

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

INDIA, NEPAL, and SRI LANKA



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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Regional Analysis Report on Optimizing Screening and Support Services for Gender-Based Violence and Trafficking in Persons Victims

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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. In India the research team from FXB Suraksha was led by, Mr. Satya Prakash and Ms. Mamta Borgoyary and supported by Ms. Pranjita Borah and Ms. Chetana Naskar. In Nepal the research team was led by Mr. Deepak Thapa and Ms. Sudeshna Thapa and were supported by the research team at Social Science Baha including Bhimkala Limbu, Binod Dulal, Sita Mademba, Manju Gurung, Varsha Upraity, Binay Jung Thapa, Vibhav Pradhan, Bibhu Thapaliva, and Shambhawi Poudel. In Sri Lanka the research team was led by Ms. Chandima Arambepola and supported by the research team at CEPA including Ms. Sujanthi Sri Sureshkumar, Researcher Ms. Pamodi Warawita and Ms. Tharunee Samarajiva.

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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.



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 Victims.’

This regional analysis report is a result of a research project implemented by The Asia Foundation’s offices in India, Nepal, and Sri Lanka 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, regional analysis report, policy briefs and action plans, 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 the Centre for Poverty Analysis (CEPA) for Sri Lanka, FXB India Suraksha for India, 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 the regional analysis it was found that TIP and GBV continue to be a major concern in the three countries. In India and Nepal, the number of both GBV and TIP cases is high. In Sri Lanka, while GBV is high, but TIP shows comparatively fewer registered cases. Commercial sexual exploitation and forced labor are the two dominant forms of trafficking in India and Nepal whereas trafficking for forced labor (especially of outward-bound migrants) emerges as more common in Sri Lanka. 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 absence of nuanced understanding of the link between TIP and GBV that can drive appropriate responses from key frontline stakeholders was a critical finding of the study. The research highlights how GBV and TIP victims often suffer similar and intersecting forms of abuse. Yet the service delivery system largely compartmentalizes the provision of services based on the type of crime, rather than on the common experiences of violence and abuse suffered by both types of victims.

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

Contents

Acknowledgements.....	1
Preface.....	2
Abbreviations	5
Executive Summary.....	8
CHAPTER 1 Introduction	12
1.1 The Problem Statement.....	12
1.2 Background of the Project.....	13
1.3 Purpose of the Report.....	13
1.4 Overview of Research and Information Collection Process	14
1.4.1 Country Assessment Reports.....	14
1.4.2 Key Informant Interviews.....	14
1.4.3 Research Tools	16
1.4.4 Training of Researchers.....	16
1.4.5 Pilot Testing of Questionnaires	16
1.5 Impact of the COVID-19 Pandemic on the Data Collection Process	17
1.5.1 Limitations and Challenges of Online Key Informant Interviews	17
1.6 Order of chapters.....	18
CHAPTER 2 Major Findings from India, Nepal, and Sri Lanka.....	19
2.1 Understanding of Trafficking in Persons and Gender-based Violence	19
2.1.1 Situation Analysis of TIP and GBV	19
2.1.2 Vulnerability Factors Perpetuating TIP and GBV.....	24
2.1.3 Understanding of TIP and GBV and their Intersections.....	26
2.1.4 Understanding of Migration, Trafficking in Persons, Smuggling of Migrants and their Intersections.....	31
2.1.5 Impact of COVID-19 on Incidence of TIP and GBV	33
2.2 Screening and Identification of Victims	37
2.2.1 Conceptual clarity on different categories of TIP victims	37
2.2.2 Challenges of Screening and Identification of TIP and GBV Victims	40
2.3 Legal Framework and its Enforcement	49
2.3.1 Comparison of Ratification Status of Key International and Regional Instruments	49
2.3.2 National Legal Framework on TIP and GBV	50
2.3.3 Gaps and Challenges in Laws and Legal Procedures and their Implementation	52

2.3.4	Judicial Interventions	62
2.4	Service Provision for TIP and GBV Victims.....	62
2.4.1	Service Delivery Stakeholders for TIP and GBV Victims.....	62
2.4.2	Delivery of Services to Identified TIP and GBV Victims	64
2.5	Integration or Separation of Services	78
CHAPTER 3 Key Recommendations		82
India		
Recommendations Set 1 - For the government		82
1.1	Strengthened legal and policy framework	82
1.2	Coordination among different stakeholders.....	82
1.3	Mapping of vulnerable areas and hotspots for human trafficking	83
1.4	Guidelines and protocols.....	83
1.5	Access to services	83
1.6	Separation of services.....	83
Recommendations Set 2 - For law enforcement agencies		83
2.1	Strengthening law enforcement responses through training and capacity-building for increased efficiency of screening and identification of victims and criminal justice delivery.	83
Recommendations Set 3 - For service providers		84
3.1	Awareness generation among the general public and within communities.....	84
3.2	Access to services	84
3.3	Rehabilitation and reintegration.....	84
Nepal		
Recommendations Set 1 - For the Government.....		84
Recommendations Set 2 - For law enforcement agencies		85
Recommendations Set 3 - For service providers		86
Sri Lanka		
Recommendations Set 1 - For the Government.....		87
Recommendations Set 2 - For the non-government stakeholders		88
Conclusion		89
Key Terms used in the Report.....		91
List of References		93

Abbreviations

AGD – Attorney General’s Department

AHTUs – Anti-Human Trafficking Units

BSF – Border Security Force

CBI – Central Bureau of Investigation

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CEPA – Centre for Poverty Analysis

CID – Criminal Investigations Department

CSOs – Civil Society Organizations

CWC – Child Welfare Committee

DoFE – Department of Foreign Employment

DIE – Department of Immigration and Emigration

DS – District Secretariat

EPZs – Export Processing Zones

FIR – First Information Report

FXBIS – FXB India Suraksha

GCC – Gulf Cooperation Council

GBV – Gender-based Violence

FBR – Family Background Report

FGD – Focus Group Discussion

GoSL – Government of Sri Lanka

HTIB – Human Trafficking Investigation Bureau

HTTCA – Human Trafficking and Transportation Control Act, 2007

ILO – International Labour Organization

IOM – International Organization for Migration

IPC – Indian Penal Code

ITPA – Immoral Traffic (Prevention) Act, 1956

KII – Key Informant Interview

LEOs – Law Enforcement Officials

LGBTQ – Lesbian Gay Bi-sexual Transgender and Queer

LRPs – Local Research Partners

MDO – Migration Development Officers

MHA – Ministry of Home Affairs

MoHP – Ministry of Health and Population

MoLESS – Ministry of Labor, Employment and Social Security

MoWCSC – Ministry of Women, Children and Senior Citizens

MWCD – Ministry of Women and Child Development

NAHTTF – National Anti-Human Trafficking Task Force

NHRC – National Human Rights Commission

NCRB – National Crime Records Bureau

NCW – National Commission for Women (India)

NIA – National Investigation Agency

NWC – National Women’s Commission (Nepal)

NWC – National Women’s Committee (Sri Lanka)

NGO – Non-Governmental Organization

OSCC – One Stop Crisis Centre (India)

OCMCs – One-stop Crisis Management Centres (Nepal)

OSRT – Office of the Special Rapporteur

PI – Principal Investigator

SAARC – South Asian Association for Regional Cooperation

SGBV – Sexual and Gender-based Violence

SLBFE – Sri Lanka Bureau of Foreign Employment

SOP – Standard Operating Procedure

SSB – Social Science Baha

TAF – The Asia Foundation

TIP – Trafficking in Persons

UN – United Nations

UNFPA – United Nations Population Fund

UNICEF – United Nations Children’s Fund

UNODC – United Nations Office on Drugs and Crime

US – United States

VAW – Violence against Women

VCS – Victim Compensation Schemes

WCSCs – Women, Children and Senior Citizen Service Centers

WDO – Women’s Development Officer

WMW – Women Migrant Workers

Executive Summary

Gender-based violence (GBV) and trafficking in persons (TIP) continue to be major concerns in India, Nepal, and Sri Lanka. In India and Nepal, the number of both GBV and TIP cases is high. In Sri Lanka, while GBV is high, there are comparatively fewer registered cases of TIP. Commercial sexual exploitation and forced labour are the two dominant forms of trafficking in India and Nepal while in Sri Lanka, trafficking for forced labour (especially of outward-bound migrants) emerges as more common.

Research¹ suggests that female victims are more significantly affected by TIP. In 2018, for every 10 victims detected globally, about five were adult women and two were girls. In the 2016-2018 data period, 46% victims were women and 19 % girls. Through a gender lens and a case law analysis, UNODC noted intersections between human trafficking and domestic and intimate partner violence, where victims were subjected to multiple forms of GBV prior to and while being trafficked.

A composite understanding (or the absence) of GBV and TIP and their intersections directly affects the identification and screening of victims. This deprives them of seeking justice and accessing services which may be limited, inadequate and uncoordinated, and with several in-built barriers.

This research study undertaken in three countries namely, India, Nepal, and Sri Lanka is premised on exploring a deeper understanding of the intersections of TIP and GBV, their resultant impact on identification of victims, and subsequent service delivery to victims. The study also explores whether services are in need of integration or separation.

The individual country reports are based on desk review of existing literature and legal frameworks, key informant interviews, and focused group discussions. Considering the size and scale of each of the countries, the study identified certain geographical areas which were either source or transit or destination for trafficked persons. In each country a total of 70 key informant interviews were conducted with three groups of stakeholders – Law Enforcement Officials (Police, Prosecutors, Judges, Border and Immigration Officials), Service Providers (Shelter homes, NGOs, and Government Officials), and Victims (TIP and GBV).

The regional analysis is based on the findings and recommendations of the three country reports, drawing upon their similarities and differences, challenges in identification of victims of trafficking in persons and gender-based violence, and its consequential impact on service delivery to the victims.

An analysis of research findings from the three countries revealed that gender-based violence (GBV) and trafficking in persons (TIP) is highly prevalent in various forms in India, and Nepal; whereas in Sri Lanka, GBV is highly prevalent, but TIP shows comparatively fewer registered cases. Commercial sexual exploitation and forced labour are the two dominant

1 UNODC (2020)

forms of trafficking in India and Nepal; whereas trafficking for forced labor (especially of outward-bound migrants) emerges as a more common form in Sri Lanka. In their understanding of GBV and TIP, a majority of the interviewed respondents fell short of comprehending the entire spectrum of violation, as well as the various forms of TIP. Common challenges identified in the three countries in screening and identifying victims of TIP underlined the lack of protocols and specific set of indicators, insufficient awareness and appropriate training and capacity building among the first responders (police, border and immigration), inadequate understanding among victims, victims' perception of shame, stigma, and societal pressure, and lesser priority and focus on internal trafficking especially in Nepal and Sri Lanka.

The Covid-19 pandemic had a potentially far-reaching and long-term negative impact on trafficked persons and those facing GBV. Although at this stage, it is not possible to assess the full impact of the pandemic on human trafficking, it is clear that the socio-economic consequences have led to exacerbated vulnerabilities of already marginalized people to trafficking and exploitation

While the three countries have a wide array of laws dealing comprehensively with both TIP and GBV, however, their implementation for effective justice delivery is uneven. In terms of service delivery while India and Nepal have robust frameworks for TIP, it is not the same in Sri Lanka., although common services can be tapped through the larger public services. Challenges around financial and human resources are common denominators that impact the economic rehabilitation of victims.

An overwhelmingly large number of respondents in India believe that services should not be integrated for GBV and TIP victims. Majority of the interviewed victims in Nepal advocate integration of services, whilst the NGOs and law enforcement agencies are equally divided between integration and separation of service delivery. Most of the service providers in Sri Lanka support separate services for TIP and GBV as an ideal situation, whereas law enforcement officers believe that access to a safe shelter is paramount over maintaining a separate shelter. Even with divergent opinions in Sri Lanka on separate or common shelters, almost all stakeholders believe that services can and should be integrated wherever possible.

Perspectives on integration or separation of services are predominantly based on the existing service delivery frameworks 'in theory' vis-à-vis their implementation 'in reality', availability of financial and human resources; and the lived experiences of the victims and service providers. The question on whether support services for TIP and GBV victims should be of integrated or remain separate would need to be explored with a deeper contextual understanding of the following –

- i) availability of state and non-state resources,
- ii) understanding and capacity of services providers to deliver through an integrated system,
- iii) legal provisions guiding the delivery mechanisms of different services, and

- iv) the socially driven perspectives of stigma and discrimination that drives a victims' choices and options. The research found that the conversation is relatively new and must be contextualised keeping in mind the challenges listed above.

Some common recommendations for improving screening and identification of victims and improving service delivery from India, Nepal and Sri Lanka are presented below:

Recommendations for the government

- Comprehensive laws on TIP and GBV should be framed for a more effective response to TIP and GBV.
- Enforce strict implementation of all laws that relate to TIP and GBV so that successful convictions act as a deterrence to perpetrators.
- Monitor the functioning of various government and non-government institutions mandated to support GBV and TIP victims in terms of their adherence not only to the law but also to follow the various guidelines issued or adopted by the government.
- Strengthening capacity of law enforcement officials and other first responders towards early identification of victims of TIP.
- Conduct public awareness programs, especially in the vulnerable areas, to help understand the crimes and laws of TIP and GBV.
- Coordination at the government level to be strengthened between different Ministries and Departments relevant to TIP and GBV, and between the government and non-government stakeholders for more coherent responses.
- Ensuring reach and access of services in smaller towns and rural areas, by setting-up shelter homes where they are currently not available to ensure equitable geographical distribution depending on the scale of the problem.

Recommendations for law enforcement agencies

- Strengthening law enforcement responses through training and capacity-building of police, prosecutors and judges, for increased efficiency of screening and identification of victims and criminal justice delivery.
- Comprehensive training on the legal framework for police, prosecutors, and judicial officers, for building a thorough understanding on the substantive and procedural aspects of the laws on TIP and GBV and their application.
- Ensure victim-centric investigation procedures and victim participative criminal justice processes to encourage reporting of crimes.

Recommendations for service providers

- Sensitization and awareness building on human trafficking within communities and the general public, especially highlighting the modus operandi of traffickers.
- Ensuring reach and access of services in smaller towns, rural and remote areas, in partnership with the government, by setting-up more help-centers/shelter homes.

- Develop effective referral mechanisms that allow victims to access services at the nearest location possible.
- Individual care and exit plan for rehabilitation and reintegration, to enable victims availing shelter home services for rehabilitation (especially economic) and re-integration within the community, either with or without their families, based on their involved participation in the process.

CHAPTER 1

Introduction

1.1 The Problem Statement

Gender-based violence (GBV) and trafficking in persons (TIP) continue to be major concerns in India, Nepal, and Sri Lanka. In India and Nepal, the number of both GBV and TIP cases is high. In Sri Lanka, while GBV is high, there are comparatively fewer registered cases of TIP. Commercial sexual exploitation and forced labour are the two dominant forms of trafficking in India and Nepal while in Sri Lanka, trafficking for forced labour (especially of outward-bound migrants) emerges as more common. Globally research² suggests that female victims are more significantly affected by TIP. In 2018, for every 10 victims detected globally, about five were adult women and two were girls. In the 2016-2018 data period, 46% victims were women and 19 % girls. Through a gender lens and a case law analysis, UNODC noted intersections between human trafficking and domestic and intimate partner violence, where victims were subjected to multiple forms of GBV prior to and while being trafficked.

A composite understanding (or the absence) of these GBV and TIP and their intersections, directly affects the identification and screening of victims. This deprives them of seeking justice and accessing services which may be limited, inadequate and uncoordinated, with several in-built barriers.

This study is premised on exploring a deeper understanding of the intersections of TIP and GBV; its resultant impact on identification of victims; and subsequent adequate and appropriate service delivery to the them. It also looks at whether these are in need of integration or separation.

An analysis of research findings revealed that gender-based violence (GBV) and trafficking in persons (TIP) is highly prevalent in various forms in India, and Nepal; whereas in Sri Lanka, GBV is highly prevalent, but TIP shows comparatively fewer registered cases. Commercial sexual exploitation and forced labour are the two dominant forms of trafficking in India and Nepal; whereas trafficking for forced labor (especially of outward-bound migrants) emerges as a more common form in Sri Lanka. In their understanding of GBV and TIP, a majority of the interviewed respondents fell short of comprehending the entire gender spectrum, as well as the various forms of TIP. Common challenges identified in the three countries in screening and identifying victims of TIP underlined the – lack of protocols and specific set of indicators; lack of awareness and appropriate training and capacity building among the first responders (police, border and immigration); lack of understanding among victims; victim’s perception of shame, stigma and societal pressure; and lesser priority and focus on internal trafficking especially in Nepal and Sri Lanka.

2 UNODC (2020)

While the three countries have a wide array of laws dealing comprehensively with both TIP and GBV, its implementation for effective justice delivery is lackadaisical. In terms of service delivery while India and Nepal have robust frameworks for TIP, it is not the same in Sri Lanka, although common services can be tapped through public services. Along with country-specific challenges in service delivery, financial and human resources are common denominators that impact the economic rehabilitation of victims.

An overwhelmingly large number of respondents in India believe that services should not be integrated for GBV and TIP victims. Majority of the interviewed victims in Nepal advocate integration of services, whilst the NGOs and law enforcement agencies are equally divided between integration and separation of service delivery. Most of the service providers in Sri Lanka support separate services for TIP and GBV as an ideal situation; whereas law enforcement officers believe that access to a safe shelter is paramount over maintaining a separate shelter. Even with divergent opinions on separate or common shelters, almost all stakeholders believe that services can and should be integrated wherever possible.

Perspectives on integration or separation of services are predominantly based on the existing service delivery frameworks ‘in theory’ vis-à-vis their implementation ‘in reality’, availability of financial and human resources; and the lived experiences of the victims and service providers.

The Covid-19 pandemic had a potentially far-reaching, long-term negative impact on trafficked persons and those facing GBV. Although at this stage, it is not possible to assess the full impact of the pandemic on human trafficking, it is clear that the socio-economic consequences have led to exacerbated vulnerabilities of already marginalized people to trafficking and exploitation.

1.2 Background of the Project

The Research Project on ‘*Optimizing Screening and Support Services for Gender-based Violence and Trafficking in Persons,*’ is supported by the Office to Monitor and Combat Trafficking in Persons (J/TIP), United States (US) Department of State, and implemented by The Asia Foundation. The research was carried out over a period of 18 months with its geographic focus on India, Nepal, and Sri Lanka. It offers useful comparisons across contexts that include destination, transit, and source areas.

The Asia Foundation (TAF) partnered with local organizations in the three countries to conduct research and disseminate its findings. The Foundation’s offices in India, Nepal, and Sri Lanka partnered respectively with FXB India Suraksha (FXBIS) in India; with Social Science Baha (SSB) in Nepal; and in Sri Lanka with the Centre for Poverty Analysis (CEPA).

The goal of this project is to improve the efficiency and effectiveness of screening and service provision to victims of TIP and GBV in diverse contexts. By means of primary and secondary research, the project seeks to identify promising practices and challenges in integrating or separating services for victims of human trafficking and GBV, and provide recommendations to improve services and outcomes for victims across vulnerabilities.

1.3 Purpose of the Report

This Report is a Regional Analysis of the country reports from India, Nepal and Sri Lanka. The research fills a persistent knowledge gap that results in missed opportunities to provide

more effective and efficient services to TIP and GBV victims. By investigating how GBV and TIP victims are identified and access services from different stakeholders, the research will contribute to the development of guidance to maximize the outcomes of scarce resources while providing services for TIP and GBV victims.

1.4 Overview of Research and Information Collection Process

The research is informed by secondary data and literature review, study of legal frameworks and qualitative data analysis. Primary data collection included in-depth Key Informant Interviews (KIIs) with diverse groups of stakeholders, and Focus Group Discussions (FGDs) in India, Nepal, and Sri Lanka. The regional analysis report is based on the findings and key recommendations from the country-level reports.

The desk review and research for this report, field visits, and writing of reports by the three local research partners (LRPs) was completed between November 2019 and February 2021. The Foundation conducted an Inception Workshop on 11-12 November 2019, between the lead TAF country office staff, the three LRPs, and the Principal Investigator (PI) of the project to build the research tools and roll out strategy. To promote consistency and quality data collection and analysis across countries and research partners, the project began with an intensive three-month inception phase.

1.4.1 Country Assessment Reports

A desk review/ country assessment was conducted in the three project countries by the LRPs during the inception phase. The objectives for the Country Assessment Reports were to serve as a background and a foundational tool for the main report; identify some key gaps and challenges regarding convergence of support services for GBV and TIP victims; and as a reference in developing tools for multi-stakeholder field research. The Country Assessment Reports from India, Nepal, and Sri Lanka were finalized in March 2020.

1.4.2 Key Informant Interviews

Qualitative research methods were to be followed in the field study through in-depth interviews with the aid of tailored survey questionnaires.

In India, the field research focused on the states of Delhi, Goa, Kerala, Madhya Pradesh, Maharashtra and Manipur, which were selected on the basis of their regional coverage across the vast geography of the country, and based on these states as being either emerging or existing hotspots for human trafficking.

In Nepal, data collection was carried out in Kathmandu as well as the outlying districts of Morang and Sunsari in Province 1, and Banke in Lumbini. These were chosen mainly due to their proximity to the Indian border, a fact particularly relevant for collection of information on cross-border trafficking and responses by relevant stakeholders.

In Sri Lanka, the districts of Colombo, Batticaloa, Jaffna, Matara and Nuwara Eliya were selected to maintain an ethno-linguistic balance, to capture data from high-migration districts and due to the presence of GBV shelters in some of these districts.

Data was collected from three sample groups, namely:

- Service Providers – including shelter homes and government/ NGOs providing services;
- Law Enforcement Officials – including police, prosecutors, judicial officers, border and immigration officials; and
- Victims – comprising GBV and TIP victims. ‘Victims’ for purpose of this study were defined as those who were ‘legally identified’ through the criminal justice processes.

The project plan mandated 70 stakeholder interviews in each country – 10 shelter homes and 20 NGOs; 20 law enforcement officials; and 10 GBV and TIP victims each. The initial project proposal had, however, also recognized the fact that in Sri Lanka, where only 15 cases of TIP were reported in 2017, and only one TIP victim received care at a government shelter, it may not be possible to identify 10 victim respondents. The project proposal also acknowledged that given fewer shelter homes in Sri Lanka, the sample size for shelter home interviews may be smaller.

In addition, two focus group discussions were to be held in each country – one with service providers and another with law enforcement officials.

Interviews were conducted by the three research partners using structured questionnaires and key in-depth interviews. CEPA and SSB both exceeded their targeted 70 interviews, while FXBIS completed the mandated 70.

FXBIS included its four pilot testing interviews (each with a police official, shelter home personnel, a public prosecutor, and an NGO personnel) as part of the final data collection due to the impact on mobility caused by the COVID-19 pandemic, and the resultant lack of access to respondents for the KIIs. FXBIS was also unable to interview immigration officials and conduct the FGD with law enforcement officials due to the lack of timely clearances from the relevant authorities and the non-availability of officials engaged in essential COVID-19 response duties (as per information received from the research team).

CEPA interviewed only four GBV victims who had availed of shelter facilities in the past. Since shelter homes denied access due to their security protocols to interview the resident victims of GBV and TIP, CEPA could not complete the mandated 20 victim interviews or interview any TIP victim.

Table 1: Data Collection Figures of Research Partners

Country	Research Partner	Total Interviews	Stakeholders Interviewed	Female	Male	FGDs
India	FXB India Suraksha	70	<i>Victims</i> – GBV 12, TIP 08; <i>Service Providers</i> – NGOs 24, Government 06; <i>Law Enforcement Officials</i> – 20	46	24	One FGD with service providers.

Country	Research Partner	Total Interviews	Stakeholders Interviewed	Female	Male	FGDs
Nepal	Social Science Baha	72	<i>Victims</i> - GBV and TIP 10 each; <i>Service Providers</i> – NGOs 21, Shelter Homes 10, Government Officials 02; <i>Law Enforcement Officials</i> – 17	54	18	One FGD each with law enforcement officials and service providers.
Sri Lanka	Center for Poverty Analysis	78	<i>Victims</i> – GBV 04; <i>Service providers</i> – 54; <i>Law Enforcement Officials</i> – 20	59	19	One FGD each with service providers and with Immigration Officials.

1.4.3 Research Tools

Research instruments were developed by the PI in the form of detailed questionnaires for each set of stakeholder interviews. Two sets of FGD facilitation tools underwent multiple reviews till they were finalized.

1.4.4 Training of Researchers

The first draft of the questionnaires was utilized by the PI to deliver a focused training for the researchers to get them fully acquainted with the project and its objectives; and to better equip them to navigate sensitivities while working with TIP and GBV victims, service providers, and law enforcement personnel, along with ethical research considerations, and self-care of researchers. The training addressed individual country contexts while ensuring that there was synergy in methodology across practices of the three LRPs.

The PI developed two documents - Guidelines for the Ethical Conduct of Research and Data Collection, and Handout on Self-Care for Researchers/ Interviewers. The Guidelines were based on international human rights instruments, and meant to ensure that the rights of TIP and GBV victims would be considered and respected during their interviews.

The training workshops with the LRPs focused on – finalizing the content of the questionnaires; standardizing the research approach; and providing guidance on trauma-informed ethical and safety measures to protect the health and identity of victims and researchers who could probably face negative repercussions as a result of their participation in the study.

