An Assessment of Services Available for Trafficking Survivors in India and Nepal:

*Focus on Improving Rehabilitation and Repatriation Efforts between India and Nepal*
January, 2019

This document has been produced with the financial assistance of The Asia Foundation. The views expressed here are those of Women Power Connect and can therefore in no way be taken to reflect the positions of The Asia Foundation.
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List of Abbreviations

AHTU- Anti Human Trafficking Units
CWC- Child Welfare Committee
DCW- Delhi Commission for Women
DLSA- Delhi State Legal Services Authority
FGD- Focus Group Discussion
FIR- First Information Report
IO- Investigating Officer
ITPA- Immoral Traffic Prevention Act, 1956
KII- Key Information Interviews
MoU- Memorandum of Understanding
MoWCD- Ministry of Women and Child Development, India
MWCSW- Ministry of Women, Children and Social Welfare, Nepal
NALSA- National Legal Services Authority
NCRB- National Crime Record Bureau
SLSA- State Legal Services Authority
SOP- Standard Operating Procedures
SSB- Shastra Seema Bal
TAF: The Asia Foundation
TIP- Trafficking in Persons
WPC – Women Power Connect
Executive Summary

India is usually the first port of destination for victims of human trafficking from Nepal due to the shared open border and consequent the lack of procedural difficulties in crossing the border. From India, the victims are taken to countries such as, Malaysia, China, Dubai, Gulf, or, they remain in India. Victims from India are also trafficked to Nepal primarily in the brick, cement and construction sector. Although the number of victims from India to Nepal is small, there are cases of young boys and girls who are trafficked from India to Nepal.

This study provides a mapping of services available for victims of human trafficking in Nepal and India with a focus on rehabilitation and repatriation. Both repatriation and rehabilitation are closely linked to each other. In the absence of proper rehabilitation services for the victim, (which includes effective vocational training, skill development, shelter, victim compensation, witness protection and legal aid) victims who are repatriated are likely to be re-trafficked and return to a situation of exploitation. In order to make repatriation a meaningful exercise it is important that adequate rehabilitation services be offered by both governments concerned.

The findings from this study have highlighted the following lacunae in existing services for repatriation and rehabilitation of victims of human trafficking in Nepal and in India. Specifically, these include:

Absence of victim centric legislation: Efforts have been made by both countries to end human trafficking by enacting legislation. However, the existing laws in both India and Nepal are protectionist, criminal centric and focus on penalizing the trafficker(s). India recently enacted a victim centric Bill in 2018, namely, the Trafficking (Prevention, Protection and Rehabilitation) Bill, which is a step forward towards enacting a victim centric law. Some loopholes have been pointed out by NGOs / CSOs that exist in the Bill.

Poor quality State run rehabilitation facilities in Nepal: There is an absence of good quality shelter homes, legal aid, or vocational training offered by the State in Nepal. Most of such services are provided by NGOs / INGOs.

Lack of funding for shelter homes in India: Shelter homes are unable to meet the demands of women due to shortage of funds.
Delegation of responsibilities to NGOs for repatriation: It is primarily NGOs / INGOs in India and Nepal, and not the State departments, who coordinate the process of repatriation. This is a negative trend as NGOs do not have any mandatory requirement to keep state departments informed about each case.

Inadequate vocational training / skill development offered: Vocational training and skill development offered by State run centres and NGO centres / homes in India and Nepal are usually inadequate to meet the economic aspirations of the rescued women.

Inadequate allocation of State funds for compensation of victims in India: With the exception of Delhi, State Legal Aid Authorities across India lack sufficient funds to provide victim compensation in cases of human trafficking.

Lack of convergence between State departments in India: Meetings held by WPC with the Delhi Commission for Women, Delhi State Legal Services Authority and the Anti Human Trafficking Unit in Maharashtra, showed there is lack of convergence in between stakeholders. It is important for different departments to work together to arrest cases of human trafficking. For example, the Delhi Commission for Women needs to keep the legal aid authorities updated following their rescue work so that compensation can be awarded to victims. The police need to register FIRs quickly in order for the CWC to pass an order. The legal aid authorities, women commissions, Child Welfare Committees, police / AHTUs and shelter homes lack information about each other and tend to play a blame game with each other.

Procedural difficulties in the process of rehabilitation and repatriation: Identification of the victim, tracing of families, frequent transfers of the Investigating Officer (IO), and age verification of the victim cause difficulties in the process of rehabilitation and repatriation.

Based on the above mentioned drawbacks, recommendations made in this study include, convergence meetings and regular trainings for all stakeholders in order to make their roles and responsibilities clear, vocational training and skill development that meets the individual needs of each victim, clarifications to be made in the Trafficking Bill 2018 on the maximum and minimum amount of compensation that can be awarded in cases of human trafficking, increase in government funding for shelter homes, directions from the Magistrate for mandatory recording of the IO’s statement, and awareness generation for civil society and vulnerable groups.
We also recommend the drafting and regular updating of a “Resource Directory” – essentially a listing of stakeholders, their verified contact details and the services they offer. WPC has created such a Resource Directory for Delhi, Kolkata, Mumbai and Nepal as part of this study. Such directories should be made available to all stakeholders dealing with human trafficking.

Finally, we reached no consensus on the issue of whether an SOP should be signed between India and Nepal for the purpose of improving rehabilitation and repatriation efforts. While one view is that India must enter into bilateral agreements with all countries whose population are vulnerable to trafficking to India, another view is that in the absence of a binding law, such SOPs will not be helpful.

