational training, psycho-social support

assistance, legal aid, and rehabilitation assistance including economic rehabilitation. The rest either denied any similarities between TIP and GBV victims or did not mention any. However, most respondents identified differences in the needs of both victims. According to them, the experiences from the violence and exploitation that victims of TIP and GBV undergo are very different. GBV is the reflection of structural inequality and systematic discrimination that an individual experiences in an unequal society while TIP takes place with criminal intention by the perpetrators by use of force, deceit, and most importantly to exploit someone. Also, the victims of TIP experience exploitation and violence at various levels and forms. The level of trauma is severe among TIP victims. It is also seen that TIP victims for CSE are often abandoned by family and community and are themselves treated as criminals. Hence, a TIP victim may need different kinds of support and services compared to a GBV victim.

“Due to the injustice and deep attack on the self-worth of a victim of TIP and GBV, they in the process tend to lose their individual agency and lose trust in others including service providers.” (NGO, Program Officer, Female, Delhi, July 23, 2020).

Identifying the above challenges, the majority of interviewees were not in favour of integrating services for victims of TIP and GBV but suggested creating a common location for services. This means structures designed in the similar format of OSCCs where all victims of violence could be linked to services based on their needs. The location would have different units operating under the same roof and the victims would not have to face any challenge in accessing the services. This would also save time, increase transparency, and make accessing services easier for victims. Some of the interviewees also suggested time-bound interventions, i.e. treat the victims of TIP and GBV separately for few years and gradually integrate them into a common space for their further rehabilitation and reintegration into society.

Police officials also reiterated the recommendation for creating a common location with different departments operating and providing services (such recording statements before a magistrate, production before Child Welfare Committee, medical assistance, trauma-induced care/counselling, translator, special educators for specially abled persons, compensation etc.) to the victims of TIP and GBV. According to police officials, the creation of a common location would save time and “compel” the police officers to follow procedures mandated under law. It would also no longer require the police to take the victim from one place to another for accessing services. However, officials cautioned that even if services were brought under a common location, victims of TIP and GBV should be treated separately as both the forms of crime are different. TIP is a crime committed through a more organized network, hence, requires more specialized techniques of investigation.

Among the prosecutors, one out of four recommended integration of services for the victims of TIP and GBV, while three recommended the separation of services as they saw the crimes as different. According to them, before deciding whether to integrate or separate the services, there is a need to assess the existing services, how well they are executed or implemented and whether those are reaching the victims or not.

Case Study 5: Gulmohar Sakhi Centre- An Integrated Service for Victims of TIP and GBV



Sakhi/Gulmohar centre, Vidisha, Madhya Pradesh

The case study is based on an interview conducted with a police official during the field research in Madhya Pradesh in July 2020. The facts as mentioned in the case study were narrated by the respondent – i.e. the police official, under whose leadership the Gulmohar Centre was established in Vidisha district of Madhya Pradesh to provide integrated services to women in distress.



Complaint registration room

Gulmohar Mahila Suraksha Kendra (Gulmohar Women's Safety Centre) now known as Gulmohar Sakhi Centre was established in January 2018 under the One Stop Crisis Centre Scheme. It was incorporated in the police station premises in Vidisha (a district in Madhya Pradesh) and covers necessary facilities such as, food, shelter, medical assistance, legal advice, and psychological counselling in a common location. The Centre creates a conducive support system for victims who earlier had to go to different departments for support. The Centre is managed by the Women

and Child Development Department (WCD) and the police department of the district, and presents a picture of all agencies working together. The interviewee shared that the Centre was established based on findings of a baseline survey to understand i) accessibility of services by women victims at the police station ii) sensitivity and level of awareness amongst police officials in handling cases of GBV and other women-related issues iii) coordination and



Counselling Room

convergence between agencies and challenges in implementation. Some findings from the study were a) victim's access to police officials is limited and needs to be strengthened; b) inadequate victim handling mechanism i.e. the police officials lack empathy, sensitivity, and training to support victims; and c) all departments were working in silos making it difficult for victims to access services. Citing few examples, the respondent stated that in case of domestic violence if women victims do not want to return to the same abusive home, there is no other place for them to go. Another challenge was providing safe shelter to victims found during the night, as not all districts are equipped with night shelter homes. Moreover, some shelter homes accept victims only of a particular age; some only women; some only children; some do not accept victims at night; while on certain occasions the victims too refrain from going to a shelter home. All these hurdles, according to the respondent, gave rise to the need for a unique centre, and this is how the concept of Gulmohar Centre came into existence -- to provide services to victims (women and children in distress) in an integrated space where all the services i.e. psycho-social support, medical assistance, legal counselling, family counselling, temporary shelter and referrals would be provided.