1.4.5 Pilot Testing of Questionnaires

The LRPs pilot tested the questionnaires with service providers and law enforcement officials. No pilot testing was conducted for the victims' questionnaires to prevent any inadvertent trauma that may occur as a result of their preliminary testing. The feedback and recommendations for modification by the LRPs from the pilot testing were incorporated into the final version of all

the questionnaires for all stakeholders after which they were translated into local languages by the LRPs.

1.5 Impact of the COVID-19 Pandemic on the Data Collection Process

The outbreak of COVID-19 in 2020 and the resultant lockdown/ curfew in the three project countries severely impacted the field data collection component of the project, which was to commence from March 2020. The project implementation teams comprising of TAF, LRPs and the PI had to engage rapidly in adaptive project management to re-strategize the implementation of the activities, specifically, the data collection. Although the lockdowns/ curfews were lifted a couple of months later in the three countries, government regulations and guidelines restricted movement and the gathering of groups, making it impossible to conduct the research according to previously planned methods of one-on-one key stakeholder interviews. Consequently, it was decided that the entire data collection process would be planned and conducted remotely.

The COVID-19 situation had opened opportunities based on the need to explore options beyond commonly used data and information collection methods for qualitative research, such as face-to-face interviews and physical FGDs. Despite the initial hesitancy with using technology for qualitative research, TAF and the LRPs considered it imperative to consider using different tools for Internet-Mediated Research, to accomplish the project objectives and ensuring timelines.

The PI drafted ‘Guidelines for the Ethical Conduct of Research and Data Collection’ to guide the data collection and data protection under this research. The research team conducted a regional workshop to discuss and adopt data management protocols addressing challenges of telephonic interviews and interviews conducted through digital platforms. The research partners ensured the privacy of the research respondents, and that of the collected data. All personal information were anonymized to protect respondent’s identity. A detailed consent form was administered to all respondents in their preferred language and any recording was made upon willing approval by respondents. The collected data was securely saved on local systems and will be retained for two years from the close of the research.

1.5.1 Limitations and Challenges of Online Key Informant Interviews

All the three research partners reported serious challenges in shifting from physical to virtual methods of interviewing. Poor internet connectivity for setting up online interviews using the different platforms (Zoom, etc.) was a considerable challenge, especially where the interviewees were based in remote locations, and in some cases lacked adequate knowledge in using online mediums. Research partners had to, therefore, switch over to phone interviews in some instances, without any visual contact with the interviewee. In terms of qualitative research, the importance of a simulated face-to-face interaction with the respondent cannot be overstated. Visual stimuli can help respondents be more forthcoming in an atmosphere of trust and enable interviewers to obtain more non-verbal cues from the interview.

With users becoming more conscious of data security, it was imperative to choose technology considering its security and privacy policy in case of ethical scrutiny. Another important aspect for the LRPs was to plan detailed measures to store the data securely since usual procedures could not be followed given the use of online technologies.

Gaining access and seeking approvals from higher authorities for interviewing government functionaries was specially challenging for the LRPs in the absence of physical meetings. Different methods had to be devised by the research teams to seek the consent of the interviewed stakeholders, such as electronic signatures, email correspondence, verbal consent and sharing consent forms online.

The online/ phone interviews took longer than expected and interviewers had to face frequent breaks and disruptions for reasons of poor internet connectivity, or if the interviewee had to discontinue with the interview for one reason or the other.

A conscious decision was taken not to interview victims online, but to explore methods of interviewing them face-to-face, as and when the lockdowns were eased in the three countries. Even after the easing of lockdowns/ curfews, there were restrictions from shelter homes to not allow access to outsiders due to fear of infection. The data collection strategy was once again revised specifically for victim interviews. The LRPs collaborated with their own local networks who had access to TIP and GBV victims, trained their researchers, and got the interviews conducted on the basis of the questionnaire. In India and Nepal, the requisite 20 victim interviews were made possible with the assistance of local partners of FXBIS and SSB respectively. In Sri Lanka, however, in order to protect the privacy and confidentiality of the victims, access to current shelter residents was strictly not allowed. Instead, four women who had previously received shelter support in the past year were interviewed. Although a research gap, the reluctance on the part of the shelters to give access to its residents could also be viewed as a positive step by these organizations to ensure that they remain safe and that their privacy and the locations of the shelters are protected.

1.6 Order of chapters

Chapter one outlines the research background, its methodology, limitations especially in light of the Covid-19 pandemic. Chapter two provides an analysis of the key findings from the three country reports and examines the understanding of TIP and GBV, their intersection, and its implication on identification and service delivery. Chapter three concludes with recommendations for different stakeholders to improve service delivery for victims of GBV and TIP.

CHAPTER 2

Major Findings from India, Nepal, and Sri Lanka

2.1 Understanding of Trafficking in Persons and Gender-based Violence

2.1.1 Situation Analysis of TIP and GBV

India

Situation Analysis of GBV - In India, the Crime in India annual reports brought out by the National Crime Records Bureau (NCRB), under the Ministry of Home Affairs (MHA) captures data on 'Crime against Women', highlighting the various forms of violence against women. As per this Report, 405,861 cases of crime against women were registered in 2019, an increase of 7.3% over 2018. A majority of the cases under the Indian Penal Code (IPC) in 2019 were filed under the Sections of 'Cruelty by Husbands and Relatives', followed by 'Assault on Women with Intent to Outrage her Modesty', 'Kidnapping & Abduction of Women' and 'Rape'. The crime rate (registered per 100,000 women population) increased over the years, in 2019 it was 62.4, in 2018 - 58.8, in 2017 - 57.9, and in 2016 - 55.2. Among the selected states for study, Maharashtra tops the list with the maximum cases of GBV in 2019, ranking third in the country with 37,144 cases. Madhya Pradesh (MP) follows with 27,560 cases and Delhi with 13,395 cases, Kerala with 11,462 cases, and Goa and Manipur registering 389 and 266 cases respectively.

The all-India data, however, does not represent the actual magnitude of violence experienced by women, since most of the crimes are grossly under-reported due to social stigma, and ineffective formal mechanisms to address the violence.

Situation Analysis of TIP - Human traffickers exploit domestic and foreign victims in India and traffickers exploit victims from India abroad. Internal forced labor constitutes India's largest trafficking problem; traffickers use debt-based coercion (bonded labor) to compel men, women, and children to work in agriculture, brick kilns, rice mills, embroidery and textile factories, and stone quarries. India remains a major source, transit and destination country for thousands of men, women and children being trafficked internally and cross-border every year, mainly for commercial sexual exploitation and forced labor³.

Trafficking patterns indicate that about 90% is domestic (i.e. intrastate and interstate) and 10% transnational.⁴ This volume of internal trafficking is because of the vastness in the geographical landscape of the country and its diversity. For cross-border trafficking, India is a destination for victims mainly from Nepal and Bangladesh due to its long and porous borders, and from

3 US Department of State (2021)

4 NHRC, UNIFEM, ISS Project (2002-2003); Murugan Bala P. (2020)

Europe, Asia, Central Asia, and Africa.⁵ An analysis of crime figures from NCRB⁶ for the past five years reveal that there was a surge in reporting of trafficking cases in 2016, marking the highest number, after which there has been a gradual decrease, with 2019 accounting for the lowest number of cases registered. The decrease in the number of registered cases does not reflect a fall in persons trafficked, as their numbers in 2019 surpassed the previous two reporting years of 2018 and 2017. Of the total trafficked victims, the number of female victims is higher than men, mostly in the cases of adult victims⁷. The secondary literature review and KIIs reveal that the official statistics do not present a comprehensive picture of the trafficking situation in the country (and the selected states) in terms of reporting of crimes.

Among the states selected for the study, Maharashtra (282) reported the highest number of trafficking cases in 2019 followed by Kerala (180), Delhi (93), Madhya Pradesh (73), Goa (38) and Manipur (9)⁸.

Modus operandi and emerging hotspots for TIP - Traffickers use means such as, false employment promises, 'boyfriend' relationships, and arranging sham marriages to lure women and girls into sex trafficking. In the case of forced labor, debt bondage is used to coerce people. Over time, the modus operandi along with traditional methods of recruiting victims into trafficking includes cybercrime or online trafficking. KIIs reveal that the places of exploitation have experienced a shift from the traditional brothel-based to private apartments; lodge/ hotels; beauty and massage parlors for commercial sexual exploitation; homes for domestic servitude; and informal work places for forced labor.

Nepal

Situation Analysis of GBV - While the issue of GBV covers a wide spectrum of issues, almost all the focus in Nepal is on physical violence against women.⁹ This could be because of the high incidence of violence against women, particularly in the domestic sphere. The 2016 Nepal Demographic and Health Survey revealed that a third of all married women in Nepal have experienced violence, both physical and emotional, from their partners¹⁰, and that two-thirds of those women had not shared their experiences with anyone or sought help. The high degree of domestic violence in Nepal is borne out by the number of complaints received by the National Women's Commission (NWC). In 2017/18 and 2018/19, more than 90% of complaints received by the NWC were related to 'domestic violence' as opposed to general 'violence against women'. Similarly, data available from the Nepal Police shows that reporting on GBV has increased significantly over the last quarter century, from just 663 cases in 1996/97 to 15,692 in 2019/20.¹¹

Despite the increase in the reporting, there remains the challenge of under-reporting, arising mainly from fear of retaliation and stigma. There is a fair amount of information available on

5 UNODC (2011)

6 National Crime Records Bureau (2017/2018/2019)

7 Crime in India Reports (2017-2019).

8 Crime in India Report (2019); National Crime Records Bureau, Government of India.

9 OPMCM (2012)

10 MoHP (2017)

11 NWC (2020)

GBV in Nepal, but no reliable data, if any, is available on violence faced by men and people of other genders.

Situation Analysis of TIP - Information on TIP is sparse, scattered, and incomplete. A government report even stated upfront that official information and statistics are not available,¹² mainly because the clandestine nature of trafficking makes it difficult to track such incidents; victims have few incentives to be truthful even when discovered; numerous contending definitions of what constitutes trafficking, any one of which may be used while collecting data, compromising the quality of the information; and the vast dichotomy between the official TIP figures vis-à-vis the ‘rescue’ figures provided by NGOs indicating the possibility of TIP cases being under the radar. Compounding the situation is that given the high degree of foreign employment in the country, there is some conflation between labor migration and human trafficking, even if there is no clear demarcation between violations of the rights of migrant workers due to fraudulent practices of the recruitment agencies and/ or employers, and the act of trafficking and the subsequent investigations of allegations.

In terms of numbers available with the Nepal Police, starting in 1997-1998 when 130 cases of trafficking were filed, the number has fluctuated from as low as 40 in 2001/02 to a record high of 308 in 2017/18 and 247 cases in 2018/19. Data from five years show that of the TIP complaints, 43% were as a result of the victims being lured, 34 % involved manipulation, fake marriages accounted for 3%, employment to 4%, and foreign travel to 2%.¹³ The different scales of domestic trafficking and transnational trafficking are, however, not known since neither the NWC nor the Nepal Police have disaggregated data.

During the Nepali fiscal year, police conducted 97 investigations involving 240 suspects, the Office of the Attorney General (OAG) initiated prosecution in 170 cases against 415 suspects, and district courts convicted 202 traffickers in 88 cases, all under the Human Trafficking and Transportation Control Act, 2007 (HTTCA). This is a decrease compared to initiating 258 investigations involving 524 suspects, initiating 407 prosecutions from previous years, and convicting 231 traffickers during the previous reporting period.¹⁴

The entertainment sector has seen a rise in GBV incidents and internal human trafficking through women in prostitution/ forced prostitution and forced labor. A 2018 study suggested that 17% of entertainment industry workers (including those working in massage parlors, small eateries and ‘cabin restaurants’, *dobori*¹⁵ bars, dance bars and live-entertainment restaurants, guest houses, among others) are below 18 years; 62% had been engaged in the sector since childhood; 27% were in conditions of forced labor; 60% were at risk of sexual exploitation (with 6% already involved); and 72% already subject to violence of some kind (including withholding of payments, verbal abuse, threats, beatings, sexual assault, etc.).¹⁶

12 MOWCSC (2019)

13 NHRC (2019). Although the report does not specify which five year period the data covers, from the narrative it seems likely that it is for the five years previous to and inclusive of the fiscal year 2017/18.

14 US Department of State (2021)

15 *Dobori* is a form of Nepali folk duet, and drinking spots featuring *dobori* singers along with mainly female servers/ hostesses are very popular across Nepal.

16 The Freedom Fund (2019)

Modus operandi - There is a general consensus among interviewed stakeholders that trafficking has transformed in terms of nature and patterns over time in Nepal. It has now become part of organized criminal groups engaging in activities such as, hazardous domestic labor, forced prostitution, organ trafficking and, more recently, using women for drug trafficking.

Sri Lanka

Situation Analysis of GBV - In Sri Lanka, quantifying the magnitude of GBV and TIP is made complicated by the absence of a publicly accessible central database. Of the few available sources, the Grave Crimes Extract of the Sri Lanka Police is widely used as a verifiable data source for both TIP and GBV. The numbers however, tend to be categorized in different ways, making it difficult to ascertain the actual number of victims identified. Gender disaggregated data is generally not available, making it difficult to determine the prevalence of grave crimes committed against women and men. The nature of data collection – by types of crimes – and the under-reporting may imply that police statistics capture “only a fraction of incidents of violence”.¹⁷

The most recently published national survey data on violence against women indicates that 21.4% have experienced physical violence, 9.7% sexual violence and 24.8% of women have suffered physical and/or sexual violence at the hands of a partner or non-partner.¹⁸ A scoping review of the past 35 years estimated that 25-35% of all women had experienced violence by their partners in their lifetime. Intimate partner violence was found to be prevalent between a wide range of 20 to 72%, among women in Sri Lanka.¹⁹

Findings from another study indicated that of those surveyed, 36% of ever-partnered²⁰ males were found to have been sexually or physically violent against their female partner whereas 17% were found to have been sexually violent against a woman.²¹ This study also reveals the use of emotional violence – an area that has not received much attention in research – with over 40% of men revealing emotional abuse of their partner. Less than five per cent of men expressed having experienced sexual violence by a male partner whereas just over 12% of men reported having perpetrated sexual violence against another male.

Situation Analysis of TIP - While multiple sources of data are available for GBV, for TIP which is treated as a separate form of violence in government statistics, only few data sources are available. The Sri Lanka Police Department reports procurement and TIP together (in the Penal Code, procurement and trafficking are treated under two different Sections – 360A and 360C). While the number of reported cases is relatively low compared to India and Nepal, coupling procurement and trafficking together as well as the lack of disaggregated data by gender makes it impossible to form a clear idea of TIP prevalence. A five-year analysis of the Grave Crime Abstract of the Sri Lanka Police highlights the low number of filed/ recorded cases on human

17 Leader of the Opposition's Commission (2014)

18 Department of Census and Statistics (2020)

19 Guruge Jayasuriya-Illesinghe, Gunawardena and Perera (2015)

20 Ever-partnered denotes individuals who currently have or have had a relationship at some point in their life, whether it is in marriage or out of marriage, such as cohabiting, separated, divorced, widowed or dating.

21 De Mel, Neloufer, Peiris, Pradeep and Gomez, Shyamala (2013)

trafficking – 9 cases in 2019; 23 cases in 2018; 15 cases in 2017; 26 cases in 2016; and 19 cases in 2015.

The Criminal Investigation Department's (CID) anti-trafficking unit and police initiated 14 trafficking investigations (six sex trafficking and eight forced labor), compared with 10 investigations during the previous reporting period. The government initiated 27 prosecutions (16 under procurement, two under trafficking, and nine under sexual exploitation of children statutes), a decrease from 46 prosecutions (35 under the procurement statute) during the previous reporting period. The government secured the conviction of three traffickers under the procurement statute 360(A) and acquitted the defendants in three cases compared with the conviction of 10 traffickers (seven for procurement and three for trafficking) in the previous reporting period²².

There is a general tendency in Sri Lanka, as a source-country exporting labor, to view trafficking in terms of the external labor migration process. Since female migration outpaced the number of migrating men for years, there is a further trend to view women as the most vulnerable to trafficking, despite reported government data to the contrary – in 2018, 56 out of the 66 potential TIP victims identified were men.²³ Despite the mobility of women within Sri Lanka for work, especially to the Export Processing Zones mostly located in the urban centers, TIP in this context is not well-understood. Instead, such young women are viewed as more vulnerable to GBV.²⁴ The question of whether trafficking within Sri Lanka for the sex trade is considered within this framework is also doubtful. Overall therefore, the question of how much the existing data reflects the actual context of GBV and TIP prevalence is difficult to ascertain, and the gaps have been recognized as challenges in Sri Lanka.

Conclusion

- GBV and TIP are highly prevalent in various forms in India, and Nepal; whereas in Sri Lanka, GBV is more than TIP. Commercial sexual exploitation and forced labor are the two dominant forms of trafficking in India and Nepal; whereas trafficking for forced labor (especially of outward-bound migrants) is more common in Sri Lanka.
- With regard to responses of the governments, in India both internal and cross-border trafficking is focused upon; in Sri Lanka external trafficking for labor is prioritized; and in Nepal more attention is now shifting to internal trafficking, especially of women and girls, along with cross-border trafficking.
- Over time the *modus operandi* along with the traditional methods of recruiting victims into trafficking, including cybercrime or online trafficking, and cybercrimes against women are on the rise in India and Nepal.
- There are challenges of data collection and its accuracy in all the three countries due to reasons ranging from lack of reporting to institutional and legal gaps in recording instances, especially of human trafficking.

22 US Department of State (2021)

23 US Department of State (2019)

24 Hewamanne S. (2008)

- Whilst gender and age disaggregated data on TIP is available in India, there is an absence of such disaggregation in Nepal and Sri Lanka. There is, however, no reliable data available, if any, on GBV faced by men and people of other genders in the three countries.

2.1.2 Vulnerability Factors Perpetuating TIP and GBV

India

The profiles of the 20 GBV and TIP victims interviewed for the study show poverty, age, lack of education, disturbed family situation and social component (marital status) as probable factors for vulnerabilities to trafficking. Some TIP victims mentioned that their quest to live a violence-free life forced them to run away from their abusive homes only to be trapped by traffickers who forced them into prostitution. KIIs with Law Enforcement Officials (LEO) and service providers pointed towards an obvious link between GBV and TIP resulting from socio-economic reasons, aspirational migration, societal norms and pressure, and physical and other forms of abuse within the family/or by known persons.

It emerges from primary and secondary research that gender discrimination and gender violence are among the major causal factors for trafficking of women and girls. The intensity and the magnitude at which they experience violence due to their gender, 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 and social. The heinousness with which it is meted out against women,²⁵ increases their vulnerability towards trafficking.

Additionally, socio-cultural pressures and norms such as, fear of arranged/ forced marriage, stigmatization faced by women/girls after sexual abuse, demands for dowry and dowry deaths, child marriage, child labor and intergenerational prostitution practised by certain communities, have pushed many young girls and women to escape their disadvantageous situation only end up in further exploitative situations.

Nepal

Violence against women in Nepal is compounded by the persistence of entrenched patriarchal attitudes, gender stereotypes and harmful practices.²⁶ Trafficking, on the other hand, is facilitated by factors such as domestic violence, dysfunctional family, separation from family, critical poverty, and traditional practices such as child and forced marriages. GBV is a leading cause of TIP in Nepal, since GBV makes women more vulnerable to being trafficked.

A host of social, cultural, economic and political factors compel individuals to migrate for work, which has emerged as a major vulnerability factor for female trafficking. Poverty is the primary reason vulnerable women migrate under conditions that increase their chances of being trafficked.²⁷ There is also evidence that Nepali women migrant workers experience a continuum of GBV and harassment before, during, and after their migration.²⁸ Women often cite violence

25 Bhartiya Stree Shakti (2017)

26 UNHRC (2019)

27 Maiti Nepal (2018)

28 Global Alliance Against Traffic in Women (2019)

and discrimination at home, primarily from husbands and male family members, as a major push factor for their migration. Extreme economic pressures to provide for families, maintain ‘family honor’, and repay debts, together with linguistic, social, and cultural barriers that women migrant workers face during the migration process increase risks of GBV and limit opportunities for redress.²⁹ To compound the situation, women’s involvement, either voluntary or forced, in commercial sex has created a false perception and stigmatized all migrating women, leading to restrictions on their movement forcing them to use irregular channels to migrate. This makes them more vulnerable.

“We go for foreign employment due to poverty in Nepal and when we go abroad, we pay a lot of money to the agents in Nepal. They orient us on what happens abroad but those things do not happen when we reach there. After reaching there, we are sold either to companies or to the houses” (Victim of TIP, Female, Kathmandu, 5 September 2020).

Similar factors propel organ trafficking, and as per a 2015 study³⁰ the majority of victims of kidney trafficking are from the poorest and most marginalized communities. Illiteracy and ignorance also make them vulnerable to fraud and deception by brokers. Of the 36 ‘donors’ identified by the study, 30 were men.

The profiles of 20 GBV and TIP victims interviewed indicate certain commonalities – a majority of the victims belonged to the marginalized population groups, dalits³¹ and janajatis³²; those from weaker economic backgrounds appeared more vulnerable to both GBV and TIP. Many had only completed primary level education or lower, thus indicating a possible connection between low levels of education and vulnerability to TIP and GBV.

Sri Lanka

Several factors are commonly identified as perpetuating GBV and TIP, such as the low socio-economic status of women in society, which pushes them to make choices that lead to vulnerabilities. Women from poorer regions of the country and generally understood to be from rural areas are considered most vulnerable to violence. With regard to GBV however, NGOs emphasized that violence permeates these socio-economic boundaries as young women in particular can become highly vulnerable to abuse in intimate relationships. Secondary data analysis reveals that marital status and gender identity are the two key factors. In terms of gender, women are consistently framed as the weaker sex and therefore, most at risk of experiencing violence, either at home, in public spaces or in the workplace. Similarly, married women have been found to be at a higher risk of experiencing intimate partner violence. The absence of unmarried women could be due to under-reporting of such instances as well.

Where TIP is concerned, all these socially ascribed identities, along with the lack of stable livelihoods in rural areas are seen to push women to seek migration as an option owing to the burden of sustaining the household economy. In contrast, men are seen as more ‘worldly’ and able

29 Global Alliance Against Traffic in Women (2017)

30 The Asia Foundation (2015)

31 Dalits (formerly, the ‘untouchable’ caste in Hinduism)

32 Indigenous ethnic groups of Nepal.

to negotiate the public terrain including migration and avoid the risks of being exploited. This again indicates the persistence of gendered roles and patriarchal notions of power imbalances.

Conclusion

- Common ‘push factors’ for TIP in the three countries are - poverty and illiteracy; disparities in distribution of income, employment and livelihood options; discrimination, traditional customs, and societal norms; unsafe and irregular migration; violence within family settings; lack of awareness of the modus operandi of traffickers; and prohibitions on travel and work and certain age-related restrictions on female labor migration to some of the Gulf Cooperation Council (GCC) countries.
- Planning preventive measures for human trafficking needs an in-depth comprehension of the vulnerability factors. This study however, suggests that in the three countries, ‘reactive’ responses to human trafficking, rather than ‘proactive’ prevention strategies, are the norm.

2.1.3 Understanding of TIP and GBV and their Intersections

India

Conceptual clarity of GBV and TIP

GBV predominantly understood as violence against women - A majority of the interviewed respondents understand GBV only as violence against women, further limiting it to domestic violence that is perpetuated by men or other women within the family. Few stakeholders, mostly NGOs and government officials hold a broader understanding of GBV. Violence experienced by men and third gender is seldom spoken of due to the lack of social acceptability; division of feminine and masculine type of behavior, attributes and stereotyping; and ignorance towards the pain and abuse of the transgender community due to their lesser numerical representation in the total population, makes them ‘voiceless’ and ‘invisible’. However, all the respondents unequivocally accepted that GBV impacts an overwhelming number of women.

Understanding of the nuances and various forms of TIP - The stakeholders’ comprehension of human trafficking is segmented. Some had clear idea about its various facets – cross-border/ domestic; various purposes for which it is done; and its victims being men, women, children and transgender persons. Many others relate trafficking only to prostitution and TIP crimes committed mostly against women and girls. Almost all respondents understand the process of human trafficking. Seventeen of the 20 victims reveal a clear understanding of trafficking while three TIP victims were yet unable to comprehend and explain human trafficking.

Intersectionality between GBV and TIP

The literature review reflects a clear intersectionality between GBV and TIP and the impact one has on the other. The experiences of violence, abuse and exploitation runs in a continuum for persons experiencing GBV, and the linkages to being trafficked.

Understanding on GBV leading to TIP and vice versa - An unequivocal understanding among all the respondents (Law Enforcement Officials, NGOs, Shelter Homes, Government Officials and the Victims) of GBV creating more vulnerability towards TIP is revealed in the KIIs. All 20 victims unequivocally expressed that GBV creates more vulnerability to trafficking. The

major factors identified by the respondents are – socio-economic disadvantage, physical abuse, emotional abuse and mental trauma, unfounded trust of outsiders as a result of extreme violence faced at the hands of spouse and/or family members and loss of faith in them, and the quest to evade family/spousal violence.