However, it is clear that a system, under the overall responsibility of the governments of both countries, needs to be put in place for effective repatriation and rehabilitation of victims. The roles and responsibilities of both governments need to be clear in order to prevent a blame game at the later stage. Monitoring the process of repatriation and overall responsibility for each case must vest in the state to ensure accountability and not in NGOs.
Introduction

India and Nepal share an open border in accordance with the Indo-Nepal Treaty of Peace and Friendship, 1950. As a result, nationals of Nepal and India have freedom in moving from both countries with little paperwork involved. Nationals of Nepal are also permitted to work in India (with the exception of certain government jobs) in accordance with Article 6 of the Treaty.¹ While freedom of movement benefits both countries and its workers and migrants on one hand, on the other hand, criminal exploitation of human labour is facilitated by the loose border. Human traffickers can facilitate the movement of vulnerable targets with little procedural hurdles in terms of documents and paperwork related to cross-border movement.

In India, the National Crime Records Bureau (NCRB) records the nationality of victims of human trafficking rescued. As per the 2016 NCRB report, 10269 rescued victims were reportedly Indian, and 38 were reportedly from Nepal. 4 rescued victims from West Bengal, 5 rescued victims from Delhi and 4 rescued victims from Maharashtra were officially recorded as having come from Nepal.² The actual figures are likely to be much higher. According to the Sashastra Seema Bal (SSB), there has been a 500% increase in the numbers of victims brought into India from Nepal since 2013.³ As per the NCRB data, overall, more females than males are reported as having been trafficked, with the number of female victims (both women and girls) almost double those of male victims.⁴ According to the SSB, victims of human trafficking from Nepal are primarily trafficked for the purpose of sexual exploitation and domestic work, and in a few cases, for organ harvesting.⁵

As per the NCRB data, the primary purpose of human trafficking is forced labour, followed by sexual exploitation for prostitution, other forms of sexual exploitation, domestic servitude, forced marriages, petty crimes, child pornography, begging, drug peddling, removal of organs and other reasons.⁶ However, there are variations within States, and trafficking for sexual exploitation is proportionally higher in West Bengal and Maharashtra than it is in Delhi. Victims from Nepal

¹Article 6: Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.

²Table 14.4, Chapter 14 “Human Trafficking”, Crime in India 2016

³Times of India “Nepal girls trafficked into India up by 500%” March 31, 2018

⁴Table 14.2, Chapter 14 “Human Trafficking” Crime in India, 2016

⁵Times of India “Nepal girls trafficked into India up by 500%” March 31, 2018

⁶Table 14.5, Chapter 14 “Human Trafficking” Crime in India, 2016
are pushed primarily into sex work and domestic work but also into new and emerging areas of human trafficking (including organ donation, surrogacy). The trafficking of women and girls from Nepal to Middle East and Africa via India increased considerably after the 2015 Nepal earthquakes.\textsuperscript{7} Women and girls from Nepal are trafficked to major Indian cities: Kolkata, Mumbai, Delhi and Hyderabad, for both labour and sex. Another major destination for sex trafficking of Nepali women and girls in India is Assam and cities such as Nagpur and Pune.\textsuperscript{8}

The process of repatriation of victims from Nepal in India has not been formalized through any officially binding agreement between the two countries. The process is ad hoc and largely implemented by NGOs. Further, there exists dependence on courts orders for action to be taken and court orders are not always sensitive to the needs of the victim. For example, repatriation is often confused as deportation by Judges and both words are used interchangeably.\textsuperscript{9} The lack of involvement of state functionaries in the process of repatriation of victims from Nepal leads to non-accountability including lack of collection of official data on repatriation, and inability to officially follow up with a case. Hence, although victims are sent back to Nepal from India, in the absence of any follow up of the case and shortage of livelihood options, women are re-trafficked back into India.

This study examines the current status of services available for victims of human trafficking, suggests recommendations based on meetings and interviews held with stakeholders and explores the need for finalizing a bilateral agreement between India and Nepal for repatriation and rehabilitation of victims of human trafficking.

\textsuperscript{7} U.S Department of the State. \textit{Trafficking in Persons Report India 2017}. Retrieved October 4, 2018, from https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271205.htm
\textsuperscript{8} As above
\textsuperscript{9} Observation made at the FGD in Mumbai on 23\textsuperscript{rd} October 2018. \textit{See for example}, Savera vs. State of Goa, High Court of Bombay (21\textsuperscript{st} July 2003) where women CSWs noted to have been trafficked were ordered to be deported to the State from where they came. The High Court held that since the sex workers had been brought into Goa from other States the Government of Goa was not obliged to rehabilitate them except up to the minimum stipulated by the Apex Court.
Methodology

This study is based on desk-based research, Key Informant Interviews (KII) and Focus Group Discussions (FGD) held with NGOs (both in India and Nepal), Child Welfare Committee (CWC) Member, Delhi Commission for Women, Delhi State Legal Services Authority, and Anti Human Trafficking Unit (AHTU) officers. A need was expressed by all stakeholders dealing with anti-trafficking for the creation of updated Resource Directories, with updated and verified addresses of AHTUs, CWCs, legal aid, and NGOs working on anti-trafficking. WPC (with support from The Asia Foundation) has created Resource Directories for the States of Delhi, Haryana, Uttar Pradesh, Jharkhand and West Bengal. With this study, WPC updated the Resource Directory for Delhi, and created new lists for the cities of Mumbai, Kolkata, and Delhi, and also mapped a list of support services for Nepal.