The respondent was appointed as the Superintendent of Police (SP) in the district and he had the opportunity to participate in a Global Exchange Programme organized by the British High Commission in London, United Kingdom wherein he got the chance to visit an integrated crisis centre run by the UK police for victims. According to him, although the One Stop Centre Scheme existed in India, it lacked implementation in all the districts and, therefore, he conceptualized the Gulmohar Centre in Vidisha district, Madhya Pradesh.

To set up the Gulmohar Centre the police department approached the WCD for support. It was because of the efforts of the police department (headed by the respondent) which met the expenditure needs that the Centre was established initially, with help from charities. Later, funds were received from the OSCC scheme.

In order to make the services available to a larger number of victims, a help desk called– 'Urja Desk' were set up at the police stations so that victims in distress could be provided with immediate support at the police station itself and also referred to Gulmohar for further support or assistance. For effective working of the Centre, the department approached Action Aid, an NGO which was already running a One Stop Crisis Centre called Gauravi, in Bhopal, to train police officials responsible in providing services at the Gulmohar Centre

and the *Urja* Desk. The setting up of such centres was widely publicized in rural as well as urban centres in the district as a result of which an increased number of women started approaching (within a year 3,000 cases) the *Urja* desk and Gulmohar Centre. Once the number of cases started increasing, the police department again approached the WCD department and presented the functioning of Gulmohar. The WCD visited the Centre and studied its effective implementation, especially the efficiency of police officials in operating such a Centre, adopted it and extended funding under the OSC Scheme. The setting up of such a Centre run by police department is a good example of the effectiveness of law enforcement officials in providing services to victims of TIP and GBV in an integrated location. The case study can also be considered as a best practice adopted by the Vidisha police in Madhya Pradesh focusing on behavioural change in police officials while dealing with victims of violence and making the criminal justice system accessible and victim-centric.

CHAPTER 5

Findings and Recommendations

5.1 Introduction

This chapter presents the major findings and recommendations of this research on analysing the present situation, identifying gaps and challenges of screening of victims, and service delivery to TIP and GBV victims in India. The chapter is divided into two segments, the first summarizes reviewed literature and field research analysis detailed in Chapters 2, 3, and 4. The second presents recommendations from respondents for improving service delivery for [as per the design of the study] victims of GBV and TIP.

5.2 Major Findings

5.2.1 Trends and Patterns of TIP in the country [and the six states selected for the study]²⁶⁶

Towards an increasing trend of human trafficking – Crime figures in the Crime in India Reports, over the past five years (2016 to 2019) revealed a gradual decrease in the reporting of the number of (Indian Penal Code [IPC]) cases, with the year 2019 accounting the lowest. Nonetheless, absolute figures in cases of persons trafficked (IPC) have experienced a surge in the year 2019 with 6,616 persons being trafficked, in comparison to the previous reporting years of 2017 and 2018. The number of victims rescued also registered an increase in 2019.

Under-representation of TIP data – Crime in India Reports suggest under-representation of trafficking data seemingly due to the clandestine nature of the crime and under-reporting. This is corroborated by disparities between the official data (couple of thousand cases) and reports by national/ international NGOs (reporting millions of TIP cases, especially bonded labour cases).

Fall in conviction rate for TIP cases in 2019 – Even as the number of persons trafficked and rescued showed an increase, the conviction rate dipped to 22% in 2019 compared to 29.4% in 2018 and 24.5% in 2017. The lower conviction rate is largely the consequence of the uneven responses of the Indian legal system.

The probable link between TIP and missing children/persons cases – The police data on ‘Missing Children/ Persons’ and ‘Kidnapping & Abduction’ suggests that these cases are gradually increasing, something attributed in various reports to an alleged camouflage of the trafficking statistics.

Trafficking scenario in the states selected for the study – Maharashtra topped the country in the number of TIP cases (IPC) in 2018 and 2019. Kerala saw a steady rise in TIP cases in the recent past and figures also indicate a skewed share of women in the cohort of total trafficked victims, and

²⁶⁶ Please refer to section 2.2 in Chapter 2.

majority being minors. Delhi's data for 2019 suggests an increase in trafficking of minors. The state is also a breeding ground for various fake placement agencies which entrap vulnerable people for commercial sexual exploitation (CSE), forced labour, and domestic servitude. Madhya Pradesh is a major source, transit, and destination state for trafficking especially young boys and girls. It also reports the highest number of cases of missing children in police data. Goa is an emerging hotspot for trafficking of women and girls particularly for CSE, with a transition in its *modus operandi* of trafficking to online platforms. Manipur reports high incidences of missing children and has emerged as a major transit point for trafficking of women, especially from Nepal to Gulf countries such as Dubai (UAE), Iraq, Kuwait, and others.