“I wanted to escape from my abusive-alcoholic husband... so one day getting an appropriate opportunity I ran away from my home and later got trafficked by an unknown person into prostitution” (TIP Victim, Female, Delhi, 28 August, 2020).

Only three victims could explain GBV in a TIP situation, and the other 17 either “*didn’t know*” or had “*no response*”. The other stakeholders’ responses were mixed, with a section of them identifying the link clearly (“*violence on women in prostitution due to fantasies of the customers*”), and some others either stating – “*only GBV leads to TIP*” or not answering the question. The FGD with service providers (NGOs, Shelter Home and Government Officials) brought out the strong interlinkages between GBV and TIP and vice versa.

“Not only does GBV cause trafficking, but 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 happen in case of commercial sexual exploitation only, but also in labor trafficking” (Government Official, Male, Maharashtra, 01 July 2020).

Understanding on commonality of experiences of the victims of GBV and TIP - A majority of the respondents related probable shared experiences between victims of GBV and TIP as – psychological, physical, sexual, labor, wage related, stress, use of force. Other factors such as male perpetrators (mostly), lack of self-worth, control over one’s life, family support, trust, and the feeling of being misjudged in society were also highlighted.

“Dono mein hi marna peetna aur pareshani hai...samaj donon ko hi izzat nahi det?” (in both the situations, there is violence and harassment... society does not give respect to either the victim of TIP or GBV). (TIP Victim, Female, Delhi, 14 October, 2020).

A few respondents believed that, victims of GBV and TIP have very disparate journeys, with the latter experiencing more painful encounters than the former with regard to perpetrators.

Nepal

Conceptual clarity of GBV and TIP

GBV predominantly understood as violence against women - The interchangeable meanings of Violence against Women (VAW) and GBV have led to the latter’s focus being considered a solely ‘women’s issue’.³³ The patriarchal nature of Nepali society has also ensured that women are perceived as more vulnerable to GBV. Legal procedures too are seen as more women-centered as the likelihood of a woman being a victim of GBV is much higher than for male or other genders (Interview with police official, Women, Children and Senior Citizen Service Center, Sunsari District, 11 September 2020). Eighteen of the 20 victims interviewed expressed knowledge about GBV and TIP, were able to describe GBV and some of them also mentioned discrimination as part of GBV.

33 OPMCM (2012)

“Gender-based violence means discriminating between son and daughter. Between a man and a woman, a woman is the one to bear all the trauma, beating and scolding. That should not happen” (Victim of GBV, Female, 5 September 2020).

As understood by GBV victims, TIP is ‘selling a woman across border into brothels for money mainly with promises of a better life’ (KIIs with three GBV victims, September 2020).

Conceptual clarity and the understanding of the nuances and various forms of TIP - A National Human Rights Commission (NHRC) study of 2018 suggested that often the women and children engaged in the entertainment sector had been forced into it through deceit or by being provided inadequate information and made to work by their husbands, boyfriends, girlfriends, partners, friends, fathers, brothers and other relatives. Likewise, it is generally family members (usually male relatives or domestic partners) who are responsible for the internal trafficking of women and girls in Nepal. In the past, those working in human trafficking considered only women sold across the Nepal border as trafficked. Now, they have begun to increasingly look at the issue of ‘selling of women within the country’ as well (Interview with Representative, Female, Shelter Home, Sunsari District, 19 June 2020). Another change is the understanding that men as well as individuals from all genders, caste/ ethnicity, religion, class and social backgrounds are potential victims of trafficking (Interview with Supervisor, Female, Shelter Home, Kathmandu, 1 July 2020).

Intersectionality between GBV and TIP

Understanding on GBV leading to TIP and vice versa - The KIIs strongly establish that GBV is a leading cause of TIP in Nepal, with GBV increasing the vulnerability to being trafficked. The sequence of events that takes a person from being a victim of GBV to a victim of TIP is also common. Women in domestic violence situations are often tempted to go for foreign employment and risk becoming victims of TIP (Interview with TIP Officer, National Human Rights Commission, Kathmandu, 27 June 2020). A majority of service providers also view GBV as a starting point for TIP.

“Gender-based violence causes the risk of human trafficking because if a person is subjected to violence, he or she is found to come into contact with brokers while trying to escape the violence. Violence does not diminish even after being trafficked. Both of these (GBV and TIP) can be caused by each other.” (Legal and Training Coordinator, Male, NGO, Kathmandu, 4 July 2020).

All border and immigration officials interviewed believed in the intersections between GBV and TIP, with only one disagreeing and considered them as mutually exclusive. A majority of the service providers interviewed also noted the inter-relationship between GBV and TIP.

“Violence against women and trafficking are intertwined. Women are trafficked because of domestic violence. Women who are victims of violence are trafficked by luring and baiting them through different hopes. Brokers also target the victims who have faced difficulties in life. Therefore, even though these two issues are different, they are connected to each other” (Representative, Female, Shelter Home, Morang District, 24 June 2020).

Understanding on commonality of experiences of the victims of GBV and TIP - Interviewed respondents believe that the ‘suffering’ of the two types of victims is not the same as ‘human

trafficking is more serious than GBV³⁴. Victims of TIP undergo more violence, suffering and exploitation. Societal perception regarding them is also different – “*TIP victims are viewed with disdain by the society, but GBV victims are viewed with pity*” (Representative, Female, Shelter Home, Kathmandu, 4 August 2020). This view was corroborated by law enforcement officials:

“Our society views TIP victims negatively. After being rescued, instead of providing moral support, our Nepali society demoralizes victims, and tortures them further” (FGD with law enforcement officials, 7 November 2020).

Sri Lanka

Conceptual clarity of GBV and TIP

GBV predominantly understood as violence against women - While acknowledging to some extent that Sexual and Gender-based Violence (SGBV) is gender-neutral, there is a subtle yet powerful perception that women are disproportionately affected by SGBV. Law enforcement officials and service providers’ interviews confirmed that the understanding of GBV is limited to the perpetration of violence against women, in most cases understood as physical violence, mostly within the domestic sphere, perpetrated on the wife by the husband. From their experience, complaints about domestic violence are comparatively higher than those emanating from more serious crimes such as, rape and incest and the lesser-known elements of workplace sexual harassment and sexual bribery.³⁴ This is important given its implications in determining access to services and who is at-risk of losing such access. In Sri Lanka, this may suggest that men as well as Lesbian Gay Bisexual Transgender and Queer (LGBTQ) individuals could find themselves outside the regulated framework to access support.

Conceptual clarity and the understanding of the nuances and various forms of TIP - The understanding of TIP is very poor among some categories of law enforcement officers and among a majority of the service providers. With a few exceptions among shelter providers and some NGOs, the three elements that constitute human trafficking could not be identified nor explained. Even where a trafficking example was used, it could not be recognized as such. With regard to the law enforcement officials, in general, the local police stations in the districts had poor knowledge of human trafficking whereas, the officials attached to the Department of Immigration and Emigration (DIE), the Criminal Investigations Department (CID) and the Attorney General’s Department (AGD) had a clear understanding of the three elements that constitute human trafficking. This is not surprising since these three national-level entities are directly linked to the identification, investigation and prosecution of TIP offences. There is a general consensus that the lack of understanding of human trafficking among local police stations is because explaining TIP is not easy.

“Say for ordinary police officers manning the police stations. How many of them are trained? How many trained officials does each station have? What about the women’s and children’s desks, not every station has them? An orientation to trafficking is given during the initial training they receive I think, but even when the concepts are difficult to grasp for experts it is obviously going to be difficult for these officers also. The confusion between smuggling and trafficking is quite common and when these interact with labor migration,

34 De Soysa, M (2020)

there is so much interplay and officers get confused” (Representative of a UN Agency in Sri Lanka, Female, 25 June 2020).

Given the regular and historical flow of migrant workers to the GCC countries, it is unsurprising that trafficking is generally linked to the external labor migration process, with little to no attention to internal trafficking. Furthermore, TIP also tends to be understood as a woman’s problem – women are framed as being vulnerable and at more risk of being trafficked because of the nature of their work (i.e. as domestic workers) or because of their gendered identity. This is despite growing evidence to the contrary that men are as vulnerable to sexual and labor exploitation.³⁵

Intersectionality between GBV and TIP

Understanding on GBV leading to TIP and vice versa - In general, GBV and TIP are understood as distinct forms of violence, although recent studies have pointed to how violence increase the risk of a woman to be trafficked for prostitution, where family members can also push women into prostitution and force them to remain in the trade. Stakeholder interviews suggest that even among those who have a clear grasp of both concepts, recognition of the intersections is less forthcoming, mainly because of the lack of verifiable information or data of GBV leading to TIP or vice-versa. There is, however, an acknowledgement that vulnerability in the form of poverty increases the possibility of trafficking in female migrant workers or those in the sex trade.

Making the connection between GBV and trafficking or vice-versa is tenuous in Sri Lanka, with the inability of organizations and government officials impacting identification, especially of the already marginalized – those in commercial sex trade, the LGBTQ community, internal migrant workers living and working in formal settings such as, the Export Processing Zones (EPZs) as well as workers in the informal sector, especially domestic workers.

The dissonance between definitions embedded in national policy documents and the service providers’ take on GBV and TIP shows that outreach of such policy frameworks is still restricted by normative ideas of gender and a gendered hierarchy. It also showcases how policies developed and designed at the national level with good intentions can invariably strike a discordant chord at the community level where implementation and community responses need to be most effective.

Understanding on commonality of experiences of the victims of GBV and TIP - Among some of the stakeholders working on issues related to TIP, the notion is that trafficking is a serious crime where the victim’s experiences can be much more devastating than what a GBV victim may experience.

“Since TIP at the core is about exploitation, psychosocial support is necessary and however you look at it, it must be differentiated from GBV. Trafficking can be very serious when compared to GBV” (Senior State Counsel, Female, 29 October 2020).

35 ILO (2018)

Conclusion

- In India, Nepal and Sri Lanka, the discourse on GBV narrowly focuses on ‘physical’ violence against women, further restricting it to domestic violence – whilst overlooking the fact that men and other genders can also be victims of GBV. A majority of the respondents fell short of comprehending the entire gender spectrum – including and beyond the traditional binary gender categories of man and woman.
- In India, respondents were divided in their understanding of TIP – some recognizing all its forms, whilst others focused on TIP only for prostitution involving women and girls. In Nepal, human trafficking was earlier understood as ‘selling’ of women cross-border or women getting trafficked into domestic work in the GCC region. But, now there is increased focus on internal sex trafficking. In Sri Lanka, field research suggests inadequate understanding of TIP among some LEOs and among a majority of the service providers; with more attention on TIP as a result of external labor migration vis-à-vis internal trafficking for sexual exploitation and forced labor.
- Field research in India and Nepal revealed the unambiguous understanding among all the respondents that GBV creates increased vulnerability towards TIP. It also revealed a lack of comprehension among some stakeholders, including a majority of the interviewed victims, of the prevalence of GBV within a TIP situation. KIIs in Sri Lanka suggest that linking GBV and trafficking or vice-versa is not easy, and even among those who have a clear grasp of both concepts, recognition of the intersections is less forthcoming, mainly because of the lack of verifiable information or data of GBV leading to TIP or vice versa.
- On the commonality of experiences of the victims, in all the three countries a majority of the respondents believed that GBV and TIP victims have distinct journeys, in which the latter has diverse and extreme encounters compared to the former where the perpetrators are limited.

2.1.4 Understanding of Migration, Trafficking in Persons, Smuggling of Migrants and their Intersections

India

Though most migration occurs regularly³⁶, not all migration is safe and secure. For a large number of men and women, it involves, exploitation, abuse and irregularity.³⁷ The stringent emigration rules and regulations enforced by the government with the introduction of “e-Migrate”³⁸ in May 2015 and setting up a minimum referral wage³⁹ as an approach towards safeguarding the wellbeing of the blue collar workers in the Gulf region, have increased both trafficking and irregular migration of women to these countries.⁴⁰

36 Regular migration – Migration that occurs in compliance with the laws of the country of origin, transit and destination. Source: <https://www.iom.int/key-migration-terms>

37 Uncertain Journeys (2019)

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

39 Calabrese John (2020)

40 Ameerudhan TA (2016)

Interviews with border officials suggest that there is a lack of clarity and appropriate knowledge about human trafficking, human smuggling and migration. It is one of the reasons why “*all the three events occurring at the borders are measured with the same yardstick*” and therefore:

“Everybody who crosses the border are nabbed/ detained and no distinction is made between trafficking victims and migrants (regular or irregular). Approximately 40 percent of the cases at the Indo-Bangladesh border in West Bengal are of TIP, 5-10 percent (approximately) cases are of migration and rest are human smuggling” (Border Security Force, Male, West Bengal, 23 December, 2020).

The officials identified the need for proper training and skillful handling of the three separate events as an important aspect of border management.

Nepal

There exists no clear understanding among the law enforcement officials, and other relevant government responders (prosecutors, border officials, labor department officials and other government officials), of what constitutes human smuggling. The issue is often conflated with human trafficking and irregular migration, with migrants possibly experiencing being both smuggled and trafficked on the same journey.⁴¹ In the case of women migrant workers, the number of those going abroad through irregular means is even higher due to the legal ban on going to the GCC countries for domestic work, which is shown to place them at a higher risk of human trafficking to those countries.⁴² Trafficking has increased due to attempts to evade the government ban on female migration to GCC countries.⁴³

A majority of the interviewed TIP victims said that they were aware of the travel restrictions on women, but many were of the view that such restrictions do little to keep women safe.

“I don’t think it (the restrictions) makes women very safe because when people don’t find jobs in Nepal then they feel tortured and face many kinds of problems. If you go abroad, you will get at least a little bit of salary. After getting a salary, one can be happy within one’s family too. After living abroad for some years, one comes back and is with their family. That’s why I don’t think so” (Victim of TIP, Female, 5 September 2020).

Government officials at the border exit points were not totally clear about the differences between ‘migration’, ‘smuggling of migrants’ and ‘trafficking’; whilst the immigration officials, pointed out that their job does not entail identification.

“No (the three terms are not clearly differentiated by immigration officials). Our job is checking documentation; we are not required to do this work” (Immigration official, Male, Immigration Office, Morang District, 4 September 2020).

41 UNODC (2019)

42 NHRC (2019)

43 The Nepali government has placed restrictions on women migrant workers numerous times since 1998 ‘for the security of women migrant workers in order to prevent exploitation and trafficking’.

Sri Lanka

The confusion of human trafficking with people smuggling is quite common with Sinhalese and Tamil terms sometimes used interchangeably. In general, smuggling is clearly seen as law-breaking by “clients” who use such smugglers, whereas in trafficking, individuals are treated as “victims”. The latter therefore, is viewed through a human rights prism. But these distinctions can often become blurred. The desk review of literature suggests that migrant workers do not understand the elements that constitute trafficking even when men and women migrant workers had experienced elements of it.

The inability to differentiate and to identify them as two separate processes is also common. The way in which a smuggled and trafficked individual is framed can serve to further create confusion. An individual who is smuggled can be easily framed as having willingly participated in breaking the law. This act of *knowingly* participating in a process has been cited in Sri Lanka⁴⁴ by alleged traffickers to challenge the charges of trafficking.

Conclusion

- In India, Nepal and Sri Lanka, there is a general inability to differentiate between human smuggling and human trafficking, and trafficking and migration (regular or irregular).
- Border officials in India, and immigration officials in Nepal identified the need for a stronger understanding of the three separate phenomena as part of larger and efficient border management.

2.1.5 Impact of COVID-19 on Incidence of TIP and GBV

India

Reporting of GBV cases witnessed an unprecedented rise during the pandemic disproportionately affecting women and girls,⁴⁵ through calls to helplines, police stations and the National Commission for Women (NCW). The latter recorded more than twice the number of complaints against domestic violence that it otherwise receives during normal times. The increase of the domestic violence cases in districts with stringent restrictions in mobility was 131% higher than the areas which had fewer restrictions. It has been estimated that filing of domestic violence complaints during the first four phases of the COVID-19 related lockdown experienced a 10-year high in a similar period.⁴⁶

The reason behind the rise in domestic violence cases as revealed in the field interviews is due to mobility restrictions and loss of jobs, economic uncertainty, increased frustration, and perpetrators getting away with the abuse as support systems become more inaccessible to the victims. Service providers asserted that due to a lack of proper communication the victims could not physically reach them to seek help; whilst some pointed out that the police were sensitive in addressing cases of GBV during this time.

44 Thomas Kris (2016)

45 Mysore Narasimha Vrandha and Moorkath Febna (2020)

46 Radhakrishnan Vignesh, Sen Sumant and Singaravelu Naresh (2020)

With respect to human trafficking, the general sentiment is that the pandemic has created more favorable conditions for the traffickers by exacerbating the existing vulnerabilities, whilst creating new ones. The lockdown had an adverse impact on children, pushing up child marriages and vulnerability to child labor. The uncertainty of reopening of schools, may lead to thousands of girl children being forced into child marriages over the next five years.⁴⁷ Reports suggest that about 1,127 suspected child victims of trafficking were rescued across the country, and 86 alleged traffickers were arrested, between April-Sept 2020.⁴⁸ Childline, the national helpline for distress calls, tracked 192,00,000 interventions between March-Aug 2020, and 27,00,000 distress calls.⁴⁹

KIIs pointed to the lack of any written protocol on provisions and accessibility to services for victims of GBV and TIP to be followed by service providers and law enforcement agencies during the pandemic. The Ministry of Home Affairs issued two Advisories – ‘Advisory on preventing and combating human trafficking especially during the period of COVID-19 Pandemic’ in July 2020; and ‘Institutional mechanism for preventing and countering human trafficking at State level’ in December 2020.

Nepal

Several media reports⁵⁰ and interviews with stakeholders suggest the rise of GBV during the lockdowns enforced in the wake of the COVID-19 pandemic. The loss of employment, resultant frustrations and tensions at home led to escalation of domestic violence and the inability of the victims to seek help due to the lockdown further aggravated the situation.

In contrast to the incidence of GBV, many of the interviewed respondents noted that TIP had gone down during the pandemic, owing mainly to the closing of international borders and the restrictions on movement. Border and immigration officials claimed that there had been no instances of trafficking because of the ‘sealed border’. Several news reports have, however, highlighted that women and girls are being trafficked into various countries, mainly India, even during the pandemic as ‘they tend to be more susceptible to trafficking during adverse situations created by the coronavirus outbreak’.⁵¹

The outbreak of the pandemic resulted in extensive reverse migration of Nepali migrant workers. In early 2020, the government estimated there were 1.3 million Nepalis living abroad who were expected to return.⁵² By 15 September 2020, a total of 63,347 people had returned, and about 200,000 more Nepalis were estimated to be awaiting immediate repatriation.⁵³ In addition to employers having unilaterally expelled or annulled the contracts of Nepali migrant workers, a large number of Nepalis had been infected and died of COVID-19 in the major labor destinations, especially the Gulf countries, with workers already facing exploitation and

47 Panicker Lalita (2020)

48 Kochar Anjali (2020)

49 Ghose Dipankar (2020)

50 Sharma Namrata (2020); UN Women (2020)

51 Himalayan News Service (2020)

52 Baniya Jeevan, Bhattacharai Sadikshya, Thapa Binay Jung and Vibhav Pradhan (2020)

53 International Organization for Migration (IOM) (2020)

abuse before the pandemic facing increased risk.⁵⁴ Notably, many women migrant workers who have returned to Nepal have also been facing various challenges including socio-economic, psychosocial and health problems; along with discrimination, abuse and stigmatization. Some of these also faced challenges in reuniting with their families and communities. In addition, an estimated 1.7 million daily wage workers in Nepal and another million workers on temporary contracts had been significantly impacted by COVID-19.⁵⁵

The Ministry of Women, Children and Senior Citizens (MoWCSC) issued ‘Standard Operating Procedure for the Operation of Shelter Homes during the Coronavirus (Covid-19) Pandemic (2020)’.

Sri Lanka

In Sri Lanka there have been concerns that the prevalence of GBV especially in the form of domestic violence would increase during the COVID-19 lockdowns. Media reports pointed to an increase in hospital admissions in relation to domestic violence⁵⁶; the UNFPA has also indicated a spike in the number of calls to domestic violence helplines⁵⁷ during the March-June 2020 curfew period. The Women’s Bureau also received complaints to its hotline about violence. According to a rapid survey conducted among groups including those who self-identify as transgender women and female sex workers and men who have sex with men, 26 percent had experienced violence of which over 80 percent was verbal and about five percent was sexual violence. A majority sought no assistance.⁵⁸ The lack of publicly accessible police and hospital admissions data as well as calls to the helpline of the National Women’s Committee (NCW) prevents the developing a clearer picture of the severity of the violence.

In contrast, law enforcement officials found no significant increase in complaints. Some LEOs, government service providers as well as a few NGO service providers attributed the low incidence of complaints to two factors: the inability of men to access and consume alcohol and the resultant cohesiveness within the family unit. Such explanations can, however, mask how loss of wages and being confined to the household can make the family environment more prone to violence and the inability to access help can be undermined by the presence of the perpetrator in the household.

Similar to fears of the rise in GBV prevalence during the lockdown period, concerns have been raised about the potential for TIP⁵⁹, which cannot be substantiated in the absence of any available data. With the number of migrant workers leaving Sri Lanka dramatically reduced, the focus has also been on in-service migrant workers. The vulnerabilities they may face due to loss of jobs, wage theft, the inability to return home as a result of Sri Lanka’s airports being closed have all been highlighted in the media. In this light, the recall of Labor Officers attached to the

54 National Human Rights Commission (NHRC) (2020)

55 International Labour Organisation (ILO) (2020)

56 Kumarasinghe K. (2020)

57 UNFPA (2020)

58 Care Consortium (2020)

59 IOM (2020)

Sri Lankan embassies in the GCC countries has been highlighted as worrying, as their primary responsibility is to respond to the needs of in-service migrant workers.⁶⁰

Conclusion

- The imposition of nation-wide lockdowns, travel bans, enforced quarantine, limitations on economic activities, increased police surveillance – in India, Nepal and Sri Lanka – though presumed an important step towards flattening the infection curve and stopping the spread of COVID-19, seems to have instead have had an opposite effect on GBV. Globally the analysis⁶¹ of crime statistics recorded by national authorities and calls received by emergency helplines presents a diverse picture of trends. There was a clear decrease in sexual violence and rape reported to authorities and an increase in calls to helplines in some countries during lockdown. This suggests that during restrictive measures there was a decrease in the accessibility of women to institutions for reporting incidents, the capacity of authorities to record those incidents and a possible decline in incidents outside the domestic sphere. India, Nepal and Sri Lanka reported a surge in cases of GBV during the lockdown periods, with further limitations on mobility and access to services. The situation of escalating GBV in these three countries is akin to the UN terming it as the “shadow pandemic”.⁶²
- Alongside increased reports of GBV, there is a greater complexity of violence. The Ebola pandemic demonstrated that multiple forms of violence are exacerbated within crisis contexts, including trafficking, child marriage, and sexual exploitation and abuse. COVID-19 is likely driving similar trends at present. Women’s fear and experience of sexual violence and other forms of violence in public spaces is also likely to escalate. “There are socio-economic consequences when these crimes happen, but in times of pandemic, the socio-economic impact is even deeper. Forty-seven million more women and girls will be pushed to extreme poverty because of COVID-19, but business is booming for traffickers”.⁶³
- In India, Nepal and Sri Lanka all the interviewed stakeholders confirmed the possibilities of an increase in human trafficking due to existing and exacerbated vulnerabilities, especially created by loss of jobs.
- The health and other responses to the pandemic ironically revealed the lack of emergency preparedness to deal with GBV and the potential rise in human trafficking cases. Although the governments of India and Nepal issued Advisories and SOP respectively, more targeted efforts are warranted inter alia for - adopting prevention responses; access to reporting incidents and access to services, collection and analysis of real-time comprehensive and sex-disaggregated criminal justice data in order to obtain a robust, longitudinal assessment of the impact of COVID-19 on GBV and TIP offences towards developing targeted evidence-based policies.

60 Colombo Times (2020)

61 UNODC (2020) Research Brief

62 UN Women (2020)

63 UN News (2020)

2.2 Screening and Identification of Victims

2.2.1 Conceptual clarity on different categories of TIP victims

India

Except for a few NGO's, the interviewed stakeholders lacked an appropriate understanding of the different categories of TIP victims – i.e., the at-risk population, potential victims, presumed victims, and actual/ confirmed victims of trafficking. These different terms create fundamental issues of defining a 'victim' – and the complexity surrounding the identification and screening of people as victims of TIP. For instance, a 2012 report stated that 3200 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 transit enroute to the Gulf on visitor visas⁶⁴, with more such cases reported periodically. The facts of Case Study 3 (in Chapter 2) of the India Country Report highlight these aspects. how a large group of Nepalese men and women trying to cross over into Myanmar from the Indian State of Manipur, were presumed to be 'victims' of trafficking, and were 'repatriated' to Nepal.

An NGO working in Madhya Pradesh highlighted their preventive measures on stopping intergenerational prostitution and trafficking, especially among the Bedia community, with a clear understanding of the women/ girls being 'potential' victims.

Restrictions on women's migration for work to certain foreign countries is done for reasons of their 'protection', and their being 'at risk populations', which also categorizes all of them as 'potential' victims. Added to this is the problem that disagreement exists over who is a victim of trafficking and at what stage a victim should be recognized as such.