The data on numbers of victims of human trafficking is unreliable across the subcontinent. A study by Terre des Hommes in 2003 noted that there are no reliable figures on the number of women and children trafficked every year in Nepal and the figure of victims of human trafficking in Nepal could range anywhere between 12,000 to 20,000. According to the National Human Rights Commission, Nepal, the estimated number of people trafficked and attempted to be trafficked in 2012-13 was 29,000. Confusion between trafficking and migration, misrecognition of victims of human trafficking as labour migrants, the difficulty in exposing family members who are traffickers, fear of the law and police officials and fear of repatriation prevents reporting, conviction and accurate collection of data. For this reason, analysis of data on human trafficking needs to be supplemented with qualitative analysis.

WPC completed compiling data, facts and analysis already conducted on the issue of foreign victims of human trafficking in India (focusing on victims from Nepal). The desk-based research covers: (1) data on human trafficking in India and Nepal; (2) laws and schemes for the rehabilitation and repatriation of victims; (3) lacunae in existing laws, government schemes and

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policies; (4) analysis of the Trafficking Bill (Prevention, Protection and Rehabilitation) Bill 2018.

For the purpose of this report, four FGDs with NGOs and CSOs were held in Nepal, Mumbai, Delhi, and Kolkata. The cities of Delhi, Mumbai and Kolkata were selected as these are destination or transit cities and received a higher number of trafficked victims. WPC worked with its members for holding the FGDs, specifically, Impulse NGO Network (for the Nepal FGD), Save the Children India (for the Mumbai FGD) and Jabala Action Research (for the Kolkata FGD). The dates on which the FGDs were held are as follows:

- FGD in Kathmandu, Nepal on 4\textsuperscript{th} October 2018
- FGD in Mumbai on 23\textsuperscript{rd} October 2018
- FGD in Delhi on 29\textsuperscript{th} October 2018
- FGD in Kolkata on 7\textsuperscript{th} December 2018

The participants list of the FGDs held in Nepal, Mumbai, Delhi and Kolkata is attached as \textit{Annexure 1} to this report. The list of questions asked at each FGD is annexed as \textit{Annexure 2} to this report.

Key Informant Interviews were held with:

- Ms. Swati Maliwal, Chairperson, Delhi Commission for Women on 27\textsuperscript{th} September 2018.
- Ms. Geetanjali Goel (Special Secretary, DSLSA) and Mr. Naveen Gupta (Additional Secretary, DSLSA) on 22\textsuperscript{nd} November 2018.
- Ms. Manisha Zande, Senior Police Inspector, AHTU, Pune on 2\textsuperscript{nd} November 2018.

A summary of the key points made along with an analysis of the findings are presented in this report.

The contact details on stakeholders provided in the Resource Directory has been verified by WPC and / or our members through face to face meetings, phone calls and web search. However, as numbers and addresses change and personnel are transferred frequently, we consider the Resource Directory to be a work in progress, which requires regular updating.
1. The Legal Framework

The Nepal Legal Framework on Human Trafficking:

Nepal has followed a protectionist policy of policing and strengthening of the criminal justice framework in order to tackle human trafficking. The 1985 Foreign Employment Act required women to get their guardians’ consent before they could acquire a license to work overseas. In 1998 the Foreign Employment Act was amended requiring women to get government permission in addition to a guardian’s permission for working overseas. In 2012, a ban was imposed on women younger than thirty years of age from travelling to the Middle East for domestic work.\(^\text{12}\) In 2017, the Nepalese government imposed a ban on emigration of all domestic workers to countries that have not signed a bilateral labour agreement with Nepal.\(^\text{13}\) Hence the issue of emigration has been confused with human trafficking in the Nepal law.

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<tr>
<th>Human Trafficking and Migration are Different from each other!</th>
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<tr>
<td>Poverty, search for better livelihoods / lifestyle, escape from natal family violence / marital violence, war and conflict are the primary reasons for migration. Human trafficking is different from migration, illegal migration or smuggling. When the decision to migrate is taken voluntarily in the absence of any force, fraud or coercion or deception, such a move may be empowering for an adult woman.</td>
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<td>Human trafficking is a harm that can occur in the process of migration. Instances where human trafficking took place in the course of migration narrated to us include cases where minors from Nepal travelled to India on their own during school breaks (including young adults travelling to Bombay in search of work in the film industry), and women from Nepal lured to India by false promise of marriage.</td>
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The Nepal Human Trafficking and Transportation (Control) Act, 2007, is the primary national law in Nepal regulating human trafficking. The Act lists buying and selling of persons for any

\(^{12}\) In August 2012, the Government of Nepal announced a ban on women under the age of 30 years from migrating to the Arab States for domestic work.

\(^{13}\) Labour Ministry of Nepal, Third Amendment, “Directives for Housemaids”, April 2016
purpose, prostitution and unlawful extraction of human organs as acts constituting human trafficking.\textsuperscript{14} The police are vested with wide powers of arrest and investigation under section 7 of the Act, including arrest of persons without an arrest warrant.\textsuperscript{15}

The Act provides for the creation of a Rehabilitation Centre and a Rehabilitation Fund to support the Centre in fulfilling its mandate, including medical treatment and economic assistance for the victims.\textsuperscript{16} However, as per information received at the Focus Group Discussions, the rehabilitation facilities in Nepal are weak as compared to Indian facilities for rehabilitation.\textsuperscript{17} According to the annual 2018 TIP report although the Nepal government has national minimum standards for victim care and referral to services, it is unclear how many victims were referred to and able to utilize services during the year. Ministry of Women, Children, and Social Welfare (MWCSW) reported its online directory, launched in the previous reporting period to catalogue service providers for trafficking victims and migration-related exploitation, had not met its expectations for utilization but there were no efforts to improve it. The government decreased its contribution to provide services for female victims of violence, including trafficking, from 19 million Nepali rupees (NPR) during the 2016-2017 fiscal year to 10 million NPR for the 2017-2018 fiscal year, although this fund’s financing was cumulative and had approximately 16 million NPR in the fund at the beginning of the year.\textsuperscript{18} This essentially implies non utilization of funds allocated for victim care and referral services.