Transition in Modus Operandi and Places of TIP – The *modus operandi* and the *places of trafficking* are evolving, and new emerging trends are seen as online modes for trafficking are either replacing the traditional methods or are simultaneously being used for trapping victims. The increased and unregulated access to the internet and social media platforms such as WhatsApp, Facebook, etc., are making young people more vulnerable to being trapped into trafficking situations. The processes of recruiting, soliciting, and monetary transactions in CSE cases has graduated to online platforms, making it extremely difficult for detection and identification of traffickers by victims and other agencies. There is a spatial shift from the traditional brothels to private apartments, lodge/hotels, beauty and massage parlours for CSE; homes for domestic servitude; and informal workplaces for forced labour, making identification of victims challenging.

5.2.2 Trends in Gender-Based Violence in the country [and the six states selected for the study]²⁶⁷

Increasing trend in Crimes against Women in the country – Crime in India Reports signify an increase in cases of violence against women with 2019 showing a surge of 7.3% over the previous year. The majority of IPC cases in 2019 was registered under different sections of 'Cruelty by Husbands and Relatives', 'Assault on Women with Intent to Outrage her Modesty', 'Kidnapping & Abduction of Women', and 'Rape'.

GBV in the selected states - Maharashtra has the highest number of GBV cases in 2019, followed by Madhya Pradesh, Delhi, Kerala, Goa and Manipur.

Lack of inclusivity in dealing with GBV in the country – GBV is narrowly understood as violence against women and excludes violence that men and other genders may face, particularly in interpersonal relationships. Norms, social stigma, and shame prevent men from being recognized as 'victims' of spousal violence. The transgender community, due to their socially stated "non-conforming" identity, faces extreme violence within families and outside. This research finds there is under-reporting of such cases and these are not included in official statistics and legal frameworks in particular, except under the new Transgender Persons (Protection of Rights) Act of 2019.

5.2.3 Understanding of TIP and GBV²⁶⁸

Conceptual clarity of TIP and GBV among the respondents - Though the respondents are aware of various forms of gender-based violence such as physical, sexual, psychological, and economic,

267 Please refer to section 2.3 in Chapter 2.

268 Please refer to section 2.4 in Chapter 2.

most of them relate it with domestic violence. However, all respondents unequivocally accept that women constitute an overwhelming number of those affected by GBV. Stakeholders largely displayed conceptual clarity and an understanding of human trafficking. However, this understanding is segmented wherein some had a clear idea about various facets of TIP such as cross-border and domestic trafficking; various forms of TIP; and trafficking of men, women, children and transgender; while some related trafficking only to prostitution.

Intersectionality between GBV and TIP – The research reflects a definite intersectionality between GBV and TIP and the impact that one has on the other. The experiences of violence, abuse, and exploitation run in a continuum for persons experiencing GBV such as domestic violence, intimate partner violence, mental/physical/sexual/emotional/economic abuse, abuse due to sexual orientation, etc. and ending up being trafficked. However, there is insufficient understanding about GBV in a trafficking situation.

Understanding on commonality of experiences between GBV and TIP victims – The common experiences highlighted were various forms of abuses--psychological, physical, sexual, labour, wage related, stress, use of force--and other factors such as male perpetrators (mostly), low self-worth among victims, lack of control over one's life, lack of family support, lack of trust, and the feeling of being misjudged in society. Some believed that victims of GBV and TIP have very disparate journeys, with the latter experiencing more 'painful' encounters than the former, and diverse perpetrators compared to a GBV victim.

5.2.4 Understanding of Human Trafficking, Human Smuggling, and Migration and their intersections²⁶⁹

Lack of clarity in understanding the three concepts – A general lack of conceptual clarity emerged among the border officials regarding the three concepts of human trafficking, human smuggling, and migration, leading to uneven responses in intercepting/detaining people crossing the borders. This further impacted their ability to understand the differences between people generally vulnerable and the actual victims of trafficking, and the desired responses for both categories. This unevenness impacts people's mobility and ability to migrate for work, especially for women.

5.2.5 Screening and Identification of TIP & GBV Victims²⁷⁰

Methods for Screening and Identification of the victims of TIP and GBV – Law Enforcement Officials and Service Providers screen TIP and GBV victims on complaints made by victims, families, and NGOs; through investigations of runaway and missing children cases; by means of raid and rescue operations carried out at hotspots; intervening in suspicious cases with the help of Anti-Human Trafficking Units (AHTUs) for the former; and through complaints lodged by the victims, family members, NGOs, help-lines and One Stop Crisis Centres (OSCC) in GBV cases. Screening at the borders is carried out by intercepting individuals travelling without proper documents by and handing them over to the local police for further investigation, and through the coordinated efforts of border officials and local NGOs. Most GBV victims self-identify and seek help from the police, NGOs, and helplines. However, TIP victims are mostly rescued by the police and later identified as victims of human trafficking.