Nepal

People in grave vulnerable situations with a strong likelihood of being entrapped in trafficking would include people working in destination countries as migrant workers, those engaged in the adult entertainment sector, people who are missing, and rural adolescents and child laborers. Authorities in Nepal lack the human and financial resources as well as training to systematically track potential victims, with government and NGO checkpoint inspections at Nepal's open border with India focusing almost exclusively on female travelers. Anti-trafficking efforts are also hampered by the failure of the law to reflect the changes taking place in the modus operandi and forms of trafficking.

A key difficulty in conceptualizing the different categories of TIP victims is the lack of available data. Nepal Police collects nationwide data on cases of violence against women and girls through the GBV information management system, while the NWC maintains the data of cases of violence against women reported to it through its case management system. Women trafficking as a form of GBV is also reported to the NWC. There is however, a lack of an integrated data management system on TIP leading from GBV, which was a key challenge in the referral process (KII with Legal Officer at the NWC, 2 December 2019).

64 Pyakurel Uddhab Pd (2018)

Sri Lanka

Generally, migrant workers seeking work overseas are considered as a group that are at-risk of being trafficked. The risk factor is considered high especially in locations such as, Nuwara Eliya due to lack of education, coupled with high levels of poverty and lack of access to viable employment opportunities. Such at-risk populations are also considered to be present more in the rural and plantation sectors in Sri Lanka rather than in the urban areas.

The higher probability of female migrant workers to be trafficked was also highlighted by law enforcement officials who pay closer attention to such workers at the point of departure from Sri Lanka. The only exception on a different perspective about the at-risk populations was offered by Prosecutors, who argued that circumstances rather than poverty, can push even the educated and cosmopolitan groups into being trafficked. The identification of the potential victim group was deemed important for service providers to help them design programs as preventative measures.

In contrast to presumed GBV victims, the situation of presumed TIP victims is far more challenging to trace, due to the lack of understanding of TIP among specific groups of law enforcement officials as well as service providers – wherein, they will be identified much later when narratives of their experiences emerge, when they approach service providers for assistance. Given the lack of knowledge about TIP among local police officers, possible cases of TIP may not be investigated in many instances.

Conclusion

- Even though there is no formal classification of victims of human trafficking in the UN TIP Protocol, UNODC⁶⁵ mentions different categories of victims. These are used more to denote that a person may be victimized during – recruitment, transit/transportation, and when exploited for various trafficking purposes. These categories are used more to denote that a person may be victimized during recruitment, transit/ transportation, and when trafficked for various purposes. It needs to be reiterated that ‘transport, transit or movement’ is not an essential element to constitute a trafficking offence. The trafficking victim can thus, appear at any place on a victim “continuum” or pyramid but it’s a key question to ask is “What are the identification mechanisms and responses in place?”
- Whilst trafficking of women and girls from Nepal into India and sometimes transiting through India or Sri Lanka onwards to the GCC countries and Southeast Asia is a reality – their ‘interception’/ ‘rescue’ on the basis of ‘suspicion’ and ‘presumption’ of victimhood, is a serious violation to their rights, as they are (mostly) adults, and hold valid travel documents.
- The existing training and awareness programs conducted by governments, international and national organizations need to include and focus on dispelling the myths surrounding the narrow understanding of gender, gender-based violence, and how it leads to the non-identification of victims of TIP other than females.

65 UNODC E4J University Module Series

The Feminization of Victimhood

In India, Nepal and Sri Lanka, this research confirms the ‘feminization of victimhood’ in human trafficking as also in GBV situations. Often severely exploited as a consequence of their trafficking or facing violence and abuse in interpersonal relationships, men and other genders are often overlooked or sidelined in legal, policy and service delivery frameworks. Secondary literature and key informant interviews with diverse stakeholders suggest that the term “victim” frequently elicits connotations of stereotypical, passive femininity – especially when the crime entails trafficking, domestic violence or other forms of sexual violence. A majority of the interviewed respondents fell short of comprehending the entire gender spectrum – including and beyond the traditional binary gender categories. This research strengthens the impression that victimization, particularly through violence (intra-familial and sexual), feminizes the victim.

Of special relevance to trafficking in persons is, that in recent years, the term “feminization of migration” has been asserted. But what has really changed in the last few decades is that more women are migrating independently in search of jobs, rather than as ‘family dependents’, as shown also in India, Nepal and Sri Lanka. In addition to this change in the pattern of female migration is the discourse on the feminization of poverty, which is closely aligned with the feminization of migration. It appears that, while there has been an increase in state and family reliance upon remittances, it has often not been coupled with increased support for female migrant workers.

Globalization, it has often been argued, has had a two-fold effect on the lives of women. For some, it has meant new opportunities, roles and access to alternative spaces not previously permitted to them. Yet, it has also created ‘new kinds of conservatism’, where claims to ‘culture’ restrict women into certain traditional roles. Migration can also be understood as resistance and transgression, if women are utilizing it to ‘escape’ from oppressive or violent environments, to transcend traditional sex-role constraints and to create a ‘better life’ for themselves. This has been brought out in this research in the intersections between GBV, migration, and trafficking.

Female migration is often perceived in sexualized or exploited scenarios, like trafficking, which reinforce messages about the ‘vulnerability’ of female migrants. The visibility of trafficking has come about because of the feminization of the image of the ‘victims’ of trafficking and the media focus on sexual exploitation. This prompts an urgent need for discussing the feminization of migration and how these social variables contribute to the pervasive narrative on the victims of trafficking. There is a need to examine the *presumptions* of the responders concerning the feminization of victimhood to trafficking – by presenting the argument that a simplistic reading of trafficking as the forced movement of women against their consent is incomplete. It ignores the complex reasons why many women seek to begin the process of obtaining employment that eventually ends up becoming a form of human trafficking.

The idea of a female ‘victim’ of trafficking who is in need of ‘rescue and return’ is a pervasive image that is often conjured up and negates scholarly attempts to establish a more nuanced understanding of the complexities of trafficking. Within the construct of the victim of trafficking, there emerges the narrative of the highly gendered ‘innocent or naïve’ victim, who

perhaps lacks agency, and who is in need of ‘rescue’, even as she tries to cross borders (or undertakes international travel) for work. Such *presumptions* are rarely, if ever, applied to men and other genders who are victims of trafficking or of GBV.

The figure of the ‘trafficking victim’ can serve multiple purposes, especially for the state. It can facilitate the control of female migration (through prohibitions and bans as in India, Nepal and Sri Lanka), through the representation of trafficking victims in awareness campaigns and media reports, which sends the message to women that they need protection. To support the logic of limiting women’s mobility, the women involved must be understood as ‘potential victims of exploitative forces’, and, therefore, in need of state protection.

Perhaps the most important finding of this study is the most obvious – that there is a need to better understand and appreciate the gender dimensions of trafficking and violence. The common assumption that women and children (rather than people in general) are acutely vulnerable to trafficking needs to be challenged and the understanding of ‘gender’ needs to be amplified to include men and other genders. Assumptions about sex and gender inform how anti-trafficking measures are undertaken, including in terms of what services and assistance are offered, assumptions which, arguably, have not always been grounded in the lived realities of men and women.

Engaging with victims of both sexes and other genders is important in terms of trafficking vulnerability and the individual’s post-trafficking needs, including protection and assistance. As such, it is important to pay attention to socially constructed assumptions about gender and gender roles in terms of how we design and implement anti-trafficking efforts. It is imperative to understand how men and other genders experience violence and exploitation in different national, social and cultural settings. Thus, this design must also attend to these differences.

Importantly, gender is not the only variable impacting risk, vulnerability and assistance needs. It is equally important to note how trafficking vulnerability may differ according not only to sex but also to other identifiers like age, ethnicity, education or caste, and a diversity of experiences. In each social, economic and political context, issues of identity play a vital role in shaping behaviors and actions. Better understanding of the social terrain upon which trafficking plays out (and anti-trafficking interventions, therefore, need to take place) is essential in efforts to combat this serious violation. As importantly, it is arguably the case that these social and cultural conditions (those that generate trafficking) are simultaneously the key to their remedy.*

* Mulder Eva, Pemberton Antony & Vingerhoets, A.J.J.M. (2020); Surtees Rebecca (2008); Russell Amy M. (2014).

2.2.2 Challenges of Screening and Identification of TIP and GBV Victims

India

Screening and identification of GBV and TIP victims are carried out by the following stakeholders:

Law Enforcement Officials - TIP victims are identified based on complaints made by NGOs, investigating runaway and missing children’s cases, raid and rescue operations carried out at the hotspots, intervening where groups of/or any persons or children seem ‘suspicious’, often

with the assistance of Anti-Human Trafficking Units (AHTUs), and family/community/local reporting. Screening at the border is carried out with coordinated efforts of the border officials and NGOs by intercepting individuals travelling without proper documents, and handing them over to the local police for further investigation. GBV victims are identified through complaints lodged by the victims/family members, NGOs, complaints received through helplines (dial 100), One Stop Crisis Centre (OSCC), and from community volunteers.

Service Providers – Interviews with service providers revealed that some either did not screen victims of TIP at all, whilst some others assisted the police/ AHTUs in screening and during rescue operations, upon information received from several sources. GBV victims were identified through complaints received from the victims, community members (well-wishers), outreach programs in the community, helplines, police and OSCCs, and through referrals by courts, police, other NGOs, social workers, and the Child Welfare Committee (CWC).

Self-Identification by the Victim - KIIs suggest that most of the victims of GBV were able to self-identify and seek help from police/NGOs/ helplines; however, in case of TIP victims most of them were rescued by the police, and two of the eight interviewed had approached an NGO and helpline on their own.

In terms of the location, most of the respondents gave equal weightage to urban, rural and semi-urban locations for the screening and identification of GBV victims. However, for TIP cases, the screening location was skewed towards urban areas (brothels, massage parlors, beauty parlors, private apartments (used for sex trafficking), hotels, homes (for domestic work), factories, and informal workplaces. A few respondents also pointed out brick kilns and farms as locations for finding trafficked victims.

Challenges of Screening and Identification

- i. Perception as barrier to identification - KIIs with service providers and victims highlighted existing gender prejudices among the LEOs, and disbelieving the victim's narrative as predominant reasons obstructing correct screening and identification of the victims of TIP and GBV. Interviews with TIP victims revealed that sometimes police criminalized and arrested women in prostitution during raid and rescue operations on the basis of 'false' charges made by customers or brothel owners, thereby preventing their identification as possible victims of TIP.

The existing gender stereotypes and patriarchal mindset among the LEOs is largely reflected in their non-supportive attitude and their common suggestion to “compromise with the situation” to the GBV victims.

KIIs with all stakeholders revealed that the identification of victims is skewed towards women and children, which reflects the perceptions of the stakeholders, especially the LEOs - that it is “not possible” for men and transgender persons to become victims of TIP, but more particularly GBV.

- ii. Absence of and lack of knowledge of existing Protocols - India has several Protocols, Standard Operating Procedures (SOPs) and Advisories, by multiple agencies – issued by the Ministry of Home Affairs, Ministry of Women and Child Development, Ministry of Labor and Employment, the NHRC, UNODC and other UN agencies, and others – to tackle various aspects of TIP. Yet, the respondents neither knew all of them nor followed

them while identifying victims, relying mostly on their own methods for identification. Besides, there are no screening and identification guidelines/indicators for the border and immigration officials.

- iii. Functioning of AHTUs - As per the US TIP report (2020) overall law enforcement efforts across the country, especially against bonded labor, remained inadequate compared to the scale of the problem. The police did not always arrest suspected traffickers or file First Information Reports (FIRs), and officials settled many other cases at the complaint stage, especially if the victim was from an economically or socially marginalized community. As the very first step to accessing services is to be identified as a victim, this lack of appropriate response by the police is often the primary barrier. A majority of the AHTUs which are the first responder for human trafficking crimes, are currently neither active nor sufficiently funded or trained, and spend their time and resources on other crimes. Recently, the MHA has directed the states to expedite the setting up of new AHTUs and upgrade the infrastructure of existing ones.

During field research, NGOs from Madhya Pradesh and Delhi stated that AHTUs are not functional in the state even though they exist on paper; in Manipur, Kerala and Goa although AHTUs functioned effectively, service providers recommended more training for sensitive handling of cases and efficiency in investigation.

- iv. Lack of meticulous training of law enforcement officials - KIIs with LEOs suggest that the majority of them did not receive any specialized training prior to working on GBV and/or TIP. Though the rate and intensity of the training programs, especially for the police has increased in recent times, it lacks sustainability due to the lack of follow-up and assessment and evaluation of the impact of training. KIIs with border officials revealed the complete absence of training on TIP preventing proper understanding of human trafficking/smuggling and its modus operandi which, in turn affects victim identification.
- v. Free movement across borders - KIIs revealed that at the integrated Indo-Nepal border check-posts, it is challenging to identify TIP cases, due to free movement across the borders. The Border Security Force (BSF) does not have any investigative powers whenever a TIP victim or a trafficker is intercepted as they are immediately handed over to the local police station. This creates reluctance to further inquire into the trail of organized criminal networks that may be involved in human trafficking. Also, all responders working at the borders, namely, the BSF, immigration, local police, and NGOs operate in isolation without much cooperation.
- vi. Lack of co-ordination and co-operation among stakeholders - Uncoordinated efforts emerged as an important factor affecting the screening process with each stakeholder holding the other responsible for their failures in dealing with TIP and GBV. The police mentioned the non-cooperative nature of the NGOs, whereas the NGOs pointed towards lack of priority, and strong patriarchal mindset as affecting and influencing the efficiency of the police officials. The border officials pointed towards the lack of commitment of the local police (who investigate cases identified at the border) and the NGOs in working at volatile border areas. According to a BSF official – *“The network of touts at the Indo-Bangladesh border is huge, and with proper efficiency from the local police it would have been handled properly”* (BSF, Male, West Bengal, 23 December 2020). Further, lack of proper cooperation and coordination between the border forces of India-Nepal and India-Bangladesh was cited as one of the reasons for non-identification of trafficked victims.

- vii. Lack of cooperation from the victims and the local community - Victims turning hostile and non-cooperative during screening is a major problem identified during KIIs by the police, and NGOs. At the border areas, lack of support and cooperation from the local community obstructs the efficient managing of the trafficking cases.
- viii. Victims' perception – A majority (18) of the victims believed that lack of awareness among the responders/ victims, safety concerns, and ineffective responses of the institutions and first responders are major barriers to screening and identification.

Nepal

Collaborative effort - The government bodies primarily responsible for the identification and screening of TIP victims are the Nepal Police and the Armed Police Force at the border with India, along with immigration officials, supported by various NGOs at checkpoints. As victim identification is complex and challenging, most often NGOs collaborate with the police and border and immigration officials for the screening GBV and TIP victims. Police and border officials reported during the KIIs that they find the booths set up by NGOs at the border checkpoints very helpful and effective in identifying the victims. Explaining the rationale for cooperation, an official said:

“We are working in collaboration with various organizations because we understand that human trafficking and GBV are complex cases” (Police official, Female, Women, Children and Senior Citizen Service Center, Banke District, 22 September 2020).

NGOs not only work at the borders but also conduct public awareness programs and interactions in collaboration with the police. If they find a suspect or a likely victim of trafficking, they report them to the Human Trafficking Investigation Bureau of the Nepali Police. On collaborating with the police, however, one of the interviewed NGOs said that frontline workers from the police were not victim-friendly and that victims were shunted from one office to another (Representative, Female, INGO, Kathmandu, 30 June 2020).

GBV victims, were often identified by the service providers based on conversations with victims themselves as well as with their families. Their identification was also done in coordination with the police and social workers.

Location of screening - All the law enforcement officials interviewed said that they conduct screening at the various checkpoints along the Nepal-India border, as they are popular gateways to India and from where people travel to other parts of the world. Screenings are also conducted in hotels and bus stands at the border areas. Rented apartments as well as entertainment venues in the city areas were also targeted since some of these places were hubs for prostitution. During the COVID-19 lockdown, the number of women traveling with unrelated people, and identified as possible TIP victims, had also increased (Police official, Male, Area Police Office, Banke District, 5 October 2020).

Some of the emerging trafficking hotspots were the districts along the Indo-Nepal border such as Chitwan and Rupandehi, and other districts like Sindhupalchowk, Nuwakot, Pokhara, Baglung and Palpa, which were identified during NGO interviews. Some NGOs have established migration information centers at Kathmandu's main Gongabu Bus Park, where people from all over Nepal arrive. Similar to the police, several service providers also identified dance bars,

dohori restaurants, massage parlors, and small eateries in some parts of Kathmandu as possible locations for screening for victims.

KIIs with immigration officials revealed that although they do not conduct screenings, they considered Delhi airport and other parts of India accessible via land ports to be suitable locations for screening and identifying victims.

Challenges of Screening and Identification

- i. Lack of protocols and specific set of indicators - Nepal does not have any kind of SOPs or protocols for the identification of GBV or TIP victims. Identifying individuals likely to fall victim to trafficking is a difficult task since traffickers, when confronted, often make claims that are not easy either to verify or reject. In almost all cases, government officials said they rely on “hunches” and past experience in being able to spot something that is amiss. The police did not have a specific set of indicators to identify the victims either. They relied on their experience, training, interrogation skills, visual and non-procedural approaches of identifying victims.

“We do not yet have any guidelines and protocols for identification. We investigate and check based on suspicion and information. We do not have a separate mechanism to check trafficking in persons at the border. Our focus is to monitor the import and export of illegal goods and weapons” (FGD with law enforcement officials, 7 November 2020).

As reported by the various stakeholders, some traffickers claim to be married to the women/girls, or to be in romantic relationships with them. Others pose as relatives. Most are able to produce certificates and documents. Given this, a majority of the law enforcement officials noted that factors that could identify potential victims include contradictory answers and other discrepancies in their stories, and suspicious behavior. Women/girls are also identified based on the discrepancy in physical appearance between them and their fellow travelers (who could be potential traffickers), and the way they talk to each other. Following their interception, they often display lack of knowledge about human trafficking and the potential risks of crossing borders on the basis of false claims.

- ii. Airport and border crossings - There are many cases where women (and men) are trafficked through Kathmandu’s international airport as they fly to destination countries where they become victims of TIP. Sometimes these are individuals without the full set of documentation required for travel, who manage to fly out due to collusion between traffickers and airport officials⁶⁶; and in some cases, women reach countries which have been banned by the Nepali government for work, and risk becoming victims of TIP.

The 1,700-km open border between Nepal and India poses a significant challenge in the identification of trafficked victims. Actual victims of trafficking or those at potential risk of trafficking cross the border pretending to require medical attention in Delhi and other bigger urban centers. The open border also results in the exchange of people on religious trips, and traffickers have been known to take their victims across by pretending to be part of a pilgrimage tour. The unregulated open border was also identified as a major barrier for screening victims in the FGD conducted with law enforcement officials.

Most of the TIP victims interviewed reported the reason people travelled via India to countries where they were barred from going was the non-issuance of labor permits by the

66 Kattel Shambu (2019)

Government, making it impossible for them to travel to those countries from Nepal for the explicit purpose of work. In case someone did not have a passport, they used another person's citizenship to make a passport and travel via India (TIP victim, Female, 3 September 2020).

- iii. Lack of awareness among victims - Most often the women/ girls at potential risk of trafficking travelled under posing as being part of a married couple, or travelling with a father, etc., and it was difficult for the police to identify the victims unless they saw something suspicious. During KIIs with immigration officials, they too referred to people trying to circumvent the proper process of obtaining documents for migrating for work, which made them more vulnerable to TIP. The task of screening and identifying had become challenging even as the traffickers employed various techniques not to be spotted.
- iv. Institutional gaps - Victims are often forced to reconcile and cases are settled through financial payments, preventing them from getting justice (FGD with service providers), often as a result of the power play involved in trafficking. The legal process is perceived as cumbersome and costly, and this precludes the identification of both GBV and TIP victims. Collusion of government officials with perpetrators, and lack of financial resources also result in victims not complaining, and thereby not being identified (Representative, Female, NGO, Banke District, 29 June 2020). Female victims are often harassed in the name of interrogation, with insensitive remarks and questions as well as the preconceptions of the LEOs regarding victims (Representative, Female, NGO, Sunsari District, 7 July 2020). In addition, victims also felt intimidated and embarrassed by the police, making them hesitant about expressing what happened to them in detail (GBV victim, Female, 6 September 2020). TIP victims have recounted stories of abuse at the hands of the police while in custody and have expressed fear of being exposed in newspapers and stigmatised as being prostitutes.⁶⁷

Sri Lanka

Identification of GBV victims - With regard to GBV, the knowledge of violence as something manifested within families have led presumed victims to come forward and access multiple avenues of seeking assistance. Women do not always approach a first responder by themselves. Among the victims interviewed, the women relayed their concerns to either a family member (i.e., mother or sister) or a close female friend, who then encouraged her to seek support through the police or the Women's Development Officer (WDO). A process of questioning and inquiries results in a referral being made to the shelter. This was corroborated by KIIs of service providers and law enforcement officials. Two such contacts are important - the Grama Niladhari⁶⁸ who would then direct the victim either to the police or to the WDO and, more importantly, the Public Health Midwife. Considered one of the most trusted government officials with access to families, these female officers have gained the trust and confidence of women. Where access to government services including the hospitals and the divisional secretariat office is challenging, the NGOs perform a critical role of identifying and referring possible victims to the appropriate services. Accessing the police station to lodge a complaint is not uncommon, especially in urban areas such as Colombo city, where women are encouraged to approach the Women and Child Desk to file their complaint and if required, seek a protection order from the Magistrate's Court.

67 Chaulagain Ganesh Prasad (2009)

68 A Grama Niladhari or Village Officer is a public officer in-charge of the smallest administrative unit. Several of these make up a Divisional Secretariat division. The officer carries out specific civil administration tasks at the community level.

Identification of TIP victims - Identification of presumed victims takes place in three main ways. First, at the immigration counters; second, through raids conducted by the Department of Immigration and Emigration (DIE) at locations suspected of harboring individuals who are in violation of the Immigrants and Emigrants Act of No. 20 of 1948 (and its subsequent amendments); and third, through complaints made to the Criminal Investigations Department (CID) by the Sri Lanka Bureau of Foreign Employment (SLBFE) and, occasionally, by the Foreign Ministry.

For immigration officials, suspicion is raised when conditions of the Immigrants and Emigrants Act have been violated. Overstaying one's visa or an expiring passport are used as indicators to question the passengers further. In this process, rather than the focus being on a potential victim, the approach adopted is to first understand if an offence has been committed by the traveler. If in subsequent interviews, information reveals the presence of trafficking elements, the DIE reports such presumed cases to the CID for further investigations.

For the SLBFE, complaints are directed through the TIP hotline or through complaints lodged by migrant workers. While preliminary investigations are conducted by the SLBFE's internal investigation unit, there is a clear understanding that presumed victims must be referred to the CID for further investigations. In both these instances, the identification of an individual as a trafficked victim lies solely with the CID. The identification of victims referred through the Foreign Ministry indicates that such instances may originate from among migrant workers not registered with the SLBFE – the irregular migrant workers who have sought consular support from the respective Embassy.

The limited understanding of TIP as a trans-border crime has led to migrant workers being the primary category of presumed victims. There is a common recognition that women are deceived by the sub-agents and their migration trajectories may be adversely affected because of the trust placed in them. Therefore, identification of hotspots within Sri Lanka is weak, as was evidenced in the interviews.

Challenges of Screening and Identification

- i. Lack of awareness - The general lack of understanding of what TIP is and what this process entails is one of the major stumbling blocks in identifying presumed victims. The lack of awareness among internal migrant workers, employed in the formal or informal sector of the economy, was cited by some law enforcement respondents as a reason why those in vulnerable situations do not come forward. Further exacerbating these conditions is the lack of understanding of what constitutes TIP among civil society organizations (CSOs) working closely at the community level. Among Migration Development Officers (MDO), the focus on implementing the Family Background Report (FBR) regulation which restricts mobility of women seeking to migrate overseas for work, takes their attention away from how the imposition of the regulation can increase their vulnerability to be trafficked. Under-reporting of TIP incidences thus, must be recognized as largely stemming from this lack of awareness among all stakeholders, including the potential victims.

In the informal sector of work, domestic work was cited by respondents in Nuwara Eliya as a sector that increases the risks and vulnerabilities of women in relation to TIP. But the recognition that similar to Sri Lanka's female domestic workers employed overseas, domestic

workers in Sri Lanka may also be victims of TIP was not a commonly held idea. Even if such victims lodge a complaint, the weak understanding of TIP among local police division officers, and the ability to investigate further and refer such victims for further investigation to the CID may not take place as intended.

