



EXECUTIVE SUMMARY

BACKGROUND

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

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

DATA COLLECTION

According to crime statistics published by the National Crime Records Bureau in its 'Crime in India Reports',

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

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

important source and transit destinations for transnational trafficking to Gulf Cooperation Council (GCC) and Middle Eastern countries.

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

UNDERSTANDING OF TIP AND GBV

Although there are issues around understanding of the terms, respondents (law enforcement officials, non-governmental organizations, shelter homes, government officials, and victims) had a clear understanding about the intersectionality between TIP and GBV, more so of GBV leading to TIP. Respondents identified socio-economic reasons, aspirational migration, societal norms and pressure, physical and other forms of abuse within the family/ or by known

persons, unfounded trust on outsiders, forced or sham marriages, especially coerced marriages to states with lower sex ratio as factors that lead to TIP. All these factors force the vulnerable to get entrapped in the traffickers' web, leading to further violence. However, there appears to be a lack of understanding among the respondents about GBV within a TIP situation. Though the responses of the stakeholders were almost equally divided - between one section demonstrating knowledge and the other declaring no preponderance of GBV in a TIP situation, there was however, an understanding of GBV in sex trafficking than any other form of TIP, especially among the LEOs. Very few respondents (mostly service providers) presented a holistic understanding of GBV in all forms of trafficking, i.e. in forced or bonded labor conditions.

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

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

PROTECTION AFFORDED THROUGH THE LEGAL FRAMEWORK

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

from Domestic Violence Act, 2005; and Prohibition of Child Marriage Act, 2006.

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

ACCESS TO SERVICES FOR TIP AND GBV VICTIMS

The major government stakeholders providing services to TIP and GBV victims are Government Departments [Ministry of Women and Child Development (MWCD), Ministry of Home Affairs (MHA), Ministry of Labour and Employment, Ministry of External Affairs (MEA), etc.]; various Commissions [National Commission for Women (NCW), National Human Rights Commission (NHRC), National Commission for Protection of Child Rights (NCPCR)]; Law Enforcement Agencies [State Police, Anti-Human Trafficking Units (AHTUs), Mahila Thanas or Women Police Stations, Special Juvenile Police Units (SJPU), Border Guards - Border Security Force (BSF)/Assam Rifles/ Sashastra Seema Bal (SSB), Central Bureau of Investigation (CBI), National Investigation Agency (NIA) etc.]; Judiciary [District Courts, High Courts, and the Supreme Court of India]; Public Prosecutors; Child Welfare Committees (CWC)]; District Child Protection Units (DCPU), Anti-Trafficking Task Force, and Civil Society. There are also government schemes for effective service delivery such as - Integrated Anti-Human Trafficking Units (IAHTU) Scheme, Ujjawala Scheme for TIP victims; Swadhar Greh for GBV victims; and One-Stop Center Scheme (OSCS), Nirbhaya Fund, ChildLine Service, Women

Helpline Scheme, etc., for both the TIP and GBV victims. All of these stakeholders work towards prevention, protection, and prosecution. However, there is a gap in information on their monitoring, evaluation, and impact assessment to gauge their effectiveness. In partnership with the United Nations Office on Drugs and Crime (UNODC), the government has also formulated various Protocols, and Standard Operating Procedures (SOPs) on TIP; in addition to issuing advisories and guidelines. However, most of the SOPs and Protocols have become outdated and are also not known to the stakeholders involved in this sector.

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

Service delivery to victims are fraught with challenges, namely, inadequate funding and resource constraints along with other barriers such as, geographical unevenness in availability of services (concentration of services in the cities), lack of awareness especially in rural areas on the availability of services, inadequate responses from law enforcement officials, existing prejudices about victims, lack of functional AHTUs, lack of cooperation amongst stakeholders, GBV victim's inability to identify oneself as a 'victim' of violence (especially in domestic violence cases), fear, shame, stigma, and lack of trust and family support. Notably, like the legal framework, gender disparity in accessing services is also evident since shelter homes and most of the services are available only for women and children. Very few NGOs and shelter home representatives mentioned providing family counseling and

psychosocial support to the male and transgender victims of GBV.

INTEGRATION OF SERVICES AS A WAY FORWARD?

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

RECOMMENDATIONS

Some key recommendations for improving the identification of victims and delivery of service to them are as follows:

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

equitable geographical distribution depending on the scale of the problem.

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