269 Please refer to section 2.5 in Chapter 2.

270 Please refer to section 2.7 in Chapter 2.

5.2.5.1 Challenges to screening and identification of the victims of TIP and GBV

Existing gender prejudices among Law Enforcement Officials (LEOs) – This research found gender stereotypes and patriarchal mindsets, non-supportive attitudes and a general lack of empathy towards TIP and GBV victims prevalent among LEOs.

Absence of appropriate protocols for screening and identification - India does not have standard and uniform protocols and indicators for identifying victims of TIP and GBV. Although some SOPs and protocols are issued from time to time by various government and non-government agencies, they are not focused on identification of victims. Further, LEOs reported dissemination issues and lack of information about these protocols.

Lack of meticulous training of LEOs – The majority of the LEOs interviewed, especially border officials, had not received any training prior to working on GBV and/or TIP despite multiple government and non-governmental agencies conducting training programs. Though the rate and intensity of training programs, especially for the police have increased in recent times, poor follow-up makes them unsustainable. There is an urgent need for assessment and evaluation of training programs.

Issues at the border – Border officials highlighted that ‘border management’ and ‘guarding the borders’ are separate responsibilities. An intercepted victim or trafficker is immediately handed over to the local police station for further investigation as the border officials do not have the power to investigate. This lack of power affects appropriate screening of the victims and tracking the trail of traffickers and the organized criminal networks. Added to this is the lack of coordination among all the service providers and lack of support and cooperation from the local community at the border which impacts identification of TIP victims.

Lack of coordination and cooperation among stakeholders – The tendency to work in isolation among the stakeholders and lack of coordination among specialized units dealing with TIP and GBV affects the screening and identification process. Each stakeholder blamed the other for failure in dealing with TIP and GBV and securing the rights of the victims.

Lack of cooperation from the victims and the local community – Victims turning hostile and non-cooperative during the process of screening and identification, and also in the courts, was identified as a major challenge by various stakeholders.

5.3 Gaps and challenges in the legal framework²⁷¹

India has multiple laws and legislations dealing with TIP and GBV and the legal framework is compliant with international standards. The country ratified and/or is signatory to relevant international instruments and regional treaties such as the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002. There are still significant gaps and challenges in some of the laws.

Inadequacies in the Immoral Traffic (Prevention) Act (ITPA), 1956 – Though the major purpose of ITPA is to prevent trafficking of women and girls for the purpose of prostitution as an organized means of living, and curbing commercial sexual exploitation (CSE) by criminalizing

²⁷¹ Please refer to section 3.4 in Chapter 3.

the procurers, traffickers, and profiteers of the sex trade, the law falls short by not defining the act of trafficking per se. Another shortcoming is that the law focuses on only one type of trafficking i.e., CSE, ignoring other forms. Further, the law is inherently contradictory, that is to say while Section 8 of the Act criminalizes seducing or soliciting for purpose of prostitution at or within the vicinity of public places, thereby, treating a person like an ‘accused’, other provisions within the Act seek to rehabilitate the person, thus treating them as ‘victims.’ The shortcomings of ITPA, 1956 to a certain extent has been addressed by the enactment of the Criminal Law (Amendment) Act, 2013, which introduced a new definition of human trafficking to the IPC Section 370 which is at par with the UN Protocol.

Absence of a comprehensive TIP law in the country – At present, India lacks a comprehensive standalone law to deal with human trafficking. Although the government introduced a Bill to enact a comprehensive trafficking law in the Parliament in 2018, for various reasons, it was not passed. The absence of a comprehensive TIP law compels the LEOs to use different Sections of the IPC and different Acts to establish the crime and also creates ambiguities on the applicability of different laws.

Inconsistency in the legal age definitions of a child - Although the Juvenile Justice Act, 2015 and Protection of Children from Sexual Offences Act, 2012, defines a child as a person who has not completed 18 years of age, other laws such as the Child Labour Act, 1986, and ITPA, 1956 have different age limits for defining a child. This creates more confusion than clarity among the law enforcement agencies, especially in cases involving child trafficking for labour.

Uneven understanding of consent – In the responses from LEOs, a lack of clear understanding of issues related to consent emerges as a major challenge. Consent in GBV and TIP cases (as defined in Section 370 IPC) is understood unevenly due to social and cultural factors, and also due to lack of comprehension of the modus operandi of traffickers, leading to non-filing of cases under the appropriate laws and its Sections. This lack of understanding sometimes leads to minors being charged as accused under the ITPA, instead of being considered under the protective provisions of the Juvenile Justice Act, 2015.