- ii. Societal pressure - Social stigma and the fear of shame are the primary reasons preventing victims from lodging formal complaints, acknowledged as a major deterrent by both service providers and LEOs. Family members and religious authorities can impose pressure on victims to withdraw their complaints, which are generally made against an intimate partner including the husband. Cultural restrictions and the imposition of strict social norms on the behavior of women prevents them from coming forward. This was cited as a grave concern in the post-war regions of Jaffna and Batticaloa as well as the predominantly Hindu communities in Nuwara Eliya. While the fear of backlash and perceived social ostracism can prevent women from coming forward, Sri Lankan women also tend to conform to patriarchal norms that legitimize violence against women. These factors therefore, can easily disincentivize women from seeking legal redress. The culture of suffering silently also permeates the migration process where shame of having been sexually exploited can marginalize and ostracize victims in their own communities.
- iii. Institutional gaps - The most discussed and highlighted gap exists within the institutional structures. The lack of understanding and/or awareness of the complexities of GBV or trafficking and the inadequate number of female cadres in the police stations were cited widely as problems. Similarly, in regions where ethnic minorities are predominant, officers' incompetency in communicating in the native language was flagged as a major hurdle. The absence of cultural sensitivity to the practices of ethnic minority populations, especially among the Tamil Hindu communities, was also cited as problematic. In all the regions, a more sensitive approach to extend support to victims by government service providers as well as the law enforcement was found to be lacking. Whereas law enforcement receives a lot of attention, shortages in the cadre at the Divisional Secretariat office, the officers' inability to visit the communities on a regular basis and a general perceived lack of commitment were also cited as gaps within the state's institutional framework to correctly identify victims.
- iv. Faith in the justice system - The KIIs with law enforcement respondents in particular pointed to a lack of faith in the justice system as a possible reason that keeps TIP victims from reporting. The tedious process of seeking some form of redress since lodging a complaint with the police can discourage victims. For those in the commercial sex trade, the risks of coming forward may far outweigh the benefits given the punitive lens adopted by law enforcement. The tendency for potential victims who are migrant workers to prefer to continue with their lives and seek employment opportunities elsewhere is well documented.⁶⁹
- v. Ad-hoc approach to identification - Raids on suspected brothels fall within the purview of the vice squads of the Police Department with the understanding that any individual raising some suspicion of being a presumed victim must be referred to the CID (KII with law enforcement officer, Male, Colombo district). The fact that sex workers are criminalized using the archaic Brothels Ordinance (1889) and Vagrants Ordinance (1841), prevents them from being identified as potential victims of TIP. Even though a lot of attention has been paid to trafficking of children for forced labor, the same level of attention is not directed at adult men and women. This is despite the presence of migrant labor in multiple supply

69 International Labour Organization (2018)

chains covering the formal and informal sectors. This is especially true in the case of migrant workers concentrated in the Export Processing Zones in urban hubs.

- vi. Limited authority - Immigration officials specifically highlighted their inability to track or investigate the possible occurrence of trafficking, and monitoring of passengers who remain in the airport transit lounge when Sri Lanka is used as a transit point, as their scope of responsibilities does not cover this.
- vii. Limited human resources - With regard to TIP, in addition to the lack of understanding, under-staffed and over-stretched police officers at the local stations may also not have adequate time to pursue an investigation on trafficking even when there is some suspicion in this regard.

‘In terms of service provision also, when you go to the police, they [police] ask ‘why didn’t you run, why didn’t you do anything’. If it’s cyber exploitation, ‘why did you send the picture?’. They ask such uncomfortable, very judgmental questions. Because of this attitude, GBV victims don’t ask for help’ (Service provider, Female, Colombo district, 25 May 2020).

- viii. Absence of SOPs - KIIs brought out the absence of any legal framework or identifying protocols as one of the biggest barriers in identifying/screening for victims and victim assistance referral systems. There is an SOP for human trafficking (but it is not applied commonly), and there is no SOP for GBV in general. There is no screening tool applied nor any universally applied set of indicators to assess the complaints. Rather, the common practice, across state and non-state service providers, is to conduct an interview and weigh the merits of the complaint on the basis of the experience of the presumed victim. Less than five interviewed organizations were found to use a standardized tool to screen for victims.

Conclusion

- In India, Nepal and Sri Lanka, screening and identification of TIP victims is carried out by various agencies, namely, the police, government officials, NGOs, border and immigration; whilst GBV victims were identified through complaints received from the police, victims/families, community members, and helplines.
- In India and Nepal, OSCCs are important intermediaries in identifying GBV victims; and in TIP cases collaboration between the police and NGOs in identifying, interception and rescuing victims especially, at the Indo-Nepal border is the norm.
- Common challenges identified in the three countries in screening and identifying victims of TIP underlined the lack of protocols and specific set of indicators; lack of awareness and appropriate training and capacity building among the first responders (police, border and immigration); lack of understanding among victims and/ or their complicity; victim’s (both TIP and GBV) perception of shame, stigma and societal pressure; and less priority and focus on internal trafficking especially in Nepal and Sri Lanka.
- In India and Nepal, police had received some form of training – orientation and in-service – to carry out their roles and responsibilities vis-à-vis TIP and GBV cases; whilst border and immigration officials had not received any focused training on TIP. The local police received little or no training on TIP in Sri Lanka. Although training programs are conducted by government, national and international NGOs and United Nations agencies on an ongoing basis, almost all the stakeholders made demands for more training during the KIIs. Agencies that provide training, need to seriously evaluate the efficacy and impact of their training

programs, as the research currently highlights the anomaly of perhaps “too much training” with “too little impact”.

- Relevant Government agencies in India, Nepal and Sri Lanka should prepare and disseminate through a multi-stakeholder approach – detailed indicators/ guidelines/ screening tools for identification of victims of all genders of TIP and GBV. These tools should cater to the requirements of multiple stakeholders who may be involved in screening and identification of victims.

2.3 Legal Framework and its Enforcement

2.3.1 Comparison of Ratification Status of Key International and Regional Instruments

Table 2: Country’s ratification status relevant to trafficking in persons, smuggling of migrants, and gender-based violence instruments

International Instruments	India	Nepal	Sri Lanka
Trafficking in Persons			
Convention against Transnational Organized Crime, 2000	05 May 2011 (R)	23 Dec 2011 (R)	22 Sep 2006 (R)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000	05 May 2011 (R)	16 Jun 2020 (A)	15 Jun 2015 (R)
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, 2000	16 Aug 2005 (R)	20 Jan 2006 (R)	22 Sep 2006 (R)
ILO Protocol to the Forced Labor Convention, 2014	---	---	10 Apr 2019 (R)
ILO Worst Forms of Child Labor Convention, 1999 (No. 182)	13 Jun 2017 (R)	03 Jan 2002 (R)	01 Mar 2001 (R)
Smuggling of Migrants			
International Convention on the Protection of the Rights of Migrants and their Families, 1990	---	---	11 Mar 1996 (A)
Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000	05 May 2011 (R)	---	13 Dec 2000 (S)
Gender-based Violence			
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979	09 Jul 1993 (R)	22 Apr 1991 (R)	05 Oct 1981 (R)
Regional Instruments			
South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002	India	Nepal	Sri Lanka

International Instruments	India	Nepal	Sri Lanka
Trafficking in Persons			
SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002			
SAARC Convention on Mutual Assistance in Criminal Matters, 2008			
(S) – Signed (R) – Ratified (A) – Accession			

2.3.2 National Legal Framework on TIP and GBV

India

National Legal Framework - The Constitution of India 1950 vide Article 23 (1) prohibits ‘traffic in human beings and *begar*⁷⁰ and other similar forms of forced labor’; and provides a multitude of fundamental rights. The Indian Penal Code (IPC) of 1860 contains more than 20 provisions that are relevant to trafficking. The Criminal Law (Amendment) Act, 2013 amended Section 370 of the IPC to provide the first comprehensive definition of trafficking in persons, covering physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Other laws that deal with human trafficking directly or indirectly are – the Immoral Traffic (Prevention) Act, 1956 (ITPA); Protection of Children from Sexual Offences (POCSO) Act 2012; the Juvenile Justice (Care and Protection) of Children Act (JJ Act), 2015; the Child and Adolescent Labor (Prohibition and Regulation) Act, 1986; the Children (Pledging of Labor) Act, 1933; Bonded Labor System (Abolition) Act, 1976; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Transplantation of Human Organs Act, 1994; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Emigration Act, 1983; and the Information Technology Act, 2000.

Different forms of GBV are dealt with in different laws, namely – the India Penal Code; Dowry Prohibition Act, 1961; the Indecent Representation of Women (Prohibition) Act, 1986; Protection of Women from Domestic Violence Act, 2005; Prohibition of Child Marriage Act, 2006; POCSO Act, 2012; and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

National Plans - The Ministry of Women and Child Development (MWCD) lists on its website – the Integrated Plan of Action to Prevent and Combat Human Trafficking with special focus on Children and Women of 2007, and the National Policy for Empowerment of Women of 2001. A thorough research of the existing literature and MWCD Reports, did not yield any information on whether the Plan of Action and the Policy were ever operationalized.

SOPs and Protocols - An extensive list of Guidelines and Protocols, and Advisories on various issues related to TIP are available in India issued by the MHA, MWCD, Ministry of Labor, NHRC,

70 *Begar*, was a system of forced labor practised in pre-independence India, in which some people were compelled to perform unpaid work for the government.

and among UN agencies primarily by the UNODC (in partnership with the Government). Many of these are outdated now. The Ministry of Health and Family Welfare has issued Guidelines & Protocols on Medico-legal Care for Survivors/Victims of Sexual Violence, 2014.

Nepal

National Legal Framework - There are a number of laws governing GBV and TIP in Nepal, starting with the Constitution of Nepal (2015). The primary piece of legislation governing TIP in Nepal is the the Human Trafficking and Transportation Control Act (2007). Other relevant laws include the Foreign Employment Act (2007); the Extradition Act (2014); the Labor Act (2018); the Immigration Act (1992) and the Mutual Legal Assistance Act (2015). Other relevant laws bearing on TIP are the Child Labor (Prohibition and Regulation) Act (2000), the Bonded Labor (Prohibition) Act (2002), and the Act Relating to Children (2018).

Major laws pertaining to the prevention of GBV include the Social Practice Reform Act (1976); the Act Amending Some Nepal Acts to Maintain Gender Equality (2006); the Domestic Violence (Crime and Punishment) Act (2009); the Some Public (Crime and Punishment) Act (1970); the Sexual Harassment at the Workplace (Elimination) Act (2015); the Witchcraft Allegation (Offence and Punishment) Act (2016); the Safe Motherhood and Reproductive Health Right Act (2018); and the National Penal (Code) Act (2017) that includes laws on abortion, sexual offences, marital rape, child marriage, dowry and menstrual violence.

National Plans - The relevant Plans are the National Action Plan on Trafficking in Persons, especially Trafficking in Women and Children (2012-2022); the National Plan of Action for Year Against Gender-based Violence (2010); and the National Action Plan for children 2004/5 – 2014-15 among others.

SOPs and Protocols - Several Guidelines and Protocols on TIP and GBV are available in Nepal, issued by the MoWCSC, Ministry of Health and Population (MoHP), Supreme Court, the National Judicial Academy, and UNODC.

Sri Lanka

National Legal Framework – Although the Constitution of Sri Lanka does not expressly prohibit trafficking, it guarantees wide-ranging fundamental rights and freedoms. The Penal Code as amended in 1995 identifies several offences that relate to GBV, along with the Prevention of Domestic Violence Act (PDVA) No. 34 (2005). Given the broad spectrum of offences that GBV and TIP covers, a number of laws pertaining to different elements are applicable. Human trafficking is covered in Section 360C, amended by the Penal Code (Amendment) Act No. 16 of 2006 to bring it in line with the Palermo Protocol, and the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act No. 30 of 2005.

The Amendment to the Penal Code has also been complemented by the Assistance to and Protection of Victims of Crimes and Witnesses Act No. 4 of 2015. Other relevant legislations are the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985; and the Immigrants and Emigrants Act (No. 20 of 1948). The Brothels Ordinance (1889) and the Vagrants Ordinance (1841) continue to be used to criminalize women on charges of prostitution.

National Plans - There are several National Plans in place to combat TIP and GBV, namely – the Policy Framework and National Plan of Action to address Sexual and Gender-based Violence; the National Strategic Plan to Monitor and Combat Human Trafficking (2015 - 2019). Specifically, the National Labor Migration Policy of 2008, and its Sub-Policy and National Action Plan on Return and Reintegration of Migrant Workers addresses external migrant workers. Although neither explicitly mentions TIP or GBV, under the overarching theme of the safe migration umbrella, they could be interpreted to include both and addressing such violence.

SOPs and Protocols - The guiding protocol in Sri Lanka is the Standard Operating Procedures for the Identification, Referral and Protection of Victims of Human Trafficking issued by the Ministry of Justice and Labor Relations. A major shortcoming noted since its introduction was that not many stakeholders adhere to the SOPs. The CID and the SLBFE refer to their own screening measures, raising questions of the viability of the SOPs as a universal instrument for use. Additionally, the SOP does not offer any guideline on identifying potential victims from at-risk populations.

Several Guidelines and Protocols on GBV are issued by Sri Lanka's Ministry of Health.

Conclusion

- All three countries have a wide and comprehensive array of laws to deal with both TIP and GBV, and the legal framework has continuously evolved.
- Nepal has a standalone law on human trafficking. Different forms of trafficking are dealt within the Penal Code and several legislations in India and Sri Lanka.
- National plans and policies exist in Nepal and Sri Lanka; but in India, there seems to be uncertainty on whether the plan of action on TIP was adopted and operationalized.
- Although SOPs and Protocols are available on TIP and GBV in the three countries, KIIs reveal that stakeholders lack knowledge of their existence or they are not universally utilized, and many are in need of revision and updating. There is also no framework and mechanism for the monitoring, evaluation and impact assessment of the SOPs and Protocols, in the three countries.

2.3.3 Gaps and Challenges in Laws and Legal Procedures and their Implementation

India

Gaps and challenges in the substantive legal framework

Absence of comprehensive human trafficking law - The Government of India had introduced a Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill in 2018, which could not be passed due to the dissolution of the Lok Sabha (House of People in the Indian Parliament) in 2019. Although the current government is planning to introduce the Bill in the Parliament again, India currently does not have a standalone law on human trafficking. KIIs with law enforcement officials say the absence of a comprehensive legislation is challenging, compelling them to use different Sections of IPC and other Acts to establish the crime.

“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, 18 July 2020).

Gaps in the Immoral Traffic (Prevention) Act, 1956 (ITPA) - Although the major purpose of ITPA is to prevent forced prostitution and punish those who profiteer from it, the law does not define trafficking, whilst focusing only on commercial sexual exploitation to the exclusion of other forms of trafficking. The challenges faced during trial in the absence of a proper definition of trafficking in the ITPA, and dependence on certain sections of the IPC was stressed upon in the research. This definitional shortcoming has been addressed by an amendment to Section 370 of IPC in 2013, which introduced a UN Trafficking Protocol compliant definition. Further, the ITPA is stated to be inherently contradictory in nature, in that Section 8 criminalizes *seducing or soliciting for purpose of prostitution at or within the vicinity of public places, thereby*, treating a person like an ‘accused’; whilst other provisions of the Act seek to rehabilitate the person as a ‘victim’.

Inconsistency in the legal definitions of child - There is inconsistency in the laws regarding age that determines whether a victim is a child or not. Although, the Juvenile Justice Act of 2015, and the POCSO Act of 2012, defines a child as a person who has not completed 18 years of age, other laws such as the Child Labor Act of 1986, and ITPA of 1956 provide different age limits, i.e., a child is defined as a person who has not completed 14 years of age by the former (law) and the latter defines a ‘child’ as a person below the age of 16 years. These inconsistencies in the age limit of a “child” creates confusion among the law enforcement agencies, especially in cases of trafficking of children for labor.

Laws are more women-centric and lack inclusivity - One of the important findings from the research is that the Indian legal system is women-centric in nature and reflects a huge gender gap in legal provisions for (adult) male and transgenders. Rape as defined in Section 375 of the IPC, and the Domestic Violence Act, 2005, are but some examples of how legal provisions overlook the fact that a person belonging to any gender can be a victim or a perpetrator of a crime. KIIs reiterated that there is a lack of focus on violence against men by the legal agencies due to lack of acceptance (which is mostly socially derived) of them being victims of GBV. As pointed 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”* (Inspector, Female, Madhya Pradesh Police Academy, 29 July 2020).

The new law on Transgender Persons (Protection of Rights) Act, 2019 which penalizes atrocities committed against a transgender person is, therefore, a step in the right direction.

Though the ITPA 1956, uses the term ‘persons’ especially in the sections on criminal activities related to prostitution, the common understanding among the LEOs is that the law only deals with sexual exploitation of women, leaving out transgenders and other genders.

Gaps and challenges in the procedural legal framework

Lack of clarity on ‘consent’ in trafficking cases - Section 370 IPC (Trafficking of Persons) immaterializes consent of a victim in the determination of the offence of trafficking. A lack of conceptual comprehension of how trafficking unfolds, especially in sex and labor trafficking

cases coupled with a belief in the ‘willingness’ to be engaged in prostitution leads to women and sometimes minors being charged as culpable under the ITPA, 1956 – instead of exploring whether ‘consent’ was obtained as a result of trafficking.

A lack of understanding of the term during implementation has also been pointed out in the stakeholder interviews, mainly with the police, with descriptions during KIIs ranging from: *“great deal of confusion in understanding the term consent”*; *“complex and which, can be interpreted differently by different individuals”*; *“varied Indian culture and tradition which makes the implementation of laws and understanding of the term consent difficult”*; *“if a person has given consent to prostitution then that should not be stopped, or understood as commercial sexual exploitation or sex trafficking”*; *“implementation becomes difficult for the police when an adult says that the consent was out of their own will”*.

Very few respondents who had vast experience working on these issues were able to articulate the meaning of consent and the role it plays in trafficking and cases of sexual violence. In GBV cases too, especially in sexual violence offences, questions are frequently raised on the alleged ‘consent’ of the complainant during investigations and trial.

Uneven implementation of laws - The research suggests that the existing laws, albeit with some anomalies, are well in place and strong enough to deal with the issues of TIP and GBV, but are impeded by uneven implementation. The continuous amendments in existing legislations and the addition of new laws give rise to legal anomalies which creates more confusion among the law enforcement officials – since *“amended laws do not reach the right person at the right time”* (Senior Public Prosecutor, Male, Delhi, 12 July 2020), in addition to the lack of timely training on the new provisions resulting in improper investigation, more acquittals and less conviction. Most respondents felt that at the ground level, 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.

Non-registration of cases - Although the amendments to the IPC by the Criminal (Amendment) Act, 2013 and the POCSO Act, 2012 make it mandatory for police officials to register complaints, adherence to these legal provisions is not assured. The police are cavalier in filing an FIR which is the first step to initiate an investigation, especially if the victim is from an economically/ socially marginalized community, as stated during field interviews.

Uneven performance of the Anti-Human Trafficking Units - AHTUs were first set up in 2007 and since then only 334 units have been formed even after the release of a fund of Rs 100 crore (\$1,37,21,510) from the Nirbhaya Fund, for their formation and strengthening. KIIs suggest that the majority of the currently active AHTUs are not sufficiently funded or trained, nor solely involved in investigating TIP cases.

Lack of inter-agency coordination - Of the 22 law enforcement officials interviewed, 14 mentioned lack of inter-agency coordination especially under the Women and Child Development Department in the districts, whereby the police face challenges in providing services to victims on time. In case of inter-state trafficking, there is a lack of coordination not only amongst inter-state agencies but also among the inter-state police stations.

Delayed legal processes - The prolonged investigation and trial of sensitive human trafficking cases often leads to the victims turning hostile and losing faith in the justice delivery system. It

was mentioned in the KIIs that the legal process is so “cumbersome and painful” (intertwined with stigma, shame, mental trauma) that ultimately many victims tend to “get lost”.

Victim compensation - Amidst the increasing concern for compensation to victims of crimes, Section 357A was inserted in 2009 (Code of Criminal Procedure 1973) to frame a Victim Compensation Scheme (VCS). A 2017 report analyzing the implementation of VCS revealed that there was no uniformity in compensation amounts between states; no uniformity between the number of compensation applications filed and the number of victims who received compensation (which was in any case very low); a lack of awareness about the Scheme in general; and the application process being non victim-centric.⁷¹ As per the US TIP Report 2020, there is an inadequate implementation of the Centrally Sponsored Scheme for Rehabilitation of Bonded Labor, 1978 (revised in 2016).

Inadequate training of law enforcement agencies - Although training of law enforcement agencies has increased in recent times, it remains highly inadequate in comparison to the scale of the problem of TIP and GBV in the country. Of the two border officials interviewed neither had received training on TIP; of nine police officers only five had received training on GBV; and none of the three prosecutors had received any training on TIP.

Nepal

While there are various legal and procedural provisions to promote and protect the rights of girls and women, the mechanisms for their implementation, monitoring and ongoing evaluation have been found wanting.⁷² A service provider mentioned, *‘The law is good in itself, but the implementation is not good’*.

Gaps and challenges in the substantive legal framework

Gaps in the human trafficking law - According to government officials who were interviewed, although the legal definition of TIP was clear, the HTTCA does not differentiate between the many types of TIP; whereas a service provider said that, *‘The legal definition is not so clear; it is not easy to understand, it also seems to have a double meaning in terms of foreign employment and human trafficking...’*. Since one of the definitions of ‘foreign employment fraud’ consists of sending ‘a person abroad by giving false assurance’, cases of human trafficking are often filed as foreign employment fraud.

- The HTTCA criminalises the person engaging in prostitution as well as use of someone in prostitution. Victims of trafficking forced into prostitution are criminalized but the act of exploitation for prostitution itself is not. The majority of those involved in prostitution are females under 18, and many are victims of internal trafficking.⁷³ A literal reading of the law doubly victimises them as they would face criminal charges under the HTTCA. Having ratified the Protocol in June 2020, Nepal is bound by the legal obligation to align its domestic laws with the international standards prescribed by the Protocol, which stipulates non-criminalization of TIP victims.

71 Sanjog (2017)

72 CREHPA (2013)

73 ECPAT International (2020)

“If a boy and girl are found in a hotel, it is generally understood that the girl is the victim, and the boy and the establishment are involved in trafficking. The trafficker will say I have consent and have paid for sex. So, he may have taken consent, but prostitution is illegal under the trafficking law. A sex worker risks imprisonment for three months, but there are no laws for those buying sex” (Police official, Male, District Police, Banke District, 4 October 2020).

- The HTTCA requires demonstration of force, fraud, or coercion to constitute a child sex trafficking offence and does not create a strict liability on all forms of this offence. Some police officials continue to arrest, detain, and fine adult and child sex trafficking victims identified in the adult entertainment sector.⁷⁴
- The HTTCA does not discuss labor exploitation in situations such as forced or bonded labor. There is no clear demarcation of the difference between violations of the rights of migrant laborers and trafficking, including how to report and investigate allegations.
- The law has not criminalized the recruitment, transportation, harboring, or receipt of persons by force, fraud, or coercion for the purpose of forced labor. The definition of trafficking in HTTCA also does not deal with transportation of victims into Nepal.
- A 2015 amendment to the HTTCA reinstated a provision for fines on TIP victims for failing to appear in court, and they could even face criminal liability should their testimony contradict the previous one, thus hampering victim protection.
- The HTTCA lacks adequate provisions pertaining to internal trafficking.

Consent - The issue of consent in the context of labor trafficking has been inadequately addressed in the HTTCA because of which perpetrators remain immune to any legal actions (Representative, Female, INGO, 24 June 2020). “The issue of consent comes to the fore in the case of rape. In the case of trafficking, there will be more deception and temptation, so there is no question of consent; it is their *modus operandi*” (Judge, Male, Patan High Court, 5 September 2020).

In the context of GBV, the issue of ‘consent’ in the definition of rape, in the National Penal Code 2017 needs clarification. Situations where this may arise include where the person is unable to give consent (due to a disability, intoxication or lack of consciousness); is mistaken about the nature of the act or is threatened with violence or bodily injury. In cases of rape as well as sexual harassment, the accused is considered innocent until proven guilty and the onus is on the victim to prove the absence of consent.

Human smuggling and trafficking - There is no law against human smuggling and there is a lack of conceptual clarity on the differences between the two crimes.

Absence of disaggregated data - Neither the NWC nor the Nepal Police has disaggregated data on domestic and transnational trafficking; along with distinguishing sex and labor trafficking, or forced marriages. There is also an ongoing problem of erroneous classification of labor violations where the majority of transnational labor trafficking cases continue to be misidentified as labor violations and are resolved through an administrative procedure under the Ministry of Labour in lieu of a criminal investigation.

74 US Department of State (2020)

No anti-discrimination law - Nepal still lacks a comprehensive anti-discrimination law that encompasses all forms of direct and indirect discrimination and multiple and intersecting forms of discrimination in both public and private spheres, including on the basis of gender. The provisions in the Act to Amend Some Nepal Acts for Maintaining Gender Equality of 2006 was a step in the right direction but it excludes sexual and gender minority groups.

Provisions of rape - The rape of persons other than females is not recognized in the National Penal (Code) Act, 2017. It only deals with sexual intercourse with a woman without her consent or sexual intercourse with a girl below the age of 18, with or without her consent.

Prohibitions on women migrant workers - The Directives Related to Managing Domestic Workers Going for Foreign Employment in 2015 setting a minimum age limit of 24 years for women migrant workers seeking domestic work in certain destination countries, and prohibiting a mother with a child younger than two years from seeking foreign employment directly contradict the non-discrimination clause in the Foreign Employment Act 2007. This Act also set 18 as the minimum age at which people can go abroad for work. These prohibitions increase the risk of exploitation as well as trafficking for younger women as they seek irregular channels which compel them to go as undocumented workers.