According to the Trafficking in Persons (TIP) report, in 2018, with direct government support, NGOs in Nepal opened two rehabilitation homes, 19 emergency shelters, and 19 community service centers for female victims of gender-based violence, including trafficking. The government established 312 Local Committees for Controlling Human Trafficking (LCCHTs) and issued a directive to recruitment agencies to furnish information demonstrating their adherence to the low-cost migration policy.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{14} Section 3 of the Act
\item \textsuperscript{15} Section 7 (c) of the Act
\item \textsuperscript{16} Section 13 and section 14 of the Act
\item \textsuperscript{17} Delhi FGD, October 29, 2018 at Iris Park, Safdarjung Enclave, New Delhi.
\item \textsuperscript{18} US Embassy, Trafficking in Persons Report, 2018 – Nepal.
\item \textsuperscript{19} US Embassy, Trafficking in Persons Report, 2018 – Nepal. The Nepal government’s 2015 labor migration guidelines include a policy requiring foreign employers to pay for visa and transportation costs for Nepali migrant workers bound for Malaysia and the Gulf states and restrict agency-charged recruitment fees to 10,000 NPR.
\end{itemize}
Although section 17 of the Nepal Human Trafficking and Transportation (Control) Act, 2007 provides for victim compensation, in reality, rights groups in Nepal have been quoted as stating that they do not know of a single survivor of human trafficking who has received compensation under the law. While the courts have awarded compensation, it has not been received by victims. In this context, victims prefer to accept “hush money” from traffickers rather than go through the court process. This not only reduces penalization of traffickers but leaves victims vulnerable to re-trafficking.

The Indian Legal Framework on Human Trafficking

India has largely followed a criminal justice centric model to counter human trafficking. There are several domestic and international laws that criminalize trafficking in India. The Constitution of India vide Article 23 (1) prohibits traffic in human beings, begar, and other similar forms of forced labour. Prior to 2013, the Immoral Traffic (Prevention) Act, 1956 was the primary legislation in India regulating trafficking. ITPA does not contain a definition of the term “trafficking” but focuses on criminalizing the activities of persons engaged in the sale and procurement of women and girls for the purpose of prostitution. In addition, the Juvenile Justice (Care and Protection of Children) Act, 2015 punishes the buying and selling of a child, and the Protection of Children from Sexual Offences Act, 2012 criminalizes any form of sexual contact with a child.

In 2013, the Criminal Law (Amendment) Act introduced a definition of trafficking in India for the first time based on the Trafficking Protocol, 2000. For the first time, India adopted a holistic definition of trafficking compatible with international standards. The definition of

21 As above
22 Section 81 of the JJ Act, 2015
23 Section 370: Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—1. using threats, or 2. using force, or any other form of coercion, or 3. by abduction, or 4. By practising fraud, or deception, or 5. by abuse of power, or 6. by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harbourd, transferred or received, commits the offence of trafficking.

Explanation
1. The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.
2. The consent of the victim is immaterial in determination of the offence of trafficking.
“Trafficking” now covers exploitation in all sectors, for example, forced marriages, domestic work, or sex work, and is characterized by cross border movement (both international and domestic). The offence of human trafficking, under all the various sections and statutory provisions, is cognizable, non-compoundable and non bailable.

*The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018*

The Trafficking Bill was passed by the Lok Sabha in July 2018. The Bill is an attempt to move beyond the criminal justice system in order to provide for preventive strategies, relief and rehabilitation for the victims. The Bill provides for the following:

- Chapter IV of the Bill directs the Central government to establish a National Anti Trafficking Relief and Rehabilitation Committee, with the Secretary of the MoWCD as its Chairperson. The Committee is expected to facilitate and ensure rehabilitation services through compensation, repatriation and reintegration, provide for Protection Homes, and ensure coordination between concerned authorities (including National State and District level Anti Trafficking Officers) both in India and in other countries.

- The Bill provides for setting up of a Rehabilitation Fund by the Central Government under section 30, which will be used for the establishment of protection homes and rehabilitation homes, supporting innovative programmes for rehabilitation of victims, strengthening legal assistance, providing entrepreneurial support, skill building, aftercare facilities for capital and infrastructure for rehabilitation of victims, witness protection, community based awareness generation programmes and prevention programmes, and specialized professional services.

- The Bill deals with repatriation under section 26, wherein the State Anti Trafficking Committee may deal with the matter under any law for the time being in force; however, written consent from the victim is required for the repatriation. The State Nodal Officer shall obtain informed written consent from the victim for repatriation purposes, and where needed, shall make arrangements for the counselling of the victim by trained psycho-social professionals.

The Bill does not cover the “how to” on several issues. For example, how to ensure cooperation and collaboration between state / non state machineries in Nepal (or any other foreign country) and their counterparts in India for identification of victims, and their safe return, and that
rehabilitation facilities are adequate to prevent re-trafficking of foreign nationals are not specifically spelt out in the Bill.