Legal anomalies associated with Gender-Based Violence - Similar to an absence of a comprehensive TIP law, there is also an absence of a holistic legislation for dealing with GBV cases. Moreover consent, that is pleaded in defence in sexual violence cases is sometimes not appropriately understood. The Indian legal system is women-centric in nature and reflects a huge gender gap in dealing with violence against (adult) male and transgenders due to socio-cultural norms and behaviours as identified by the interviewed respondents.

Lack of proper implementation of Laws – The existing laws are generally found to be adequate to deal with TIP and GBV. However, implementation is challenging given the lack of knowledge and training on recent amendments. Prolonged investigations and trials of sensitive cases like TIP often leads to the victims turning hostile and losing faith in the justice delivery system. The Gulmohar Sakhi Centre, the One Stop Crisis Centre in Madhya Pradesh, emerges as a good practice model of showcasing the benefits of continuous training of police officials. (Refer Case Study no. 5 in Chapter 4).

5.4 Services and service delivery framework²⁷²

Existing delivery framework – Services for TIP and GBV victims are provided through different schemes, services, plans, policies, advisories, and standard operating procedures (SOPs) services, mostly implemented by the Ministry of Women and Child Development and some by the Ministry of Home Affairs and Ministry of Labour and Employment. The service delivery framework laid out in these various documents is comprehensive. However, it could not be analyzed for its effectiveness in implementation due to the absence of any reports in this regard. Schemes such as the Integrated Anti Human Trafficking Units, Ujjwala, Swadhar, One Stop Crisis Centres, Nirbhaya Fund, and various compensation schemes address issues related to prevention, protection, and prosecution. However, there seems to be a gap in information on their monitoring, evaluation, and impact assessment to gauge their effectiveness. Plans and policies formulated by the Government are outdated and there is no information on the operational status of some of them. SOPs available are mostly for TIP cases for sex and labour trafficking, many of which are outdated and must be amended in tune with the latest legal amendments. There is no SOP available for handling cases of GBV, other than the one issued by the Ministry of Health and Family Welfare for medical caregivers in handling victims of sexual assault.

Differential access to services: Access to services is inequitable in India and is based primarily on geography and gender. Services are concentrated in cities or urban areas compared to rural and remote areas. Often there is lack of services/shelter homes within districts which hampers rescue efforts especially during nights. There are few services and no shelter homes available at the borders, with border officials reporting lack of knowledge of the existing services to assist victims. Shelter homes and services are not available for all *genders* except in the case of children, with the only exceptions being reported in Madhya Pradesh and Maharashtra, where men access the OSCCs occasionally and are provided counselling services. There are no provisions prescribed under any law or government scheme to provide shelter home/ services to transgender victims.

Barriers to accessing services – Barriers are created due to multiple factors such as lack of awareness of the availability of services among the general public, particularly women, especially in the rural areas, despite numerous awareness programs. The other barriers include inadequate response from LEOs due to existing gender prejudices and “lack of sensitivity”, delay or non-registration of First Information Reports, lack of functional AHTUs, lack of cooperation, communication, and coordinated action among stakeholders, , non-availability of services in remote/ place of origin of TIP victims, GBV victims’ inability to identify as ‘victims’ of violence especially in domestic violence cases, and fear of retaliation from perpetrators, shame, stigma, lack of trust and family support among victims.

Accessibility of services during the COVID-19 pandemic – GBV cases showed an upsurge during the lockdowns imposed due to the pandemic. Lockdown restrictions made reporting of cases as well as seeking services by victims of GBV a big challenge as they could not reach out to service providers due to restricted mobility. Shelter home services were affected due to social distancing procedures within the institutions and limited spaces to quarantine due to which new admissions were not done. Interviews during the data collection suggested the future possibility of increase in number of TIP cases as the pandemic exacerbated existing vulnerabilities (especially of

²⁷² Please refer to section sections 4.2, 4.3 and 4.4 in Chapter 4.

children and adolescents), created new ones, and pushed people in already disadvantageous economic conditions into further risky and exploitative situations. Stakeholders highlighted that there were no written protocols on provisions and access to services for victims of GBV and TIP during a pandemic.

Types of services provided by shelter homes to TIP and GBV victims – Services for victims include shelter, psycho-social support, physical health care, nutrition, life skills, vocational training, economic security, education, identity documents, legal information, counselling, rehabilitation and repatriation. Shelter homes are run both by government and NGOs and services were provided to the victims either while staying in the shelter homes or being associated with certain NGO/ OSCC after leaving the shelter homes. Services and shelters remain available only for women victims and not to men and other genders.

5.4.1 Challenges in service delivery²⁷³

Barriers to service delivery – The research identified five important barriers to service delivery. a) NGO-run shelter homes and services don't receive on-time budget allocations under the government's Ujjawala and Swadhar Greh schemes; b) Rehabilitation services are not composite. Often rehabilitation is narrowly understood as "reunion with families", even if the victims don't have continued access to services in their places of origin; c) Focus on economic rehabilitation and sustained income generation is missing; d) Service delivery is inherently complex. Navigating its complex requirements directly impacts the effectiveness of services; e) Services don't meet acceptable quality standards. Shelter homes, especially government-run ones, often have poor living conditions and victims receive substandard food, clothing, hygiene and trauma-induced care.