Gaps and challenges in the procedural legal framework

‘Women-centric’ legal procedures - Many of the stakeholders interviewed noted that legal procedures tend to be ‘women-centric’ as evidenced by the establishment of the Women, Children and Senior Citizen Service Centers which cater primarily to women along with laws such as, investigation to be conducted by female police officials in the case of women victims, mainly because ‘women are at greater risk’.

“Legal procedures are women-centered because women are more likely to be victims, because generally out of 15 cases registered, only two cases involve men and the remaining 13 cases involve women” (Police official, Female, Women, Children and Senior Citizen Service Centre, Sunsari District, 11 September 2020).

Implementation of GBV laws - The legal definitions of GBV were perceived as ‘weak’ by almost all the interviewed shelter home representatives, NGOs and even judges. An NGO official stated that in their implementation, the laws on GBV did not recognize the power relations within the diverse Nepali society where perpetrators usually have the upper hand due to their political connections that can even trump the law (also KII with Prosecutor, Male, Banke District, 15 September 2020).

“The legal definition of GBV covers everything but the implementation side is not strong. According to the legal definition, women should be given justice, but in reality, the same woman is often blamed in the legal process. If there is any kind of violence against women, there is a Women’s Cell inside the police station and there is a growing understanding that one can have one’s say. But, there is a problem somewhere in the law” (Supervisor Shelter Home, Female, Banke District, 9 July 2020).

Extradition issues in TIP cases - No extradition arrangements exist with countries of destination to bring individuals accused of human trafficking to justice. The one extradition treaty Nepal has with India from 1953, does not deal with trafficking and the provision in the treaty closest to trafficking is the one on ‘abduction or kidnapping.’

Barriers to accessing legal redress - The complex legal proceedings, lengthy and complex complaint process, delays in court hearings, difficulties in receiving compensation, restricted legal aid are some of the barriers encountered by women to access legal redress.⁷⁵

There are ambiguities regarding the appropriate body to address complaints for victims of trafficking and GBV. The Domestic Violence Act of 2009 identifies four different institutions for lodging an initial complaint—the local government, the police, the courts, and the National Women’s Commission; the latter based in Kathmandu is not accessible to everyone. There is also a marked gap in dissemination of information on authority, duties and limitations of each agency in handling the complaint process.

In cases of labor trafficking, migrants/ victims are quite unaware of how redress can be sought. There is a preference to submit claims for restitution under the Foreign Employment Act (FEA) rather than lodge a criminal case under the HTTCA, due to the lengthy period required for criminal prosecution under the latter, the stigma associated with trafficking, the potential for compensation being higher under FEA, and overall poor access to institutions providing redress.⁷⁶ Although it was possible for prosecutors to file cases of both trafficking and foreign employment fraud, prosecutors believed it would violate the double jeopardy rule.

Gaps in responses of criminal justice actors - Prosecution of cases are hampered by poor investigations as well as hurried prosecutions, leading to lack of evidence.⁷⁷

- The proceedings of GBV cases all depend on the evidence presented by the victims and collected by the investigating officers, but there is lack of accountability from the police for the protection of the evidence.
- Neither the Human Trafficking Investigation Bureau (HTIB) of the Nepal Police nor other law enforcement units have the resources to coordinate with NGOs and victims while registering cases against traffickers.
- There is lack of coordination between the police and the prosecutors, leading the police to submit incomplete cases that the latter cannot pursue in court.
- Many cases are frustrated because the victims do not cooperate, or delays lead to loss of evidence.
- It has been more than a decade since the Supreme Court ordered human trafficking cases be fast-tracked,⁷⁸ and although there was some movement towards that end initially in the district courts, it has since petered out.⁷⁹
- Several service providers noted that the attitude and behavior of the police towards the victims is not always positive.

“In the case of rape, it is a matter of policy to ask questions in a natural and confidential manner, but in practice, the victim is asked for evidence of the incident, they are asked what the scenario behind the rape was. The questioning makes the victim feel more confused, and they feel more victimized” (Representative, Male, NGO, Banke District, 11 July 2020).

75 Forum for Women Law and Development (FWLD) (2018)

76 US Department of State (2020)

77 FWLD (2018)

78 Jyoti Poudel and others v. Nepal Government and Others (2009)

79 There is a record of a rape case having been decided within seven days in 2013. Subedi Binu (2018)

- One of the interviewed judicial officers believed judges had a good understanding of human trafficking and GBV, but they were bound in their decision making to the evidence presented in the specific cases. Another judicial officer stated that even though Nepal had clear Supreme Court guidelines on TIP and GBV, there also were chances of corruption and mis-judgment by the judges (Judge, Male, Patan High Court, 5 September 2020).

Capacity of human resources - Efforts are further hampered by the presence of very few investigators and prosecutors trained to work on trafficking cases, and the difficulties are further compounded by the frequent turnover of personnel. Whilst the police and prosecutors confirmed to receiving basic orientation training, some of them also received advanced specialized training on the subjects. Officials mentioned the training programs as being useful in their work on TIP and GBV and prescribed basic mandatory training for everyone working on these issues.

Notably, none of the three immigration officials interviewed said they had received any training on TIP. Not all the service providers interviewed had received formal training – in some instances self-learning equipped them for their roles, whilst in others more formal and intense training was provided by the organization.

Sri Lanka

Among the respondents interviewed for this report, there is universal agreement on Sri Lanka's ability to design and/or develop policies, Action Plans and even laws that seek to address any gaps in the existing legal and policy framework. The problem lies in enforcement and/or implementation.

Gaps and challenges in the substantive legal framework

Gaps in the TIP Law - The apparent failure to file indictments under the Section 360C Penal Code provision and the over-use of Section 360A on procurement, and the low success rate illustrated by only a single conviction being secured under the new Amendment, have all been cited as highly problematic for Sri Lanka.

- From the outset, the low rate of convictions is not a shortcoming in relation to trafficking cases only. Sri Lanka consistently has had a low rate of conviction for criminal matters, which is considered to range between 4-6 percent. Hence, the low rate of convictions for TIP must also be foregrounded in factors that impact the legal system in general in Sri Lanka. Factors specific to TIP, however, also exist. The year 2018 marked a turning point in Sri Lanka for having secured a conviction under Section 360C of the Penal Code for the first time in five years. The sentences were however, suspended for all three traffickers, thus 'watering' down its potential impact.
- 'Consent' is not explicitly spelled out in the definition of Section 360C in relation to adults, and a clear mention in the law of consent as irrelevant in a situation of exploitation could help avoid any doubt surrounding this issue.

Labor trafficking - Complaints of possible cases of trafficking that are directed through the SLBFE can easily be interpreted as a contractual issue rather than a presumed case of trafficking. Despite these shortcomings, about 60-70% of the cases referred to the CID originate from the SLBFE, indicating that processes are in place to sort through possible cases of trafficking. Officials revealed during their KIIs that only 10% of all the complaints received by the CID fulfill all requirements as per the law, pointing yet again to gaps in the preliminary investigations.

Gaps and challenges in the procedural legal framework

Gaps in identification of presumed TIP and GBV victims – Legal law enforcement is hampered by gaps in identification of trafficked victims, due to which justice delivery cannot be initiated.

For GBV victims, lodging of a complaint with the local police station does not necessarily always culminate in legal redress. Accusations are directed (during KIIs by the service providers) at the local police stations for adopting a dismissive approach to domestic/intimate partner violence incidents, resulting in women being forced to return to an abusive relationship.

Cooperation of the victim/ witness - A primary reason preventing cases from reaching the courts is the lack of willingness of the victim/witness (TIP and/or GBV) to cooperate with the investigations, as not all presumed victims wish to pursue a legal remedy.⁸⁰ Some wish to migrate again or re-integrate into their communities, while others fear for their safety and that of their family members. KIIs with LEOs and service providers point to the pressures that can be brought on a victim to change or withdraw statements.

- There are no safeguards for the victims/witnesses (especially in TIP cases), and even though the Assistance to and Protection of Victims of Crimes and Witnesses Act No. 4 of 2015 is in force, the extent of support it provides is not yet clear.
- For both GBV and TIP victims, social stigma is a major barrier in seeking legal redress, especially when the victim is a young woman. The re-victimization of victims within the criminal justice processes can have devastating effects on their physical and mental well-being.
- The lack of understanding of one's rights and processes to seek compensation and protection that existing laws provide for further exacerbate existing gaps.

According to interviews with police officers, there is some reluctance on the part of the police to petition the courts for a Protection Order because of apprehensions that complaints are sometimes withdrawn by the victim, later. Even when Protection Orders are not sought, instances of women returning to the police station to withdraw the complaint the next day was also cited.

Capacity of human resources - With regard to TIP, a major gap is of human resources available with police officers at local stations and their inability to pursue an investigation on trafficking to its logical conclusion. Additionally, there is lack of awareness on the kinds of evidence needed in order for a case to be filed. These gaps in investigations result in the Attorney General's Department prosecuting offenders for procurement under Section 360A of the Penal Code rather than for trafficking under Section 360C.

The transnational nature of trafficking in the external labor migration process prevents certain cases from being investigated further, and despite legal provisions on mutual cooperation and assistance, time and financial allocations required to conduct trans-border investigations are limited. These gaps in investigations result in the Attorney General's Department prosecuting offenders for procurement under Section 360A of the Penal Code rather than for trafficking under Section 360C.

80 ILO (2018)

Court proceedings – In both GBV and TIP cases, the pace of examining the cases can negatively impact the victims' ability to continue with their lives. Since Prosecutors are disallowed from interacting with the victim/witness because of possible accusations by the defense of the witnesses being coached, court processes and victims' question and answer inquiry seem intimidating, further discouraging them from participating in the justice process.

“The other thing is why would a victim want to pursue a case when they are re-victimized in the process? Imagine, we file the indictments this year and it is 2020 and the girl, the victim is 20 years old. By the time, a judgement is given, she will be 25 years old and during that time period, would she be able to get married? Would anyone want to marry her? We know of cases where, it's not to do with trafficking but a rape or similar case, where by the time the judgment was given, she was married and had a child also and the child was schooling or something. This is how long it takes for justice to be delivered. When these things delay, it doesn't allow the victim to carry on with their lives” (Law enforcement official, Male, Colombo district, 15 September 2020).

The Covid-19 situation has also highlighted how law enforcement can become further delayed other priorities including delayed court proceedings due to the lockdowns.

Conclusion

- India, Nepal and Sri Lanka have strong and constantly evolving laws, but inadequate implementation. Even though there is scope for improvement in the TIP and GBV laws in all the three countries, the existing legal framework is quite effective, but is hampered by weak and uneven implementation.
- TIP and GBV laws in India, Nepal and Sri Lanka are more women-centric and exclude men and other genders from its ambit; with only India enacting a law in 2019 for transgenders - the Transgender Persons (Protection of Rights) Act.
- Interpretations of legal provisions by legal responders, especially the definition of trafficking in persons, and consent are problematic in all the three, impacting the identification of victims, investigation of cases, and justice delivery.
- Delayed legal processes in recording complaints, investigations and trials of TIP and GBV cases have been reported in all three countries primarily due to the inherent systemic challenges associated with the broader justice delivery system and deficiencies in the capacities of legal responders, beginning with the police and culminating with the courts.
- Cooperation of the victim/witness is patchy in India, Nepal and Sri Lanka due to societal and family pressures, fear for self and family due to threat by perpetrators, inability to navigate the criminal justice system and lengthy and complex legal processes. All these directly impact the investigation and prosecution of cases. The criminal justice delivery is heavily dependent on the victim-witness testimony, and in the event of their turning non-cooperative or hostile, the entire case falls apart.

2.3.4 Judicial Interventions

- There is robust judicial intervention in India, Nepal and Sri Lanka by courts at various levels for protecting fundamental and human rights of victims of TIP and GBV. There is an abundance of judgments⁸¹ addressing diverse aspects of human trafficking and GBV.
- Public Interest Litigation (PIL) has been used more effectively in securing rights of victims of TIP and GBV in India and Nepal, compared with Sri Lanka. Implementation of judgments pronounced in the PILs by the relevant authorities in India and Nepal, however, suggest that often orders remain more on paper.

2.4 Service Provision for TIP and GBV Victims

2.4.1 Service Delivery Stakeholders for TIP and GBV Victims

India

- The Ministry of Women and Child Development (MWCD) is the nodal ministry for GBV and TIP on the prevention, rescue, rehabilitation, re-integration and repatriation of victims of human trafficking, and coordinating activities and processes at all levels.
- The Ministry of Home Affairs (MHA) is the nodal Ministry for human trafficking for prosecutions (also of GBV cases) and other related issues, which also functions through its Anti-Trafficking Nodal Cell in coordinating actions with State Governments, and the Central Bureau of Investigation (CBI) and National Investigation Agency (NIA) for investigation of TIP cases. The Border Security Force (BSF), Assam Rifles, Sashastra Seema Bal (literally, the Armed Border Force) are para-military forces under the MHA which, are the first responders to identify and screen victims of cross-border trafficking.
- The State Police (for GBV) along with the Anti Human Trafficking Units perform all roles related to rescue and investigation with regard to TIP victims.
- The Ministry of Labor and Empowerment deals with issues of trafficking for labor along with the MWCD where women and children are concerned.
- The Ministry of External Affairs is relevant for repatriation of trafficking victims both within and out of India and it issues directives on migrating women (and male) workers.
- Statutory bodies such as the National Human Rights Commission, the National Commission for Women, and the National Commission for Protection of Child Rights perform broad monitoring functions on issues related to TIP and GBV.
- Besides government authorities and statutory institutions, several international and national NGOs in India provide services to TIP and GBV victims from screening to rescue from exploitative and abusive situations, administration of shelter homes, rehabilitation and repatriation.

81 Refer segments 3.5 of India Country Report; 3.11 of Nepal Country Report; and 3.6 of Sri Lanka Country Report for more details on the judicial pronouncements.

Nepal

- The Ministry of Women, Children and Senior Citizens (MoWCSC) is the nodal ministry dealing with GBV and TIP, working through the National Committee for Controlling Human Trafficking and the Human Trafficking and Transportation Control Division.
- The Ministry of Home Affairs (MoHA) has an important role to play in both the TIP and GBV sectors, primarily through the Nepal Police, the Armed Police Force and the Department of Immigration. The Nepal Police has several special units – the Women, Children, and Senior Citizen Service Directorate (WCSCSD) which operates through the Women, Children and Senior Citizen Service Centers (WCSCs), the Human Trafficking Investigation Bureau (HTIB) under the Crime Investigation Department, and the Cyber Bureau.
- The Ministry of Labor, Employment and Social Security (MoLESS) works through the Department of Foreign Employment (DoFE), and the Foreign Employment Board.
- Working with Nepali diplomatic missions abroad, the Department of Consular Services under the Ministry of Foreign Affairs rescue and repatriate victims of human trafficking and smuggling in various countries.
- The Ministry of Health and Population (MoHP) establishes and runs the One-stop Crisis Management Centers (OCMCs) through government hospitals.
- Statutory bodies such as the National Human Rights Commission under which the Office of the Special Rapporteur (OSRT) on Combating Trafficking in Persons is constituted; and the National Women’s Commission (NWC) also deals with several aspects related to TIP and GBV.
- In addition, several international and national NGOs in Nepal provide numerous services to TIP and GBV victims from screening to rescue from exploitative and abusive situations, administration of shelter homes, rehabilitation and repatriation.

Sri Lanka

- Generally, the mandate for GBV related interventions is with the Ministry of Women’s and Child’s Affairs in Sri Lanka (currently operating as the State Ministry of Women and Child Development, Pre-Schools and Primary Education, School Infrastructure and Education Services). The Ministry houses the National Committee on Women. Multiple services are provided on GBV through the Women’s Bureau, Women’s Development Officers (WDOs) and Counsellors attached to the Divisional Secretariat.
- The Ministry of Justice through the National Anti-Human Trafficking Task Force (NAHTTF) is the focal point for all actions related to TIP. The Legal Aid Commission offers legal assistance and free legal counselling.
- The Police Department of Sri Lanka under the purview of the Ministry of Public Security through the Police and the Women and Children’s Desk in police stations perform law enforcement responsibilities. A special unit with the Police Department’s Criminal Investigations Department (CID) holds the primary responsibility of investigating instances of TIP.
- The Ministry of Health through the Family Health Bureau and the unit for Gender and Women’s Health, plays a pivotal role in extending support to victims of GBV and TIP.

Several specialized Centers for victims of GBV have been established within some hospitals in Sri Lanka, which provide counselling and other health related support.

- The Sri Lanka Bureau of Foreign Employment is the principal regulator for overseas labor migration, and additionally works through the Anti-Human Trafficking Unit and the Investigations Unit.
- The State Ministry of Foreign Employment Promotions & Market Diversification is the apex policymaking body for external migrant workers.
- The Foreign Ministry provides consular and repatriation services to external migrant workers.
- Several international and national NGOs in Sri Lanka provide numerous services to TIP and GBV victims.

2.4.2 Delivery of Services to Identified TIP and GBV Victims

India

1. Victim referrals to services/ shelter homes

Victim referrals and place where services are accessed - KIIs revealed that service providers came in contact with victims of TIP and GBV through multiple sources such as, police, community, helplines (childline and women helpline), child protection agencies, through victims' families, court referrals, and NGOs. Of the 20 victims interviewed (12 GBV and 8 TIP), eight said they received services at the place where they made the complaint, three at the police station, four at the OSCC, and one at an NGO. A few of the victims also highlighted the challenges in filing complaints and receiving assistance at the police station, and one GBV victim recounted the police asking her for a bribe to lodge a complaint. Three TIP victims said they received services at the place of rescue, two at the place where they requested i.e., NGO and OSCC and seven of them received services such as food, shelter, counselling and vocational training from NGOs, Shelter Homes and OSCC.

One-Stop Crisis Centers (OSCC) - 683 OSCCs had been set up till 2020⁸² under the MWCD Scheme, but the research points towards their ineffective implementation and functioning. A study by the Maharashtra State Commission for Women (2019) of 11 OSCCs in the State found that a majority of them were not functioning 24 hours of the day and nine had no trained staff. Several centers lacked infrastructure and faced issues of delayed funds from state government.⁸³ A KII in Manipur with a staff of an OSCC revealed similar challenges in the state. Additionally, the US TIP Report (2020) mentions the government allocation of USD 44 million to improve access to OSCCs and establish an additional 728 centers. However, there is no information if the 506 operational centers actually assisted any trafficking victims. Existing OSCCs will likely require strategic investment to address these specific barriers before they can achieve their ultimate goal of reducing survivor re-traumatization when seeking care. Lack of trained counsellors, little access to legal aid, and a failure to link these centers with helplines reduces their effectiveness – and ultimately does not serve victims.

82 MWCD (2020)

83 Barnagarwala Tabassum (2020)

a) Barriers to accessing services

Differential access to services on the basis of gender, geographical location, and types of TIP - KIIs and FGDs with service providers suggested that geographically services are concentrated in cities or urban areas compared to rural areas, making access difficult for rural victims. Police and border officials highlighted the challenges of lack of shelter homes in many border districts and in some being situated in remote areas within the district. This makes care and support to victims lengthy and time-consuming, besides restricting the provision of shelters to rescued TIP victims during the night.

Very few victims interviewed claimed knowledge about the availability of services in their place of origin. Many more mentioned there were no services at the village level and a few victims expressed their inability to return to their families due to non-availability of services.

“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 center to lodge a complaint” (GBV Victim, Female, Madhya Pradesh, 2 September, 2020).

According to some of the respondents, services and shelter facilities are largely available only in metropolitan cities like 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 to their families, after their rescue” (NGO, Founder, Male, Delhi, 12 July, 2020).

The Ujjawala Scheme (for TIP victims) and Swadhar Greh Scheme (for GBV victims) including OSCCs are targeted only at victims of one gender and don't apply to male/other genders was also highlighted in the KIIs with service providers. A judicial officer narrated her experience when a transgender person was brought to the ITPA court

“Madam ab aap mujhe kaha rakhoge? Mujhe women shelter home bhejoge yaa men shelter home mein bhejoge?” (Madam where will you keep me, in a shelter home for women or men?) (Judicial Officer, Female, Maharashtra, 7 July 2020).

A major gap 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 other genders as a result of TIP/ GBV. None of the service providers interviewed, except for those in Madhya Pradesh, provide services to male victims or victims of other genders experiencing violence. In Madhya Pradesh, the OSCC in district Bhopal and Gulmohar, in district Vidisha, provides the only counselling services to the male victims in case of intimate partner/domestic violence cases.

Service providers believe that cases of sex trafficking are given more importance in comparison to GBV due to their perception of 'lot of trauma and assault' suffered by the former. Cases of TIP for forced labor, domestic servitude, or forced marriage are not addressed on priority.

Services for repatriated female transnational trafficked victims and returnee migrants from foreign countries were available in the same shelter homes.

Reasons for not accessing services by victims - On addressing the reasons for not accessing services by victims, 15 of the 30 service providers mentioned reasons such as – *‘not able to identify self as a victim’ and ‘fear of retaliation to self-and/or family’*; whilst the other 15 mentioned social pressure or institutional gaps such as, *‘lack of social support’ (isolated), ‘feelings of shame or stigma’, ‘lack of knowledge about available services’, ‘lack of ease of access to services’, ‘lack of trust of the system’, ‘language and cultural differences’, and ‘fear of deportation/ legal status’*. The perspective of victims on the contrary revealed a lack of knowledge on available services, fear of stigmatization or shame, lack of knowledge about ones’ rights, feeling of isolation and lack of social support, as prominent reasons affecting access to services.

Inadequate responses from law enforcement officials - As the very first step to accessing services is to be identified as a victim, the KIIs suggest that existing gender prejudices amongst the law enforcement officials further deprives the victim of this.

Lack of cooperation amongst stakeholders - KIIs with service providers suggest that the service delivery stakeholders are often found to be working in silos, lacking communication and coordinated efforts. Especially in cases of adult GBV victims, if not guided well, she often has to move from one place to the other to access services.

Accessibility of services during the COVID-19 pandemic - The nation-wide lockdown made reporting of cases as well as seeking services by GBV victims challenging due to restricted mobility as well as stringent guidelines of social distancing, according to the interviewed service providers. Shelter Homes were directed to maintain social distancing procedures resulting in them not admitting any new victims due to lack of infrastructure for separate quarantine rooms. Some service providers were running emergency helpline services, which experienced a surge in the number of distress calls from women reporting domestic violence during the lockdown. In case of TIP victims, the interviewees could not provide any information on restricted access to services (perhaps due to no victims being rescued and brought to the shelter homes during the lockdown period).

2. Types of Services provided to TIP and GBV Victims

Government mandated shelter services - Ujjawala and Swadhar Greh are government- and NGO-run shelter homes for TIP and GBV victims respectively, mandated, funded and monitored by the MWCD. Victims can receive comprehensive services, namely psycho-social counselling, health, legal aid, rehabilitation services including economic rehabilitation, and repatriation (for TIP victims) within shelter homes. Services could also be accessed through government/ NGO sources if victims are not staying with the shelter homes. The ITPA, 1956 and the Juvenile Justice Act, 2015 provides a range of legal provisions from rescue to rehabilitation of TIP victims by the former, and for ‘children who are in need of care and protection’ under the latter.

As per the Ministry of Home Affairs, 267 projects including 133 rehabilitation homes are functioning under Ujjawala Scheme⁸⁴, but the study found the distribution of such homes to

84 Ministry of Home Affairs (2019)

be uneven in all states. For instance, in Manipur, there are 16 Ujjawala centers while Delhi has none, even though the number of TIP victims rescued are much more in Delhi as compared to Manipur. Field interviews in all five states highlighted that Ujjawala Homes, just like OSCCs lack trained staff and resources due to lack of funds or irregular funds and serious shortages of space, thereby confirming the findings of the US TIP report (2020).

The quality of services provided to the victims at the government-run shelter home was pointed out to be inadequate by the service providers (Government officials and NGOs); in most cases the living conditions of the shelter home lacked quality in food, clothing, hygiene and trauma care.

The effectiveness and/or challenges in the implementation of the various schemes and services could not be analyzed in the absence of appropriate literature indicating monitoring, evaluation or assessment.

Service delivery by interviewed service providers - KIIs with victims of TIP and GBV revealed the services that they received namely – shelter, psycho-social support, physical health care, nutrition, life skills and vocational training, economic security, education, identity documents, legal information and counselling, rehabilitation, repatriation, and others. All these services were provided to the victims either while staying in the shelter home or after being associated with NGOs/ OSCCs after leaving the home.

In total 11 service providers (seven shelter homes and four NGO officials) mentioned that lack of adequate funds and timely budget allocations hindered in the provision of long-term services to victims, increasing their reliance on funding from other sources. The US TIP report, 2020 also revealed that Government-run and funded shelters remained insufficient, facing serious shortages of space, financial resources, and trained personnel.

Assessment of services - A majority of service providers did not have any structured assessment tool to evaluate their services. It was done through interactive sessions during counselling with the victims, monthly meetings, or group activities; some of them used feedback forms to be filled either monthly or quarterly; whilst a few had suggestion boxes in their shelter home/ NGO centers.

Victim's preference for non-institutional care and support - KIIs with service providers reveal that in cases of GBV, mostly in cases of domestic violence, victims opt for family reconciliation with the mediation of the service providers, rather than seeking legal redress. Sex trafficking victims are mandated to stay in shelter homes under court orders under the ITA 1956. Also, such victims are mostly not accepted by their families or their families' conditions may have led to trafficking in the first place. In such cases, shelter homes are considered to be the safest place for them.