II. Concerns regarding Rehabilitation services for victims of human trafficking from Nepal in India

Shelter Homes: Shelter homes are crucial for the protection of survivors of trafficking. Victims, both Indian nationals and foreign, are provided with the same shelters and services.24

One of the objectives of Ujjawala Scheme for Combating Trafficking is to rehabilitate victims of human trafficking by providing them safe shelters and at the present there are 143 rehabilitation homes under the scheme.25 According to the MoWCD, the expenditure on Ujjawala scheme in 2017-2018 (until 28.11.2017) was INR 23.28 crores, out of 50 crores which was allocated for implementation of the scheme for the year.26

Maharashtra, Odisha and Uttar Pradesh received the highest amount under the Swadhar Greh scheme for the year 2017-2018 as first instalment.27

Non-governmental organizations are primarily responsible for implementation of this scheme.28

Even though an increase in the allotment of the funds from the central government for the Ujjawala program and the Swadhar Greh program has been reported, however, the number and the status of the government shelter homes continues to be dismal.29

Insufficient utilization of funds and delay in the disbursement of funds to both government- and NGO- run shelter homes have severe implications on the quality of services provided in shelter homes such as an inadequate number of medical and psychological counsellors, overcrowding,

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26MoWCD Annual Report 2017-2018 at page 19
27Mishra, Nandita, EA, MoWCD “Issues related to Working Women’s Hostel, Ujjawala, Swadhar Greh” available at www.wcd.nic.in, retrieved on October 8, 2018
unhygienic conditions and limited services.\textsuperscript{30} Incidents of abuse of inmates in a government run shelter homes in Muzzafarpur, Bihar in 2018, and in NGO run shelter homes in Delhi and Odisha have been reported recently.\textsuperscript{31} The participant representing a Sarva Shiksha Abhiyan school in Kolkata noted that there are more requests from parents / guardians for residence facilities than is available. Parents in fact mention that the child is in danger and may be trafficked. There are several cases of children who go missing in villages adjoining Kolkata.

Shortage of funds for shelter homes is a problem for shelter homes such as Shakti Shalini in Delhi who do not fix a time limit for the duration of stay. Women victims are permitted to stay in the shelter for as long as is necessary.

\textit{Juvenile Justice Homes}: Children do not receive age-appropriate services at the juvenile justice homes. Often, children in conflict with law and children in need of protection are housed together in the same shelter homes.\textsuperscript{32} Lack of proper care and protection within the shelter homes results in further victimization of children and often leads to children escaping from the shelter homes. There is an urgent need to improve and standardized the quality of care provided to children in the shelter homes across the country.\textsuperscript{33}

Licensing and monitoring of the shelter homes is also an issue. While the central government is required to have registration of the child care institutions under the Juvenile Justice (Care and Protection of Children) Act 2015, however poor compliance has been reported.\textsuperscript{34}

\textit{Skill Development / Vocational Training}: There is a major lacuna in the government’s skill development initiatives as it fails to provide skills training to survivors of trafficking according

\textsuperscript{34}As above
to their interest, capabilities and economic viability.\textsuperscript{35} Without viable livelihood alternatives, survivors are not able to support themselves and become highly vulnerable to being re-trafficked.\textsuperscript{36} It has been observed that economic viability of the traditional skills training provided to women residents of government or NGO operated institutions has to be re-examined based on changing economic context.\textsuperscript{37}

Vocational training and skill development are primarily offered in shelter homes for women of all nationalities who are rescued. Different states have different schemes in place for the nature of vocational training offered and placement in a job thereafter. For example, there is 70\% job placement in Bombay after women complete a skill development course offered by the government. The Maher Yojana (scheme) offered by the State government of Maharashtra provides that if a woman stays in a government run shelter home for more than a month, then she is entitled to Rs one thousand per month from the state government. However, these schemes are only for Indian citizens(women) with Aadhar cards.\textsuperscript{38}

Vocational training in stitching, jam / pickle making, beautician training and computer literacy is usually offered at shelter homes. Skill development in what is traditionally considered as “women’s work” has its limitations as it does not offer sufficient remuneration for creating an alternative livelihood. Furthermore, women who are rescued and placed in shelter homes may already be skilled in such traditional work. In order to be relevant, skill development has to offer a realistic solution for a women victim of trafficking. For example, the skill trainings offered to women from Nepal need to take into account what is considered of value in the Nepal job market, what is feasible to offer and likely to lead to the woman becoming financially secure. In some cases, formal education may be the most important skill to offer. At the Delhi FGD, Shakti Shalini observed that skill development includes how to combat violence, which is necessary to offer to all victims of human trafficking. At the Kolkata FGD, participants agreed that


\textsuperscript{38}Information received at the Mumbai FGD
counselling of victims should be part and parcel of the skill development training, in order to give them the mental capacity to reintegrate.

**Stigma:** Social reintegration of victims is a challenge as there is a stigma against the survivors in the society, especially against victims of commercial sexual exploitation and those girls who eloped for romantic reasons. It is extremely difficult to reintegrate the survivors without the family and community support.

**Victim Compensation:** Victim compensation in cases of human trafficking in primarily given as per court order under section 357 of the Code of Criminal Procedure, 1973 and not through the State Legal Aid Schemes. Although dedicated funds are mentioned in some of the State Victim Compensation schemes for rehabilitation of victims of human trafficking, not all SLSAs have the funds available with them to give to the victims.