Victim's perception of services – Victims interviewed were generally satisfied with the services received at the shelter home or from NGOs but were dissatisfied with the services received from the police and prosecutors. Victims highlighted a serious gap in the rehabilitative services especially towards their economic independence.

5.4.2 Rehabilitation and reintegration of TIP and GBV victims²⁷⁴

Procedures are streamlined – Shelter homes and NGOs were found to have streamlined procedures for rehabilitation and reintegration of both GBV and TIP victims, within their limited means. For TIP (adult) victims of sex trafficking, the ITPA, 1956 is applicable. Where victims are in shelter homes, court orders decide the future course of action in consonance with the individual care plan of the assisting NGO. For child victims of trafficking, the Juvenile Justice Act, 2015 prescribes detailed procedures towards their rehabilitation through the Child Welfare Committees set up under the Act.

Victims' preference for reintegration – GBV victims, mostly in case of domestic violence, are reluctant to file legal proceedings and often desire family rehabilitation. TIP victims for CSE who have to stay in shelter homes during the court ordered duration, often due to lack of family acceptance, either prefer to continue living in the shelter homes or get rehabilitated in communities with or without their families.

²⁷³ Please refer to section 4.4.3.2 in Chapter 4.

²⁷⁴ Please refer to section 4.4.4 in Chapter 4.

5.4.3 Criminal justice delivery in cases of TIP and GBV²⁷⁵

Challenges of investigation and prosecutions in TIP and GBV cases – Respondents reported several barriers to investigations and prosecutions, namely lack of inter-agency coordination among law enforcement agencies and Departments of Women and Child Development and other welfare services in the districts; lack of regional and international coordination in cases of foreign victims of trafficking, especially towards their repatriation; uneven knowledge and training for law enforcement agencies on comprehensive coverage of TIP and GBV issues and their legal frameworks; gaps and anomalies in the relevant legislations; and lack of cooperation from victims, who often turn hostile or indifferent due to delayed investigations or trials.

5.4.4. Integration or Separation of Services for GBV and TIP Victims²⁷⁶

Three different strands of opinions emerged from the primary research on integration or separation of services for TIP and GBV victims from 70 (including victims) interviews:

- 14 were in favour of integration of services, considering the commonality between the needs and experiences of TIP and GBV victims.
- 24 of them suggested keeping the services separate for TIP and GBV victims considering that differing needs and experiences of the victims. According to them, the intensity of violence experienced by TIP victims differs from GBV victims. The interviewees however, suggested the possible integration of a few services like legal aid and medical facilities.
- 27 of them suggested having separate services but to be kept under one common location for both GBV and TIP victims so that access becomes smooth and less time-consuming.
- 5 either did not respond to the question or had no opinion.

All the 15 police officials interviewed suggested creating a common location under one roof with different departments operating and providing services (recording of statement before magistrate, production before Child Welfare Committee, medical assistance, trauma-induced care/counselling, translator, compensation etc.) for victims of TIP and GBV – which would make following procedures easier for the police.

Understanding of integration – Respondents understood integration of services for TIP and GBV victims as a) keeping both TIP and GBV victims in common shelter homes, b) victims should not be differentiated, and c) there should be integrated intervention. Structures could be designed building on the benefits of OSCCs. The common structure could link victims of different kinds of violence to appropriate services. The location would have different units operating within the same roof and reducing the challenges victims face in accessing the services.

Understanding of separation – Given the different needs and experiences of victims, interventions for TIP and GBV victims should also be kept separate. GBV victims may differ from one another in terms of the nature of violence suffered. But when compared to TIP victims, the needs of GBV victims would not be as extensive, especially those TIP victims rescued from CSE. Common shelter homes would further stigmatize such TIP victims and, therefore, they

²⁷⁵ Please refer to section 4.4.5 in Chapter 4.

²⁷⁶ Please refer to section 4.4.6 in Chapter 4.

should be kept separate. Some of the interviewees also suggested timebound interventions, i.e., to treat the victims of TIP and GBV separately for few years and gradually integrating them into a common space for further rehabilitation and reintegration into society.