Victim's perception of effectiveness in the service delivery - Of the 20 TIP and GBV victims, 18 expressed satisfaction with the services received at shelter home or NGOs but were not satisfied with services from police and prosecutors. The reasons were delayed registration of FIRs, and no proper guidance on the post-rescue procedures (TIP victim). Three of the 20 victims complained of lack of quality of food and the living conditions at the shelter home.

Inadequate rehabilitative services - A majority of the victims pointed out that they are still deprived of various rehabilitative services mainly, economic rehabilitation, self-reliance, and access to various government schemes. The desire for economic independence was most strongly expressed with or without their families.

Level of communication - KIIs with service providers suggest that they have a fair level of communication with victims once they come under their service provisions. A majority of the victims were satisfied with the level of communication, and their opinions and consent were always sought before associating them with any service or proceeding in their case. A majority of victims, however, expressed their dissatisfaction with the communication they received from the lawyers and police during their case proceedings and stated that they were not guided well in their cases.

Rehabilitation and re-integration – Of the 24 (NGOs) service providers, 12 stated that most of the victims preferred to go back to their families or at least be in the community. Due to the lack of a concrete community rehabilitation structure or plan, victims of TIP/ GBV, however, continue to stay at the shelter home if their families are not ready to accept them. The individual agency of the GBV victim is the determining factor on rehabilitation within the family. Family assessment and counselling is conducted before initiating the process of rehabilitation, with frequent follow-ups with the victim.

The duration of stay of sex trafficking victims at the shelter home along with other rehabilitation assistance, such as compensation are court decisions. A Home Investigation Report is the determining factor for the ITPA Court on sending the victim to her family or not. At times, various directions are given to ensure suitable rehabilitation.

All decisions regarding child victims are directed by the CWC, the competent authority under the Juvenile Justice Act, 2015, based on the Individual Care Plan for each child's rehabilitation.

Service providers mentioned that some victims refuse to integrate with their families, and are then accommodated within the homes and linked with various support services available at the shelter. The victims' interviews received similar responses – 14 of the 20 victims (9 GBV and 5 TIP) preferred staying either with their families or within the community (all 14 chose 'community' as their choice of living) to lead an independent life. Economic independence was, therefore, very important to them, and their demands from the government were jobs and places to live. The victims who preferred to stay at the shelter home did so for reasons of safety and security, acquiring "inner strength" due to the motivation, guidance, and psycho-social support received at the shelter home.

Lack of composite rehabilitation mechanisms - As shared by the service providers, in reality the rehabilitation services for victims of TIP and GBV are very limited, normally associated with sending victims back to their families, who then lose access to service providers for their economic and other rehabilitation services. The service providers demanded a holistic rehabilitation framework for victims from the government.

Nepal

1. Victim referrals to services/ shelter homes

Victim referrals and place where services are accessed - Victims are referred to shelter homes through referrals made by the police, NGOs, the national helpline run by the NWC, and from other sources. Of the 10 GBV victims interviewed, six reported a referral to the shelter home through another NGO. All 10 TIP victims reported being referred to the shelter home by law enforcement officials – six were referred by the police; and four reported coming to Nepal in the wake of the COVID-19 pandemic, and after being taken directly to ‘holding centers’ operated by the Nepal Army were referred to shelter homes.

All 10 shelter homes reported that victims are mostly referred to them through law enforcement officials, and a majority of them also claimed to receive cases through the local government and NGOs. In the case of GBV victims, most cases referred to them involve rape, attempt to rape, and physical or other forms of abuse by the husband and other family members.

One-stop Crisis Management Centers (OCMCs) - were established in government hospitals as part of the National Plan of Action for the ‘Year Against Gender-based Violence, 2010’ in order to ‘strengthen the health sector for effective and efficient response to GBV, including victims belonging to the LGBTIQ group.’ Although beset by problems of not having trained staff and proper infrastructure, OCMCs have generally been viewed as playing a key role in providing services to victims of GBV.⁸⁵

Service centers - operated by NGOs have been functioning primarily as providers of immediate health care for TIP and GBV victims, mostly in the border towns where victims are intercepted. Additionally, various other services (legal and psycho-social counselling, among others) are provided while victims wait to be taken into rehabilitation homes.

a) Barriers to accessing services

Differential access to services on the basis of gender and geographical location - A majority of victims and service providers stated that services are not easily available in rural areas and are mostly concentrated in cities and border areas. However, victims can file complaints at the community level or at the nearest police station, after which they can be referred to suitable organizations. One of the victims narrated:

“I have come here after having been through a lot of violence. This is common in remote areas like mine. Now that I am here, I am getting various services and facilities. If such services were to be available in my village, other victims like me would not be in pain. There are no facilities in my village and it takes four or five hours to go to the city and even then, services may not be available. There is no justice in that place where I come from” (Victim of TIP, Female Kathmandu, 4 September 2020).

Nine of the 10 shelter homes interviewed reported that they only provide services to women and girls, while one mentioned that it sometimes provides services to men also. Many NGOs providing psychosocial counselling and legal services in particular, stated that they also provide services to men and other genders. Several service providers were of the view that the government has not prioritized providing services to men.

85 Atreya Alok et al (2020)

“Our experience is that more and more women and children are being trafficked, so the services are more women-centric. But in recent times, people of all genders are going for foreign employment, so men are also being trafficked. However, we do not look into such cases. We only deal with cases concerning women and children. The issue of men is looked into by the Department of Labor” (Focal Person, Ministry of Women, Children and Senior Citizens, Female, Province 1, Morang, 1 July 2020).

Reasons for not accessing services by victims - An overwhelming majority of the interviewees felt that a major barrier hindering access to services is the reluctance of victims to seek services openly. There is a fear of re-integration into the community, being re-victimized and the victims’ perception of the authorities in the local judicial committees being politically influenced and failing to administer justice properly. The country’s transition into a federal system complicates matters further.

“The roles of the local government and the central government are still not clear and there is confusion as to who will do what. This seems to be the reason why services have not been provided effectively at the community level” (Representative, NGO, Male, Kathmandu, 7 July 2020).

Many of the GBV victims mentioned that they refrained because of fear of revenge and retaliation by offenders or out of shame and embarrassment.

“We do not seek out services because of fear of tarnished reputation. We think to ourselves – ‘If I bring out this incident, what will the society say? I have to go and live in the same society. I won’t be able to walk in the society with my head held high’. There are many questions that arise in the mind of the victim after an incident” (Victim of GBV, Female, 6 September 2020).

Several service providers emphasized that ‘victims tend to think that GBV is something to be endured,’ but those who are financially independent are able to open up about their sufferings unlike those who have to depend on others since ‘they will have nowhere to go and that they won’t have a secure future’ (FGD with service providers).

Accessibility of services during the COVID-19 pandemic - Many service providers reported that they had been providing services in the wake of the pandemic as well, which was challenging; several of them distributed essential items to victims outside of the shelter homes, and disseminated information through online portals and social media. The challenges due to the pandemic have other dimensions as well.

“Before COVID-19, there was no problem in referring victims to shelter homes run by organizations. Now, because of COVID-19, we are facing problems because NGOs don’t accept victims without PCR test reports” (Police official, Female, Women, Children and Senior Citizen Service Centre, Morang District, 11 September 2020).

2. Types of Services provided to TIP and GBV Victims

Government mandated shelter services - Under the mandate of the HTTCA (the TIP Act), 10 rehabilitation centers have been established for TIP victims in various districts monitored by the MoWCSC, and operated by NGOs on a contractual basis, providing victims with residential facilities for up to six months.⁸⁶ The Gender-based Violence Prevention Section

⁸⁶ MoWCSC (2020)

under the MoWCSC has been operating the ‘Mangala Sahana Long-term Rehabilitation Center’ in coordination with an NGO since 2016, but has come under criticism for providing services to only 21 victims since its establishment, as most victims have been abandoned by their families and cannot be reintegrated into society.

Short-term shelter homes have been set up in a total of 36 districts across the country providing GBV victims with legal aid, psychosocial counselling and financial support. Victims are provided with residential facilities for up to 45 days in the shelter homes.⁸⁷

Shelter homes are also operated by NGOs for TIP and GBV victims. The centers provide essential services according to the needs of the victims, including housing, food, health treatment, counselling services and legal aid.

Service delivery by interviewed service providers - All 10 shelter homes asserted that shelter; psychosocial support services; physical health-care services; services related to vocational training and economic security; and legal and counselling services were available in-house to victims. Additionally, nine also claimed that life skills and education-related services were also made available in the shelter homes. As for identity documents, only six shelter homes provided some assistance. While none said they deal with repatriation, two stated they conduct rescue operations in coordination with law enforcement officials.

Assessment of services - Most of the service providers stated that they carry out periodic assessments of the services, mostly through feedback received from the victims themselves; several also got victims to fill out ‘feedback forms’, evaluating the services received and providing recommendations for improvement.

Victims’ perception of services - Most of the victims interviewed were generally satisfied with the services received and were grateful to the service providers, and there was regular communication with other residents, and shelter home staff.

“We are living here like one family in every respect. I don’t miss my family much here. They take care of everything. They take care of us like our parents. They pay a lot of attention to everything, including matters such as legal procedures to take our case forward” (Victim of GBV, Female, Morang District, 6 September 2020).

Reintegration and rehabilitation of victims - When asked if they would prefer to stay on in the shelter home or be rehabilitated into the community in the future, a majority (7) of TIP victims opted for the latter. The GBV victims’ preferences were mixed (4 with family and 3 in shelter homes), with some (3) even expressing a desire to start an independent life outside the home. A majority of the service providers expressed similar views as well.

“Rehabilitation can be a challenge. It is very difficult to change the mentality of people. Even after being rehabilitated, victims keep coming back to the city again and again. It is difficult for them because the financial situation of their family is weak and no one from the community supports them” (Representative, Female, Sunsari District, 19 June 2020).

87 Ibid.

The decision of rehabilitating victims into the community is taken after conducting a risk assessment to ensure that there is no threat to the victim from the family and community. Family members of the victims are counselled before they are sent home. Rehabilitation is initiated ‘only after ensuring that the victim is physically, mentally and socially’ prepared. Rehabilitation of TIP victims is more challenging:

“When trafficked victims are repatriated, it is very difficult to rehabilitate them into their homes and communities because their own families, and the society look at them with contempt and discriminate against them” (Police official, Women, Children and Senior Citizen Service Centre, Female, Banke District, 22 September 2020).

Challenges to providing services - A common thread during field research was that resource constraints posed significant challenges to effective long-term service provision to victims.

“It is a challenge for organizations like us to work as we rely on help from foreign donors. If they stop funding us, services cannot be continued. There is no financial support from the government. It would have been better if the government had allocated a separate budget for the construction of long-term shelters” (Representative, NGO, Male, Banke District, 11 July 2020).

Other challenges reported by service providers were being subjected to political pressure and threats from perpetrators, and concerns in ensuring their own safety and that of the victims. At least one KII with an NGO revealed that *“there is a lack of public awareness, and the community tends to view us negatively and does not support us”* (Representative, Female, NGO, Banke District, 9 June 2020).

Sri Lanka

1. GBV Victim referrals to services/ shelter homes

Referrals to services - There are multiple pathways for victims to access services such as the helpline operated by the National Committee on Women, hotlines established by leading civil society organizations, and other helplines operated by national level organizations like the Family Planning Association, along with NGOs and community-based organizations (CSOs). Referrals are then made to the appropriate District Secretariat (DS) level officers for follow-up and assistance. *Mithuru Piyasa* drop-in centers can also become a service point that leads to further referrals. Female victims of GBV also tend to approach local level government officials such as the *Grama Niladbari*, a police officer or a WDO and seek assistance. In some of the districts, the courts refer victims to shelters for services.

Referrals to shelter - Access to a shelter can be secured through police referrals where instances of violence are deemed as posing a threat to the wellbeing of the woman; referral by the WDO; and the courts referring victims to shelters. Women can also approach the shelter provider if counselling and drop-in centers are available and an assessment suggests the need for shelter.

Rather than a rigid or unidirectional system of referrals, there are many overlaps and multiple entry points from which services can be accessed. This allows victims to enter at any time into the existing service framework and secure assistance. But, specific services may also be denied based on when they attempt to access services.

2. Types of Services provided to GBV victims

Counselling Services – While there are several recognized CSOs that provide professional counselling, not many at the community level have trained counsellors. Instead, what is offered is a form of ‘befriending’ where the service provider or a community mobilizer listens to and offers assistance to the presumed victims. Ideally, two counsellors are assigned to each DS office – one representing the MWCD and the other from Social Services. While they accommodate drop-in clients, many are referred through hospitals especially after receiving medical care. The counsellors are able to carry out follow-up sessions as required. Accessing the DS office and the expenses to be incurred in doing so prevent individuals from using this service. Counselling alone, however, is considered inadequate when mediating between the victim and the abuser, especially if the perpetrator is the spouse.

Economic support - Assistance in the form of livelihoods is largely lacking. Extending such support hinges on the organization with such programs already in place and then finding the means to include the identified victim within these.

“Earlier we didn’t have procedures to provide financial assistance to the people who were in need. Those days we tried to coordinate with NGOs who work on such issues so that people can receive some support from them. But now in the Women’s Ministry, there are certain programs to help people financially. So, we refer the people to the Ministry. But it takes 2-3 months to work out. Depends on the nature of the case too. No programs are available to receive funds right away” (Government service provider, Female, Colombo District, 11 July 2020).

The frustration voiced by service providers operating at the community level and by the government officers attached to the DS office is because of this inability to ensure that the victims are supported to become economically independent. The emphasis on economic independence by a majority of the respondents is based on their view that poverty is one of the root causes that lead to violence. They feel that economic freedom/independence for the women is the long-term solution to GBV.

Legal Aid - This service is instituted through the Legal Aid Law (No. 27 of 1978) which has led to the establishment of the Legal Aid Commission. Referrals are made to the Commission, but, in most cases, the victim requires legal counsel to petition the courts for a divorce or alimony.

Shelter services - While there is a shortage of accessible shelters for both TIP and GBV in Sri Lanka, the Women’s Bureau operates three to four shelter homes on their own, the other GBV-dedicated shelters are managed with some oversight by NGOs. Beyond this regulated set-up, several unregulated shelters continue to function on an ad-hoc basis. Residents of shelter homes are provided a range of services until their re-integration and rehabilitation. Access to the shelter facility is determined on the immediate need for a safe place and protection for the victim and her children and the consent of the victim to stay there.

The duration of stay can also vary. Some shelters offer a maximum of 14 days, others between three to six months. But where serious offences have been committed, the victims may stay for over a year as ordered by the courts. When the courts refer such victims to the shelters, this 14-day regulation can easily be overlooked as the resident is required to use the shelter until the next hearing.

Protocols of shelter services - During the field study, no evidence was found of a standard protocol being referred to or used commonly by the service providers. Rather, a set of generic practices were followed in accessing shelters. Victims are assisted in filing police complaints; confidentiality and maintaining secrecy of the location of the shelter is of critical importance to shelter providers. Victims are not accepted in shelters after-hours and children of victims are not allowed to attend school due to protection issues. These existing protocols that help ensure protection, safety and confidentiality may appear to be contrary to a victim-centric approach. The difficulties in accessing the shelter have led to the organic growth of similar centers that can provide overnight stays for presumed victims. These irregular, ad hoc set-ups lack the legitimacy and capacity to provide a range of services the victim needs.

Reintegration and rehabilitation - The exit from the shelter home includes attempts to ensure that the women have some form of a stable income, either by petitioning the courts for the payment of alimony by the spouse (in GBV cases) or by linking the women to some form of livelihood opportunity. These may not always ensure that the victim can re-enter the community where the stigma of having experienced violence can lead to her marginalization. This was evident during the study when several counsellors and community mobilizers indicated that such former residents do not wish to be known for having accessed shelter facilities. Among the victims interviewed, their perception of the services appears to be favorable but this cannot be taken to reflect a general level of satisfaction with shelter services. Shelters consistently pointed to how former shelter residents make referrals and direct presumed victims to access their services.

a) Barriers to accessing services

From the interviews, it emerged that the lack of access to a nearby shelter becomes a major stumbling block in providing some form of protection to the most vulnerable. Such incidents were reported by government and CSO respondents who would then try to provide temporary shelter either in the office of the NGO or, sometimes, at the residence of the female officer. Even if available, some shelters may not be equipped to respond to emergency situations given the protocols they follow in admitting an individual to the shelter.

Groups with limited access to shelter - Shelter services are not provided to potential male victims, except in the case of one shelter that operates a separate unit for young men. Even among shelters for female victims of GBV, some reservations were raised regarding giving access to TIP victims. Though these sentiments were not common and only a single instance was recorded, the undercurrent of who is considered a TIP victim was evident, especially as women who do not fit the socially ascribed role for women or victims.

“That is a problem (in housing TIP victims) when domestic violence victims are innocent women with children. Domestic violence victims may not like it when their children get too close to the TIP ones. We still haven’t experienced them together – we haven’t had two separate cases like that stay with us. We also don’t get many trafficking victims” (Shelter Provider, Female, Western Province, September 02, 2020).

This confirms the argument of a few service providers who work closely with sex workers that existing social values can impinge upon their attempts to access such services.

3. Referrals and services for TIP victims

Government mandated shelter services - A dedicated shelter for female TIP victims was established in Sri Lanka in 2005, with its administration and operations assigned to the Women's Bureau as the primary focal point for the other GBV related shelters. This dedicated shelter has now been closed due to administrative reasons and under-utilization. To maintain some space for TIP victims, one of the existing shelters for GBV victims has now been assigned for both GBV and TIP victims with a capacity of maximum of seven residents. Hence, although technically there is a shelter, there is no dedicated shelter to respond solely to the needs of TIP victims.

Accessing the shelter services is also complicated for TIP victims. While GBV victims are granted access through lodging a complaint at the police station closest to the shelter provider, presumed TIP victims must be referred to a shelter through an order issued from a Magistrate's Court. Such a request is generally lodged through the police once a complaint is filed, or through service providers after counsellors have seen the victim. Rather than an exception, access to shelters has to be increased in cases of trafficking. Investigations take time and must go through the several levels of referrals, therefore, until such time, the TIP victims cannot get access to the shelter, since a Magistrate's Court order is generally considered necessary. As one law enforcement official pointed out, until the victim is called for an inquiry at the CID, the perpetrators are able to influence and pressure her to withdraw her statement. Shelter facilities are, therefore, critical to ensure that the safety of these presumed victims is not compromised. It has the added benefit of ensuring that victims feel confident enough to cooperate with the police and receive the necessary specialized counselling and medical care.

As of now, only female TIP victims have access to shelter facilities, and since internal migrant workers are rarely identified as TIP victims, the question of providing immediate shelter facilities does not appear to come up. While the transgender community continues to be placed outside the service framework for GBV and TIP, foreign victims are a more pressing challenge. On the detection of a considerable number of potentially trafficked Nepali women at the start of the COVID-19 lockdown and with no dedicated TIP shelter, the women were housed in the 'detention' center to hold individuals found to be in violation of Sri Lanka's immigration laws. This became the default 'shelter'.

Access to public health services - One of the entry points that remain open to presumed TIP victims, including the marginalized categories of individuals is the public health services.

"The doctors have been instrumental in giving the sex workers voice. They are learned people of course, but the sensitivity they show towards sex workers and their issues goes a long way in creating understanding. They treat these workers with respect and listen to their perspectives which is really, really valuable"
(Representative body for Sex Workers, Female, Gampaha district, 17 November 2020).

The discrimination faced by transitioning transgender individuals were also cited as problematic during a KII (10 July 2020), with an advocacy group focusing on the transgender community in Sri Lanka, where such experiences are marred by how nurses and the medical assistants treat these individuals.

In general, however, the health services continue to be one of the few entry points at which both suspected TIP and GBV victims may receive medical attention regardless of being identified as a presumed or victim of TIP or GBV.

Legal aid and psychosocial support - The failure to offer a comprehensive support system to TIP victims continues to be a major setback in Sri Lanka. With the TIP shelter being sidelined and under-funded, other services that should be designed to suit the particularities of TIP become further sidelined. Despite the lack of services, there is agreement among the relevant stakeholders that counselling as well as legal aid support and economic re-integration must be provided by service providers who understand the needs of such victims. Legal aid can be provided by the Legal Aid Commission for Sri Lanka to victims who fulfil the criteria set by the Commission. Similar to GBV victims, access to medical and psycho-social counselling is facilitated by the very few service providers working with presumed TIP victims or by law enforcement officials. Since these are provided through the public health care system, access remains open.

Rehabilitation and reintegration - The service framework appears to be the most inefficient with regard to the re-integration of victims into the community, especially through sustained and long-term assistance. At present, one project intervention of an UN agency enables local NGOs to collect information on returnees and carry out screening. If presumed to be TIP victims, they can receive some form of support towards economic re-integration

Factors such as lack of understanding on TIP, the presence of very few NGOs that support TIP victims, and their identification taking place mostly within the law enforcement sector, combine to make access to services for such presumed victims much more challenging. There are no provisions for compensation, unless pursued through the courts. Hence, unless the government or NGO service providers are able to make representations on behalf of the presumed victim to access an existing government program that provides livelihood support, any form of medium- to long-term support for TIP victims is not possible.

The analysis of services being provided and the narrow pathway from which presumed victims may access services raises a more pertinent question. Whereas the Women's Development Officers (SMWCD) have been identified within the Ministry to design and oversee GBV- related concerns, who is ultimately held responsible to ensure that TIP victims have access to services? The multiple service providers that must ideally offer services while extending support to the investigations and prosecutions are clearly reflected in the number of government representatives in the National Anti-Human Trafficking Task Force, but coordination among the different entities regarding victims, appears to have been ignored.

4. Challenges to providing services to TIP and GBV victims

Lack of funds - For the NGO sector, the lack of funding has meant a scaling back of their activities at the community level and a retrenchment of its staff. In communities such as those in the Nuwara Eliya district where existing state structures do not reach the far-flung areas, victims of GBV and TIP may not receive the assistance they require. Similarly, the basic skills that are taught in shelter homes point to the lack of funding as well as access to expand viable livelihood options for women who would have to re-integrate into society.

Limited number of shelters - The limited number of shelters in operation is a challenge for government, NGO service providers and law enforcement officials. The police are compelled to send women back to abusive families when there is no immediate access to temporary shelter. All attempts are made to find an alternative option for GBV victims but the lack of an emergency fund to support these them has been highlighted by all interviewed respondents.

De-prioritizing GBV - The changing priorities of the Government of Sri Lanka can also determine the outcomes for victims. The downgrading of the Ministry of Foreign Employment and the Ministry of Women's and Child's Affairs to State Ministries may impact its budget allocations as they have now lost their cabinet portfolio. It may lead to a downgrading of commitment on extending support services. In this context, the limited number of shelter facilities, which is highlighted as a major gap by service providers, may not receive the necessary funding or human resources.

Accessibility of services during the COVID-19 pandemic - The gaps in services were heightened during the COVID-19 induced curfew period, with access to services restricted or denied. The lack of coordination between the government and NGO service providers, and law enforcement led to victims not being properly identified. Given the restrictions on mobility during lockdowns, it is possible that women were unable to seek assistance. Since the Divisional Secretariat offices were also initially closed, access to the local WDO would also have been denied. In such a context, there is a higher likelihood that women in particular were unable to seek assistance nor be correctly identified as experiencing some form of violence.

Conclusion

- Multiple ministries, departments, statutory authorities, international and national NGOs are crucial stakeholders in responding to TIP and GBV in India, Nepal and Sri Lanka, albeit without adequate coordinated efforts, as brought out in the three country reports.
- In terms of service delivery for GBV victims, there seem to be strong frameworks in place in India, Nepal and Sri Lanka. Whilst India and Nepal have robust frameworks for TIP, this is not so in Sri Lanka, although common services can be tapped through public services. Monitoring, evaluation and impact assessments of the existing service delivery frameworks to gauge their effectiveness is, however, the missing link in all the three countries, with this study suggesting that practical implementation is indeed, their Achilles Heel.
- Government and NGOs, through shelter homes or standalone service centers (such as, the One Stop Crisis Centers in India and Nepal) are primarily involved in providing an array of services. Yet, research in India and Nepal suggests that the bulk of the responsibility of service delivery is shouldered by NGOs; whilst in Sri Lanka efforts are largely government-driven.
- In all three countries, service delivery frameworks are focused only on female victims of TIP and GBV, to the almost total exclusion of men and other genders. Differential access to services not only on the basis of gender, but also due to geographical location, and types of trafficking are reported in all the three countries. For all three countries, it is recommended to design service delivery plans for men and other genders who are victims of TIP and GBV.
- The COVID-19 pandemic has also severely impacted access to services, especially for GBV victims in India, Nepal and Sri Lanka.

- Whilst each country has their own set of challenges in service delivery, constraints of financial and human resources emerge as the predominant reasons impacting the economic rehabilitation of victims.

2.5 Integration or Separation of Services

India

Though OSCCs are established for providing a wide array of services at a common location, much of the services to TIP and GBV victims are provided under separate schemes and structures. Three distinct opinions emerged from the KIIs on integration or separation of services for TIP and GBV victims. Out of the 70 (including victims) interviewees:

- 14 were in favor of the integration of services, considering the commonality between the needs and experiences of TIP and GBV victims.
- 24 suggested keeping the services for TIP and GBV victims separate considering that the needs and experiences of both are varied, and that 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 suggested having separate services but that they be provided at one common location for both GBV and TIP victims so that access is easier.
- Five either did not respond to the question or had no opinion.