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<th>Rehabilitation of Victims of human trafficking/kidnapping</th>
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<td>State</td>
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<td>Delhi&lt;sup&gt;39&lt;/sup&gt;</td>
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<td>West Bengal&lt;sup&gt;40&lt;/sup&gt;</td>
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<td>Maharashtra</td>
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**Compensation Scheme for Women Victims / Survivors of Sexual Assault / Other Crimes – 2018:** The Supreme Court of India in *Nipun Saxena vs. Union of India* WP (C) 565/2012, directed the National Legal Services Authority of India (NALSA) to prepare model rules for victim compensation for victims of sexual offences and acid attack. These rules have been drafted and placed on NALSA’s website<sup>41</sup>. The rules do not cover trafficking of women specifically but cover acts of sexual violence. The rules require all FIRs in cases involving sexual violence, acid attack and domestic violence to be mandatorily shared with the SLSA/DLSA, so that the SLSA/DLSA can in deserving cases, issue *suo moto* verification of facts for granting interim compensation. The amount of compensation in cases of rape has been fixed to minimum of Rs 4

<sup>41</sup>NALSA, Compensation Scheme, www.nalsa.gov.in
lakhs and maximum of Rs 7 lakhs, and in case of gang rape to a minimum of Rs 5 lakhs and a maximum of Rs 10 lakhs.

The scheme does not benefit women / girls who have been trafficked for purposes other than sexual exploitation (such as domestic workers, girls trafficked to work in circuses or organ donation). Also, the rules require that in case of foreign victim or a refugee, the amount be disbursed in the form of cash cards (section 11 of the scheme).

**Victim Compensation is provided to Foreign Nationals in Delhi:** In contrast to the DCW, the DSLSA informed us they do have sufficient funds for payment of victim compensation to foreign victims of human trafficking. The payment is done through RTGS. In cases where the victim is in a shelter home and does not have a bank account, the DSLSA provides a small amount of cash to her and opens a Fixed Deposit in her name with the rest of the amount.

**Legal aid for foreign victims of human trafficking:** The DSLSA informed us that in cases where the FIR is registered in Delhi, the case can be filed in Delhi, and a legal aid lawyer provided to the victim. In case she has been repatriated, her testimony can be taken through video recording. In contrast, according to the DCW, registering an FIR remains difficult as police are reluctant to start the process of investigation. Further, the police (Investigating Officer) by and large does not show up for court hearings leading to poor conviction rates. According to the DSLSA, the traffickers have strong legal teams, which help in releasing rescued victims, once the case is filed.

**Overburdening of NGOs/ CSOs in Nepal due to lack of quality of services:** The quality of legal services and schemes for rehabilitation are inadequate in Nepal. There is lack of witness protection and delays in court hearing. Rehabilitation schemes, shelter homes and vocational training are inadequate both for victims who are trafficked into Nepal and those who are trafficked out of Nepal. Consequently, NGOs in Nepal are overburdened with rehabilitation efforts. According to a few participants at the Nepal FGD, the police system is better organized than other victim centric services for dealing with cases of human trafficking in Nepal. However, the shortage of women officers in the police force makes it difficult for the police to work with women victims at the stage of investigation.
Filling of FIR, Age verification and Tracing of families is difficult for CWCs in Delhi: CWCs function as Magistrate’s courts in cases of children in need of care and protection. They provide orders for the protection of the child which can include keeping the child in a home.

The three biggest hurdles for Child Welfare Committees when dealing with cases of trafficking of children are (i) delay in filing of FIR, (ii) age verification and (iii) tracing of their families. These three processes take a long time and delay the response of the CWC in the repatriation / rehabilitation of the child.

- **Filing of the FIR**: The CWC is dependent on the Investigating Officer to file an FIR before they can proceed further in a case and give an order. However, the IO usually delays filing the FIR. In the Kolkata FGD, the AHTU officer present observed that very few cases of human trafficking of children were reported. Around 2-3 cases of FIRS of child trafficking cases were registered in Kolkata in the last year. This implies a failure on the part of the police in gathering the required information for filing of an FIR.

- **Age verification**: In many cases, there are no supporting documents providing the age of the victim, and medical reports contradict each other. Failure to determine the age of the victim leads to delays in judicial orders.

- **Tracing of the child’s family**: Tracing can take up to six months. If an NGO undertakes the tracing work, they are under no obligation to keep the CWC informed about the progress.

In this context, the role of the police needs to be strengthened and convergence meetings organized between the CWC and the police.

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**Order given by the Delhi CWC where age verification was not possible**

In a case involving mass rescue of youth from Nepal from bonded labour, the CWC was unable to determine if all the rescued victims were under 18 or not. The CWC decided to pass an order in any case for their protection, which included skill training and repatriation of all to Nepal.
III. Procedure involved in Repatriation of victims of human trafficking from Nepal

The Nepal Embassy undertakes rescue and repatriation of victims from Nepal back into the country. But in most cases, NGOs/INGOs located in India and Nepal rescue the victims and identify if they are from Nepal or not. NGOs/INGOs such as Rescue Foundation, Maiti, STOP, Justice and Care are involved in this process. The primary burden of repatriation falls on these NGOs/INGOs.

In the absence of any official SOP on human trafficking between India and Nepal, the process of repatriation is dependent upon a court order. Once the court orders for repatriation, the process of sending the victim back begins.

Deportation and Repatriation are different from each other!

Deportation refers to the State sending back an undesired non-citizen to his/her country or place of origin. Repatriation is a broader term and covers both voluntary and involuntary return.

Article 8 (2) of the Trafficking Protocol, 2000 (ratified by India in 2011) provides:

“When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.”