5.5 Recommendations

5.5.1 Set 1 - For the Government

5.5.1.1 Strengthened legal and policy framework

- Comprehensive laws on TIP and GBV need to be framed which are holistic and standalone legislations on TIP and GBV to preclude the necessity of drawing upon different laws for investigating cases of TIP and/ or GBV. Laws should be made on the basis of human rights and human security.
- Amendment to ITPA, 1956 with inclusion of a broader definition of human trafficking and removal of the section criminalizing the victims involved in prostitution.
- Fast track courts for GBV cases and Special Courts should be set up under the Immoral Traffic (Prevention) Act, 1956.
- Enforce strict implementation of all laws on TIP and GBV such that successful convictions act as a deterrent to perpetrators. Anti-Human Trafficking Units should be set up in all districts and should be strengthened with adequate human and financial resources for making these functional and impactful.
- Timely disbursement of funds to shelter homes, and periodic monitoring and evaluation of the various schemes.

5.5.1.2 Coordination among different stakeholders

- Coordination at the government level to be strengthened between different ministries and departments relevant to TIP and GBV, and between the Central and State Governments for more coherent responses.
- Coordination between multiple stakeholders representing Government and NGOs, and between the service providers and law enforcement agencies towards holistic responses to TIP and GBV cases, especially within the One Stop Crisis Centres.
- Inclusion of border officials in the meetings of the nodal Anti-Trafficking Cell of the Ministry of Home Affairs towards building efficient border management strategies for responding to cross-border trafficking, through proper screening and identification, and integration or convergence of the services at the border areas for identified victims.

5.5.1.3 Mapping of vulnerable areas and hotspots for human trafficking

- Vulnerability mapping in coordination with NGOs, to identify vulnerable areas and/ or hotspots for trafficking by mapping a) existing vulnerable areas, b) acute vulnerable areas, and c) potentially vulnerable areas – towards designing focused strategies for prevention of trafficking.
- Preventive measures to be prioritized by planning and executing area-specific solutions to the factors that create vulnerabilities in the first place within communities, especially in the vulnerable areas.

5.5.1.4 Guidelines and protocols

- Standardized guidelines and protocols to be prepared and made available on screening and identification of victims of TIP for all relevant agencies, namely, the police, border and immigration officials, labour inspectors, authorities under the Juvenile Justice Act, 2015, health professionals, and others.
- Upgrade existing SOPs and Protocols on investigation and prosecution of cases of human trafficking, by including new legislations and amendments to the existing laws.

5.5.1.5 Access to services

- Ensuring reach and access of services in smaller towns and rural areas, especially at border areas in partnership with NGOs.
- Setting up shelter homes where currently not available to ensure equitable geographical distribution depending on the scale of the problem.

5.5.1.6 Separation of services

- Separate shelter homes for GBV and TIP victims, especially those rescued from CSE; but integrated services at a common location, similar to the One Stop Crisis Centre model, under one roof.
- Integration of possible services for GBV and TIP victims may be done for medical and legal aid services.

5.5.2 Set 2 - For law enforcement agencies

5.5.2.1 Strengthening law enforcement responses through training and capacity building towards increased efficiency of screening and identification of victims and criminal justice delivery

- Training for increased awareness for police, prosecutors and judicial officers, towards a holistic understanding of conceptual issues related to TIP and GBV and their intersections, on consent in TIP cases, the modus operandi of traffickers, and the new emerging trends of trafficking. Mandatory training to be conducted for border officials on screening and identification of victims of TIP and those in vulnerable situations towards holistic border management capacities.
- Gender sensitization to be included as an important component of training programs towards understanding the nuances of TIP and GBV. Such training should address not only women, but men and other genders as well; and address preconceived notions and prejudices based on socio-cultural norms.
- Training on the legal framework for police, prosecutors, and judicial officers, to be more rigorous for building a thorough understanding of the substantive and procedural aspects of the laws on TIP and GBV and their practical application.
- Link training to professional upgradation of police officials towards creating motivation and involved participation. AHTUs, Women Cells, OSCCs and other similar units should be assigned such trained officials for practical utilization of the training.
- Monitoring and impact assessments should be designed along with the training programs to measure the practical effectiveness and utility of the learning at the field level.

5.5.3 Set 3 - For service providers

5.5.3.1 Awareness generation among the public and within communities

- Sensitization on human trafficking within communities and the public, especially highlighting the modus operandi of traffickers.
- Awareness building on existing and available services to enable victims to access them. Victims especially recommended the involvement of community leaders (village leaders/ panchayat members) in the dissemination of information about existing help centres in the community.
- Strong community-based monitoring with the participation of village leaders/ panchayats, (especially in the hilly districts of Manipur which are exempt from the Panchayati Raj system), and religious leaders to be effective first responders in preventing TIP at the village-level.

5.5.3.2 Access to services

- Ensuring reach and access of services in smaller towns, rural and remote areas, especially at border areas in partnership with Government, by setting up more help-centres/ shelter homes.

5.5.3.3 Rehabilitation and reintegration

- Individual care and exit plan to enable victims availing shelter home services towards rehabilitation (especially economic) and reintegration within the community, either with or without their families, based on their participation in the process.