All the interviewed police officials suggested creating a common location under one roof with different departments operating and providing services (recording of statements before the Magistrate, production before CWC, medical assistance, trauma-induced care/counselling, translator, compensation, etc.) for victims of TIP and GBV to make it easier for the police to follow all the mandated procedures.

The integration of services for TIP and GBV as understood by the interviewees meant keeping both sets of victims in a common shelter home; that victims should not be categorized and be treated equally, and, therefore, there should be an integrated intervention. This would help them recover from their trauma as well as get access to all services from the shelter home itself.

The interviewees who advocated for the separation of services victims reasoned that both groups have their own needs and experiences, both cannot be viewed through the same lens, and hence, their interventions should also be kept separate. Common shelter homes would further stigmatize TIP victims (especially of sex trafficking). Therefore, KIIs with victims suggested that they should be kept separate. A large majority of the interviewees denied integrating services but suggested the creation of a common location where services are available under the same roof.

This common location would have different units operating within it, and the victims would not have to face any challenges in accessing services. This would save time, increasing transparency and making access easier for victims. Some interviewees also suggested time-bound interventions, i.e., keeping TIP and GBV victims separately for a few years and gradually integrating them into a common space for further rehabilitation and re-integration into society.

Nepal

With regard to the services provided to TIP and GBV victims, there was greater convergence in some aspects than in others. Shelter homes and rehabilitation centers offer protection to victims of both TIP and GBV. The OCMCs receive both kinds of cases (albeit only if TIP cases are recognized as GBV as well), but they only provide limited services to women and instead refer them to shelter homes or to law enforcement agencies. Anti-human trafficking units and repatriation services can deal with either issue depending on the nature of the case.

In light of the expansive list of government and NGOs providing services to TIP and GBV victims, it has been argued that duplication of efforts and structures should be avoided to ensure better outreach and coverage. Similarly, service delivery stakeholders need to look for exit strategies that promote sustainability from the very beginning so that communities continue activities on their own when donor-funded projects end.

A majority of both GBV (7) and TIP (8) victims interviewed felt that integrating services would be better than providing services separately. A few of the victims, however, seemed to feel strongly about services being kept separately. One of the GBV victims said: *“Services should definitely not be provided from the same place. The two groups of victims are likely to humiliate each other and even discriminate against each other”*.

Service providers, however, were divided in their opinions. Shelter homes (4) and international and national NGOs (I/NGOs) with government service providers (8) in favor of integration cited budgetary and resource constraints in providing separate services as one of the major reasons as to why integration would be more feasible; and that providing services under the same roof would allow victims to bond and support each other. As stated by a staff member at an OCMC at a District Hospital in Sunsari District, *“Integration would allow providing more services with less resources”*.

In contrast, those opposing integration (four shelter homes, 10 I/NGOs and government service providers) were of the view that the two types of victims have different needs and that services should be provided separately as far as possible. There were also concerns over the possibility of GBV victims being subjected to stigma if placed together with victims of trafficking (FGD with service providers).

Most of the law enforcement officials thought integration of services would be better than providing services separately. Among the judges and the prosecutors interviewed, a majority of them felt that integration would be better, although they also seemed cognizant of related challenges.

All the government officials interviewed, felt that providing separate and specialized services would be better than integrating services.

With regard to services that could, possibly, be integrated, interviewees noted that medical and health care services; psychosocial counselling services; livelihood and capacity development trainings, including skills trainings, and education, can be provided at the same place.

Sri Lanka

In a context where TIP victims – presumed or otherwise – are deprived of access to services or the existing frameworks are not attuned to serve the needs of TIP victims, including offering shelter, the question of integrating or separating services draws conflicting perspectives.

Among some of the stakeholders working on issues related to TIP, separating services for TIP and GBV is considered desirable and the ideal that Sri Lanka should aspire to – for reasons such as, TIP being a serious crime where the victim’s experiences can be much more devastating than what a GBV victim may experience. Even among shelter providers who are sensitized about TIP victims and their vulnerabilities, there is an underlying fear of the “threat” such TIP victims may pose to other GBV victims. One of the strongest and compelling arguments to maintain separate services, especially the shelter, comes from a concern about the security threat from perpetrators, when victims are the primary witnesses. The argument for separation has merit on the grounds that those providing services to TIP victims must be specially trained to deal with and provide necessary services.

“Yes. A separate place is better because trafficking victims have different problems. If they talk with the other victims, others may get shocked. When everyone is together, the innocent ones may get abused by the others” (Shelter provider, Female, Colombo district, 13 August 2020).

Not all respondents, however, hold this view, among them are shelter providers who specialize in extending services to domestic violence victims.

A more non-traditional argument about extending support, which is universally understood as very important in the case of TIP victims, is to rethink what the shelter constitutes. While acknowledging the importance of shelter, the idea is to ensure that there is a “shelter” in a non-institutional setting as well.

For law enforcement officers who are invariably called upon to find adequate shelter facilities, access to a safe shelter is paramount over maintaining a separate shelter.

“There is no need to keep the victims separated and away from the GBV victims. I don’t understand why that would be a necessity. They just need a safe place to stay and with many of the victims, the challenge is that they don’t have a place to stay so a shelter would be good. As for housing possibly sex workers with other victims of violence, they are all women at the end of the day, so I don’t understand why there needs to be some form of a separation. As for threats, I don’t believe the situation is that bad that it requires a trafficked victim to be kept completely separated from the rest” (Law enforcement officer, Male, Colombo district, 15 September 2020).

Even though divergent opinions were forthcoming from the interviews regarding the maintenance of separate or common shelter, with regard to all other services, there was a common understanding that services can and should be integrated wherever possible. With only a finite number of resources, funding and otherwise maintaining separate services for TIP victims is considered “ideal”. Yet the insights offered suggest that maintaining separate services including shelters may not be practical in the long-term. Such integration comes with a strong caveat that service providers are trained on the particularities of experiences of TIP

victims. Given that TIP victims could include sex workers, male migrant workers and individuals identifying as LGBTQ, sensitization and proper training and capacity-building are critical.

The integration of services, however, must not impinge on the existing services for GBV victims becoming overburdened and their funding, staffing and shelter spaces overstretched to accommodate the TIP victims. Instead, what may work is pooling resources towards common facilities with trained personnel to direct and manage the TIP victims' needs throughout the process.

Conclusion

- An overwhelmingly large number of respondents in India believe that services should not be integrated for GBV and TIP victims; whilst half of these advocate for keeping them under one common location for ease of access to services. Services that could be integrated were identified as medical and legal aid.
- A majority of the interviewed victims in Nepal advocate integration of services. Service providers from the NGO sector and law enforcement agencies are equally divided between integration and separation of service delivery. All the government officials interviewed as a part of the service providers group, believe in separate services. Services that could be integrated were identified as medical and health care services.
- Most of the service providers in Sri Lanka support separate services for TIP and GBV as ideal. Law enforcement officers believe that access to a safe shelter is paramount over maintaining a separate shelter. Even with divergent opinions, almost all stakeholders believe that services can and should be integrated wherever possible.
- In the three countries, perspectives on integration or separation of services are predominantly based on the existing service delivery frameworks 'in theory' vis-à-vis their implementation 'in reality'; (non)availability of financial and human resources; and the lived experiences of the victims and service providers.

The question on whether support services for TIP and GBV victims should be of integrated or remain separate would need to be explored with a deeper contextual understanding of the following –

- i) availability of state and non-state resources,
- ii) understanding and capacity of services providers to deliver through an integrated system,
- iii) legal provisions guiding the delivery mechanisms of different services, and
- iv) the socially driven perspectives of stigma and discrimination that drives a victims' choices and options. The research found that the conversation is relatively new and must be contextualised keeping in mind the challenges listed above.

CHAPTER 3

Key Recommendations

India⁸⁸

Recommendations Set 1 - For the government

1.1 Strengthened legal and policy framework

- Comprehensive laws on TIP and GBV need to be framed. They need to be holistic and standalone legislations on both TIP and GBV, to preclude drawing upon different laws for investigating cases of TIP and/ or GBV. Laws should be made from the standpoint 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, also Special Courts should be set-up under the Immoral Traffic (Prevention) Act, 1956 for speedy trials.
- Enforce strict implementation of all laws that relate to TIP and GBV so that successful convictions act as a deterrence 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 it functional and impactful.
- Timely disbursement of funds to shelter homes, and periodic monitoring and evaluation of the various schemes.

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 to provide holistic responses to TIP and GBV cases, especially within One Stop Crisis Centers.
- Inclusion of border officials in the meetings of the nodal Anti-Trafficking Cell of the Ministry of Home Affairs to build efficient border management strategies for responding to cross-border trafficking. This includes proper screening and identification and convergence of the services at the border areas for identified victims.

88 Based on Segment 5.5, Chapter 5 of the India Country Report.

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. Mapping of a) existing vulnerable areas, b) acute vulnerable areas, c) potentially vulnerable areas to design focused strategies for prevention of trafficking.
- Preventive measures to be prioritized by planning and executing area-specific solutions to the factors that create vulnerabilities within the communities in the first place.

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, labor inspectors, authorities under the Juvenile Justice Act, 2015 and health professionals.
- Upgrade existing SOPs and Protocols on investigation and prosecution of cases of human trafficking, by including new legislation and amendments to the existing laws.

1.5 Access to services

- Ensuring reach and access of services in smaller towns and rural areas, and especially for human trafficking cases at border areas in partnership with NGOs.
- Setting-up shelter homes where they are currently not available to ensure equitable geographical distribution depending on the scale of the problem.

1.6 Separation of services

- Separate shelter homes for GBV and TIP victims, especially those rescued from commercial sexual exploitation; but integrate services at a common location under one roof, similar to the One Stop Crisis Center model.
- Integration of possible services for GBV and TIP victims may be undertaken for medical and legal aid.

Recommendations Set 2 - For law enforcement agencies

2.1 Strengthening law enforcement responses through training and capacity-building for increased efficiency of screening and identification of victims and criminal justice delivery.

- Training for increased awareness of police, prosecutors and judicial officers on the 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 to ensure holistic border management capacities.
- Gender sensitization to be included as an important component of training programs for understanding the nuances of TIP and GBV which includes not only women but men and other genders; and addressing 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 on the substantive and procedural aspects of the laws on TIP and GBV and their application.
- Link training to professional upgrading of police officials to create and encourage motivation and involved participation, so that the trained officials are assigned to AHTUs, Women Cells, OSCCs and other similar units 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.

Recommendations Set 3 - For service providers

3.1 Awareness generation among the general public and within communities

- Sensitization on human trafficking within communities and the general public, especially highlighting the modus operandi of traffickers.
- Awareness generation on the existing and available services to enable victims to access them, especially with the involvement of the community leaders (village leaders/panchayat members) in dissemination of information about existing help centers in the community.
- Strong community-based monitoring with the participation of village leaders/panchayats, and religious leaders to be effective first responders in preventing TIP at the village-level.

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 the government, by setting-up more help-centers/shelter homes.

3.3 Rehabilitation and reintegration

- Individual care and exit plan to enable victims availing shelter home services for rehabilitation (especially economic) and re-integration within the community, either with or without their families, based on their involved participation in the process.

Nepal⁸⁹

Recommendations Set 1 - For the Government

- Enforce existing laws to protect people from becoming victims of TIP or GBV, including making provisions for the protection of victims while the case is ongoing, but also supporting weaker victims in their quest for justice.
- Amend existing laws to reflect new developments in the respective sectors as well as meet Nepal's international commitments.
- Implement and monitor standardized protocols for all operations relating to TIP and GBV, across all the bodies involved, both government and non-government. Since many of these protocols have already been developed, it is only a matter of ensuring that all stakeholders are made aware of their existence and provided proper guidance.

⁸⁹ Based on Segment 5.3, Chapter 5 of the Nepal Country Report.

- Monitor the functioning of various government and non-government institutions mandated to support GBV and TIP victims in terms of their adherence not only to the law but also to follow the various guidelines issued or adopted by the government.
- Streamline information to make it easier to move ahead with identification and other processes. Document the cases properly with higher sensitivity, ensure follow-ups and timely updates.
- Establish an information system so foreign employment-seekers can learn everything about the companies they are going to work for. Provide genuine and inexpensive processing services to the prospective migrant workers so that brokers do not cheat them.
- Specify functions, roles and duties of the federal, provincial and local governments towards meeting their obligations of effective service provision on GBV and TIP. Since local bodies are well placed for that, all information on TIP and GBV should be collected and fed into a national system.
- Increase the number of shelter houses across Nepal and near the border areas in order to provide services to TIP victims. The safety of victims inside shelter homes will also have to be ensured while such homes should have the provision of catering to the needs of men as well as gender and sexual minorities.
- Allocate an annual budget to support shelter homes and service providers working with GBV and TIP victims. The funds should go to government institutions and the NGO sector.
- Establish long-term shelter homes at the community level in all 77 districts. Expand the reach of the Mangala Sahana Long-term Shelter Home to provide services to more victims. In the interim, local governments can use their own funds under the Gender-based Violence Prevention Fund to establish homes.
- Carry out periodic monitoring of shelter homes and service providers to assess the quality of the services provided and make recommendations for improvement.
- Ensure coordination among various stakeholders providing services to GBV and TIP victims.
- Provide timely training to government officials to enable them to understand changes on the ground such as what has happened in the TIP sector.
- Conduct public awareness programs for uninformed, misinformed and vulnerable people especially in the rural areas to help understand the crimes and laws of TIP and GBV, as well as inform the victims of their rights and justice. Provide such information at the school level to reduce TIP and GBV.
- Raise public awareness regarding services that are available to GBV and TIP victims and places where victims can seek services, particularly in remote areas. Similarly, raise awareness to eliminate social stigma and discrimination.

Recommendations Set 2 - For law enforcement agencies

- Ensure no infringement on the right to free movement of individuals when screening for potential victims. This can be done by following proper protocols that include indicators that assist in the identification of victims instead of relying only on very subjective 'hunches' and visual cues.

- Do not limit screening and identification to official border crossings but also cover other points in the open border with India that allow for easy passage.
- Establish a system to report crimes such as 24-hour hotline services, for easy access to law enforcement, for the victims. The Khabar Garaun (Let's Report) helpline for GBV victims being operated by the National Women's Commission could provide the template on which a hotline to report both GBV and TIP could be set up.
- Ensure witness protection of victims during all stages, including before and after trial. That is the only way victims of GBV and TIP will feel empowered enough to take a stand against the perpetrators.
- Practice victim-centric investigation procedures and victim participative criminal justice processes to encourage reporting of crimes. This will enable victims to feel they are operating from a position of strength instead of just being passive recipients of justice.
- Use victim-centred language while interviewing all victims, especially female victims. This will put victims at ease and allow them to recall and report incidents more clearly.
- Provide intensive GBV and TIP-specific trainings to all law enforcement personnel, including training on effective screening and identification of victims, and dealing with them. With both acts now criminalized by law, the police have to be ready to deal with both types of cases.

Recommendations Set 3 - For service providers

- Ensure effective screening and identification of victims in coordination with law enforcement agencies, by following proper protocols with the aid of indicators in order to identify victims as opposed to relying on hunches and visual cues.
- Government and civil society organizations should set up shelter homes that cater to the needs of men alongside other gender and sexual minorities.
- Avoid clustering of services in cities and in border areas.
- Establish long-term shelter homes at the community level in all 77 districts of Nepal while trying to ensure that victims can access all the services available.
- Develop effective referral mechanisms that allow victims to access services at the nearest location possible.
- Develop a systematic and uniform feedback mechanism to assess the quality of services provided.
- Ensure that interaction between victims does not impact them negatively when providing integrated services to GBV and TIP victims.
- Raise public awareness regarding services available to GBV and TIP victims and places where victims can seek services, particularly in the remote regions.
- Raise public awareness to eliminate social stigma and discrimination against GBV and TIP victims.

Sri Lanka⁹⁰

Recommendations Set 1 - For the Government

- Strengthening capacity - One of the major gaps noted is the lack of understanding of TIP among local police station officers. This prevents possible victims of TIP from being identified. Similar to efforts conducted to improve understanding of the PDVA, specialized training that focuses on screening and identification tools to be used in TIP can be used to improve knowledge as well as enhance the ability of these first responders to assist with correct referrals as well as investigations. Since the SLBFE and the Foreign Ministry already make referrals on possible TIP victims who are working overseas, strengthening the capacity of police officers at the local stations would have a direct impact on improving identification in internal trafficking.
- Awareness building - Sensitization of public health officials, especially the counsellors and Medical Officers of Health operating within the Mithuru Piyasa centers as well as the Public Health Midwives to help screen and identify TIP as a form of violence is critical. Since marginalized groups such as people in prostitution and LGBTQ persons have relatively easier access to public health services, there is an urgent need to recognize the role such officers can perform in this process.
- Placement of Labor Officers - The Sri Lankan government's decision to withdraw the Labor Officers attached to some of the Sri Lankan embassies in the GCC countries can deter efforts to support regular as well as irregular migrant workers, especially in instances where they may experience forced labor or sexual exploitation. This makes it imperative that any officer appointed by the Foreign Ministry to extend support to migrant workers also receives specialized training to help in the screening and identification process.
- Proactive role of NAHTTF - The NAHTTF must play a much more proactive role in making referrals as well as keep presumed TIP victims within the service framework. The reluctance on the part of some law enforcement officials to hand over the responsibility of the victims to an external entity must be considered on the basis of which office is primarily responsible for the victims. Anchoring the victims to a state entity which can oversee the case management as well as adequate and timely referrals must be clarified.
- Referrals of TIP victims - In light of the gaps noted and the lack of resources, a more cohesive means of making referrals to services must be designed for TIP victims. As detailed in the SOPs, identified entities – government and NGO – must be included within this framework and the necessary personnel trained and sensitized to offer legal, medical, documentation and counselling services. The fact that many of these services are ultimately linked to public services is helpful since a system is already in operation to provide these services. In turn, this may, in the long-run, lead to a smoother transition to the integration of services for GBV and TIP victims.

Such an amalgamation of services at a focal point to manage the services provided to TIP victims must not lead to a reduction in resources at the disposal of NGOs to support GBV victims. Since TIP and GBV are viewed as distinct forms of violence which require customized service provision, the identified NGOs must be incentivized with training as well as financial resources to provide counselling and legal counsel to TIP victims.

⁹⁰ Based on Segment 5.2, Chapter 5 of the Sri Lanka Country Report.

Recommendations Set 2 - For the non-government stakeholders

- Preventative efforts - The key to addressing the prevalence of GBV as well as TIP is to focus on preventative efforts. The overwhelming support in this regard at the grassroots should be steered in a way that awareness about how TIP manifests and its interplay with GBV are made clear in a simplistic, easily understandable manner. This can be achieved by identifying possible stakeholders at the community level who already have an interest in working on issues related to GBV and internal and external migration. It is imperative such efforts do not exclude the few organizations that work with men and women engaged in the commercial sex trade, domestic workers' unions and associations as well as the associations that represent the LGBTQ community and a selection of NGOs that support workers of the Export Processing Zones.
- Enhancing capacity - Government officials at the DS level such as the Women's Development Officer, Migration Development Officer, the Social Services Officer, Economic Development Officer and Counsellor, play a central role in identifying as well as linking presumed victims to services. Hence, existing training targeting these officials must also be strengthened and where possible, consultations held with the respective line Ministries to explore how understanding of TIP and GBV can be included in training modules for the officers. Cross-fertilization of knowledge on the two concepts would help understand how both constitute different forms of violence.
- Conduct needs assessment on separate shelter - A needs assessment can focus on what form shelter services must take, including whether protection can be provided within a non-institutional setting, the geographical location of the shelter on the basis of need, the costs of setting up this separate system and under whose authority this shelter must operate.

Conclusion

The study on ‘Optimizing Screening and Support Services for GBV and TIP Victims’ research unpacks the intersectionality between gender-based violence (GBV) and trafficking in persons (TIP), where GBV is identified as one of the critical push-factors for trafficking. Informed by key informant interviews, focus group discussions, and review of laws and secondary literature, the country reports from India, Nepal, and Sri Lanka explored the link between GBV and TIP and the continuum of violence that victims suffer.

It is important to note that in all the three countries the legal definitions of TIP and GBV underpins the responses from law enforcement officials, criminal justice systems, and service providers. This in turn tends to overlook or underplay the importance of identifying and addressing the push factors like GBV which have a direct relation to TIP, affecting the timely preventive action to stem TIP, and delivery of appropriate protection support which could substantially reduce re-trafficking.

The regional analysis report which brings together the key findings from the three country-level reports, thus speaks to these concerns. It also acknowledges that while there are some common threads, each country research also highlights contextual challenges and solutions.

This summation attempts to respond to the central question of whether services for GBV and TIP victims stand in the need of integration in the region, and more specifically in each of the three countries. The research explored how well key stakeholders understood the intersection between TIP and GBV. The study revealed that across the three countries India, Nepal, and Sri Lanka there was limited comprehensive understanding of the interlinkages between TIP and GBV among law enforcement, prosecutors, judges, and service providers (government and non-government service providers).

The inability to identify, associate and respond to a wider spectrum of gender-based violence in trafficking cases as a push factor and as a direct outcome of trafficking impacts appropriate victim centric response. It leads to several highly vulnerable and at-risk cases remaining unidentified, limits the ambit of legal redressal to identified TIP cases as they fail to legally register and address the incidence of GBV outside of TIP, and it undermines the rehabilitation and reintegration process by not addressing the core push factor of GBV. This absence of nuanced understanding of the link between TIP and GBV that can drive appropriate responses from key frontline stakeholders was a critical finding of the study.

The three country reports highlight how GBV and TIP victims often suffer similar and intersecting forms of abuse. Yet the service delivery system largely compartmentalizes the provision of services based on the type of crime, rather than on the common experiences of violence and abuse suffered by both types of victims.

The question on whether support services for TIP and GBV victims should be integrated or remain separate would need to be explored with a deeper contextual understanding of the following – i) availability of state and non-state resources, ii) understanding and capacity of

services providers to deliver through an integrated system, iii) legal provisions guiding the delivery mechanisms of different services, and iv) the socially driven perspectives of stigma and discrimination that drives a victims' choices and options. The research found that the conversation is relatively new and must be contextualised keeping in mind the challenges listed above.

The findings indicate three directions to address the central question:

Resources for service delivery across the three countries are uncertain, uneven, and scarce. Additionally, different agencies are involved in service delivery. These agencies are geographically spread out, creating hurdles for victims in navigating the different service delivery centres. Thus, some interviewed stakeholders saw **integration** as a pragmatic way forward for optimum resource utilization and for services to be pooled at a common location.

Another group of stakeholders recommended a **hybrid model** of service delivery where some services could possibly be integrated, such as legal, medical and healthcare, psychosocial counselling, livelihood, and capacity development training (including skills training).

Some stakeholders maintained that services should be kept **separate**. The argument for separation was rationalized on the ground that the service needs of GBV and TIP victims are different albeit with some commonalities. However, the risk of not being able to do justice to either group by integrating services has to be realistically considered.

These perspectives on integration or separation of services were predominantly based on the existing service delivery frameworks 'in theory' vis-à-vis their implementation 'in reality', (non) availability of financial and human resources, and the lived experiences of the victims and service providers. To conclude, the research indicates that more evidence-gathering is warranted, especially to better understand the implementation and efficacy of the existing services in the three countries to arrive at any firm conclusion with respect to the integration or separation of service delivery to victims of GBV and TIP.

Key Terms used in the Report

Gender-based violence

Gender-based violence refers to harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms⁹¹.

Irregular migration

Movement that takes place outside the regulatory norms of the origin, transit and destination countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfill the administrative requirements for leaving the country.

For the purpose of this report, irregular migration is also understood as the sum of migratory movements that involve entering or staying in an irregular way in a destination country. Such migratory movements can involve both regular and irregular movements before reaching the destination country⁹².

Prostitution

The use of the term ‘prostitution’ in the 3 Country Reports and this Regional Analysis neither implies any ideological stance nor any negative judgment of persons engaged in such activity, on the part of The Asia Foundation and any of the contributory organizations.

Smuggling of migrants

Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident [Article 3 (a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000].

Trafficking in persons

Trafficking in persons shall mean the recruitment, transportation, transfer, harboring 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

91 UNHCR - <https://www.unhcr.org/gender-based-violence.html>

92 UNODC Regional Office for Southeast Asia and the Pacific (2015)

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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs [Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000].

Victim

The term ‘victim’ is used in the 3 Country Reports and this Regional Analysis to refer to a person against whom an offence has been committed. The term ‘*victim*’ has generated much debate in the context of exploitation and violence (especially, against women and children); many argue that it implies powerlessness, rather than the resilience of the victim and, therefore, prefer to use the term ‘*survivor*’ since it is more positive and draws attention to resistance, coping and survival. However, in the area of human rights and protection, the term ‘victim’ is used to refer to someone experiencing injustice for which the perpetrator is responsible. It indicates that the person or persons experiencing human rights violations have the right to protection, assistance and reparation.

Violence against women

Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs. [Article 2 of the Declaration on the Elimination of Violence against Women, 1993].

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