In practice, the process of repatriation has been outsourced to NGOs/INGOs and difference organisations have adopted different procedures related to repatriation. For example, the Impulse NGO Network (INGON) prepares a Home Investigation Report in collaboration with its partners, AHTU and social workers to ensure the women is not victimised again upon her
A home study report is also prepared by International Justice Mission in the procedure they have adopted for repatriation:

### Procedure followed by International Justice Mission in Repatriation of Victims from Nepal:

<table>
<thead>
<tr>
<th>Process involved when the Court passes the repatriation order:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Aftercare Home (where the girl / victim is staying) will submit the repatriation order passed by the presiding Judge of the court to the Nepal Consulate along with the Home address of the victim (NGO will assist the Aftercare Home for this process).</td>
</tr>
<tr>
<td>• Nepal Consulate will do the verification of the girls in the address provided by the Aftercare Home. This verification is solely done by Nepal Consulate through Government bodies in Nepal to see if the girl is Nepal Citizen or not. Meanwhile NGO will also ask the Partner organization/receiving Home in Nepal to do the home study of the client.</td>
</tr>
<tr>
<td>• Once the Home study is completed, NGO will ask the partner organization/receiving home to send the home study report and also to send the vacancy letter for the girl (Vacancy letter is the letter from the partner organization/receiving Home saying that they have a space in their Home for girl.)</td>
</tr>
<tr>
<td>• NGO will submit the home study report to Nepal Consulate along with the Vacancy letter for the girls from the receiving Home.</td>
</tr>
<tr>
<td>• Once the Verification from the Nepal Consulate is over they will notify Aftercare home in writing, that verification is done from their side and hence the repatriation process can be started.</td>
</tr>
<tr>
<td>• If the Aftercare Home is a non-government organization and if they want to be a part in escorting the girl to Nepal then - Aftercare Home (where the girl is presently staying), NGO and Aftercare Home (Where girl will be received) will decide for the date for the repatriation of the girl.</td>
</tr>
</tbody>
</table>

Or

• If it is a Government Home and if they don’t want to send their staff to Nepal for the repatriation, Government Aftercare home will write a letter to Nepal Consulate informing that they authorize NGO staff to carry on the repatriation process, since they don’t have a staff to escort girl to Nepal for the repatriation. In this case NGO will decide the date for the repatriation keeping receiving home in loop. |
| • Once the date is fixed, NGO will inform Nepal Consulate about the date and Nepal Consulate will give the name of their staff who will escort girl till boarder. |
| • Once the name is received, NGO books the tickets for the staff of the NGO, staff from the Nepal Consulate, girl and if any staff of the resident home is going (Nepal Consulate will later reimburse the expenses for train for girl and Nepal Consulate staff). |
| • Nepal Consulate will write a letter to the Birgunj(Nepal border) Chief Development Officer requesting them to repatriate the victim to the receiving home. Nepal Consulate staff carries this letter with him. |
| • The victims are accompanied by staff from Nepalese Consulate, the NGO that is working with them, the staff from the resident aftercare home (if any) The staff from the receiving home will meet NGO staff, Nepal Consulate staff and aftercare home staff (If any) along with the client at |

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43 As received by mail from IJM in Mumbai. IJM has facilitated the repatriation of around 30 girls back to Nepal. The process differs slightly in each case depending upon the facts and circumstances.
the Border (Birgunj). Everyone then goes to CDO’s office (Chief Development officer) of Birgunj. Nepal Consulate staff will hand over the letter from the Kolkata Nepal Consulate to CDO.

- CDO office of Birgunj will write one letter for the repatriation of girl to the receiving home. Receiving Home and CDO will sign that letter. The receiving home becomes the official guardian of the victim.

**Process involved when the Child Welfare Committee (CWC) passes the repatriation order:**

- When girl is placed in the aftercare, the aftercare Home will write an email to the partner organization/receiving home, requesting them to do the home study of the girl.
  
  Or

- If girl is at the Government Home then NGO will write an email to the partner organization/receiving home requesting to do the home study of the girl.

- Once the Home study is completed the Aftercare home or NGO will submit the Home study report to CWC and Nepal Consulate. Meanwhile Aftercare home or NGO requests partner organization/receiving home to send the vacancy letter for girl.

- After receiving a no-objection letter for the repatriation of girl from the Investigating Officer (IO), the CWC passes the repatriation order.

- The Aftercare Home or NGO submits the order from the CWC to Nepal Consulate along with the address of the girl and the vacancy letter sent from the partner organization/receiving home.

- Nepal Consulate after receiving the address of the girl will do the verification from their side to verify whether girl is Nepal Citizen.

- Once the verification is over from the Nepal Consulate they will inform the Aftercare home and NGO about the verification.

- Date of travel is decided by the NGO, the Nepalese Consulate along with the receiving home.

- Tickets are booked by NGO for the people travelling to Nepal in order to escort girl for her repatriation (Travel expense for girl and Nepal Consulate staff will be reimbursed by Nepal Consulate later)

- Aftercare home and NGO will have to submit letter to Nepal Consulate stating that if girl is required in the court then they (NGO and Aftercare) will take full responsibility of bringing the girl for her court hearing.

- Nepal Consulate will write letter to the Birgunj CDO office requesting to do the repatriation of the girl to the receiving home. Nepal Consulate staff carries this letter with him.

- The girls are accompanied by staff from Nepalese Consulate, the NGO that is working with them, the staff from the resident aftercare home. They go to the Nepal Boarder called (Birgunj). The staff from the receiving home will meet NGO staff, Nepal Consulate staff and aftercare home staff (If any) along with the client at the Border (Birgunj). Everyone then goes to CDO’s office (Chief Development officer) of Birgunj. Nepal Consulate staff will hand over the letter from the Kolkata Nepal Consulate to CDO.

- CDO office of Birgunj will write one letter for the repatriation of girl to the receiving home. Receiving Home and CDO will sign that letter. Then officially receiving home from then becomes the official guardian of the girl.

Follow up is also usually undertaken by NGOs and not by the State. At the Delhi FGD we were informed by a CWC Member that Maiti India does the tracing and verification of the victim’s
family and background with help from the SHO. As Maiti India is not obliged to keep the CWC informed about the status of the child after repatriation, the CWC does not have any information about what happens to victims once they return home.