5.6 Future research possibilities

1. Assessment of the existing services such as, the One Stop Crisis Centre Scheme and the Ujjwala Scheme, their existing gaps, challenges of implementation and the scope of developing a comprehensive system to create a common location where services can be provided to both victims of TIP and GBV.
2. Assessment of the Anti-Human Trafficking Units, gaps in their functioning, especially with regard to the identification and screening of TIP victims, and identifying best practices.

ABBREVIATIONS

| | |
|---------|--|
| AHTUs | Anti-Human Trafficking Units |
| ARZ | Anyay Rahit Zindagi |
| AWC | Allahabad Weekly Cases |
| BCPC | Block Level Child Protection Committee |
| BPRD | Bureau of Police Research and Development |
| BSF | Border Security Force |
| CARA | Central Adoption Resource Authority |
| CAC | Central Advisory Committee |
| CBI | Central Bureau of Investigation |
| CCI | Child Care Institutions |
| CIF | CHILDLINE India Foundation |
| CII | Crime in India |
| CPSU | Central Project Support Unit |
| CRC | Convention on the Rights of the Child |
| CSO | Civil Society Organizations |
| CSE | Commercial Sexual Exploitation |
| CVCS | Central Victim Compensation Scheme |
| CWC | Child Welfare Committees |
| DCPC | District Child Protection Committee |
| DCPO | Designated Child Protection Officer |
| DCPU | District Child Protection Units |
| DLSA | District Legal Services Authority |
| DM | District Magistrates |
| DPO | District Probation Officer |
| FIR | First Information Report |
| FGD | Focused Group Discussion |
| FRRO | Foreigners Regional Registration Officer |
| FXBIS | FXB India Suraksha |
| GB Road | Garstin Bastion Road |
| GBV | Gender-Based Violence |
| GCC | Gulf Cooperation Council |
| GoI | Government of India |
| GRP | Government Railway Police |
| HC | High Courts |
| IAHTU | Integrated Anti Human Trafficking Units (IAHTU) Scheme |
| ICPS | Integrated Child Protection Scheme |
| ILO | International Labour Organisation |
| INR | The Indian Rupee |
| IOM | International Organization for Migration |
| IPC | Indian Penal Code |
| ITPA | Immoral Trafficking (Prevention) Act, 1956 |

| | |
|--------|---|
| JJ Act | Juvenile Justice (Care and Protection) of Children Act, 2015 |
| JJB | Juvenile Justice Board |
| LEO | Law Enforcement Official |
| MEA | Ministry of External Affairs |
| MHA | Ministry of Home Affairs |
| MoHFW | Ministry of Health and Family Welfare |
| MoLE | Ministry of Labour and Employment |
| MoU | Memorandum of Understanding |
| MP | Madhya Pradesh |
| MWCD | Ministry of Women and Child Development |
| NALSA | National Legal Services Authority |
| NCPCR | National Commission for Protection of Child Rights |
| NCRB | National Crime Records Bureau |
| NGO | Non-Government Organisation |
| NHRC | National Human Rights Commission |
| NIA | National Investigation Agency |
| OCSAE | On-line Child Sexual Abuse and Exploitation |
| OHCHR | High Commissioner for Human Rights |
| OSC | One Stop Centre Scheme |
| OSCC | One Stop Crisis Centre |
| PI | Principal Investigator |
| PO | Protection Officer |
| POCSO | Protection of Child from Sexual Offences Act, 2012 |
| POR | Principle Offence Rule |
| PoSH | Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 |
| RPF | Railway Protection Force |
| RRRI | Rescue, Repatriation, Rehabilitation and Integration |
| SAARC | South Asian Association for Regional Cooperation |
| SC | Supreme Court |
| SC | Scheduled Castes |
| Sec. | Section |
| SITA | Suppression of Immoral Traffic in Women and Girls Act |
| SJPU | Special Juvenile Police Units |
| SLL | Special and Local Laws |
| SOP | Standard Operating Procedure |
| SPID | Society Participatory Integrated Development |
| SSB | Sashastra Seema Bal |
| ST | Scheduled Tribes |
| TAF | The Asia Foundation |
| TIP | Trafficking in Persons |
| TRANS | Transgender |
| UN | United Nations |
| UNCTOC | United Nations Convention Against Transnational Organized Crime |

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|----------|---|
| UNICEF | The United Nations Children’s Fund |
| UNODC | United Nations Office on Drugs and Crime |
| UN WOMEN | United Nations Women |
| UP | Uttar Pradesh |
| US | United States |
| US TIP | United States ‘Trafficking in Persons’ Report |
| UT | Union Territories |
| VAW | Violence against Women |
| WP | Writ Petition |
| ZIPNET | Zonal Integrated Police Network |

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