IV. Concerns regarding Repatriation of victims of human trafficking from India

Procedural delays: Article 8 of the Trafficking Protocol requires repatriation to be without any undue or unreasonable delay. But in India, repatriation can take years due to several constraints. For example, victims are unable to identify their home state or country or are unable to furnish identity documents which led to severe delays in the process of investigation and tracing their families.

An Advisory was issued by the Ministry of Home Affairs on 1st May 2012 on *Combating Human Trafficking in India – dealing with Foreign Nationals*. The Advisory requires State governments to ensure that immediately after a foreign national is apprehended on charges of human trafficking, a detailed investigation should be carried out to ascertain if the person is a victim or a trafficker. A victim should not be prosecuted under the Foreigners Act, 1946. The Anti Human Trafficking Units (AHTU) are charged with the primary duty of investigation in such cases.

According to Trafficking in Persons India Report, 2018, a significant coordination of AHTUs with NGOs in the matters of investigations, police referral and rehabilitation of survivors have been reported. However, it has been observed that some AHTUs lack clear mandates that effects the investigation of cases of human trafficking. There is a lack of coordination among AHTUs across the states.

44 Office Memorandum, No 14051/14/2011-F.VI, available at www.mha.gov.in
45 The Foreigners Act 1946 provides for deportation of illegal migrants in India.
47 As above
48 As above
It is important to note that as citizens of Nepal can work in India and the two countries share an open border, victims are spared from having to languish in shelter homes without any authorization to work while investigation takes place. However, tracing of families, ensuring the safe travel of the victims, and follow up of cases so that victims are not re-trafficked are issues that are of concern to all foreign national who are victims of trafficking and are repatriated from India. In the absence of any official and binding agreement regarding repatriation of victims, NGOs undertake most of the work related to repatriation.

_Hurdles faced by the AHTU:_ WPC was informed that following rescue, victims usually provide false information to the police for various reasons, including fear of being penalized. Counselling of the victims helps in getting correct information, and reducing their fear of the trafficker. As victims of human trafficking carry fake identity cards it is difficult to identify them and trace their families. Age verification is also a problem due to fake ID cards created by the traffickers. Hence, the AHTU do not know whether to treat her as an adult or a minor for the purpose of repatriation.

In Pune, the FIR is usually registered by the local police and not the AHTU. The AHTU registers an FIR only in exceptional cases. Once an order for repatriation is given, the consent of the victim is not taken for sending her back.

_Shortage of funds:_ There are inadequate State funds available for repatriation / rehabilitation of foreign victims with the State Commissions for Women. The DCW observed they lack the funds to take on tasks associated with repatriation and rehabilitation of victims from Nepal. For this reason, the DCW cannot follow up with the cases of women / children they rescue. Although the NGOs do assure DCW that the rescued women will be provided with alternative employment upon their return to Nepal, the DCW is not kept informed on what the follow up is.

_Overburdening of NGOs in the process of repatriation:_ At present, NGOs play the central role in managing the repatriation of Nepal victims from India. Governments of both the countries, India and Nepal, do not have any official responsibility in the process of repatriation. While both countries still do not have a Memorandum of Understanding (MoU) or Standard Operating
Procedure (SOP) in place for repatriation processes, several NGOs in India and Nepal have MoUs and SOPs in place.\textsuperscript{49}

An MOU was signed between India and Bangladesh on 6\textsuperscript{th} June 2015 for the Prevention of Human Trafficking in Women and Children – Rescue, Recovery, Repatriation and Reintegration. The MOU provides for cooperation between the two countries in prevention of human trafficking and places the onus on the host country for effective reintegration of the victims. However, as the MOU is not legally binding on either country, it is court orders / CWC orders that determine when and how repatriation will take place. NGOs thereafter take on most of the work associated with repatriation.

The Embassy of Nepal in New Delhi plays a limited role in identification of victims and tracing of families. Rescues undertaken by the Delhi Commission for Women (DCW) of victims from Nepal are preceded by information received from the Embassy of Nepal in New Delhi. The rescued women / girls are handed over to the Nepal Embassy which works with Maiti Nepal, or Rescue Foundation thereafter for her repatriation. The DCW plays no role in the repatriation or the follow up of the case. In Mumbai and Kolkata, we were informed the Embassy played no role in identification of victims and their rescue.

\textit{Dealing with rescued women who do not wish to go back is difficult:}

Cases where rescued women no longer wish to return to their place of origin are difficult to deal with. Strategies used by NGOs in such cases include:

- Counselling the woman to explain to her what the consequences would be if she were to continue to remain in India. Cases where women do not wish to give up on commercial sex work are dealt with by explaining the consequences of such a decision – including risk of contracting HIV/AIDS. Details of existing welfare / rehabilitation schemes available are explained to her.
- The woman can apply for permanent citizenship of India so that she can start working in India (this is not relevant for women from Nepal who are allowed to work in India).
- The woman can apply for refugee status.

\textsuperscript{49} For example, Childline has an SOP in place with the Ministry of Railways for the rescue of children found near railway lines, while Justice and Care has an SOP in place for first responders dealing with human trafficking.
• In case of a final court order requiring her repatriation, the consent of the woman cannot be taken into consideration.

Families do not accept rescued victims back always: At the Kolkata FGD, we were informed that the participating NGOs had dealt with cases where the family members of the victims cooperate with the police and with NGOs for rescue, but later on, do not accept the victim back into the family. The stigma faced (particularly for those who have been sexually exploited) by victims leads to re-trafficking.

V. Recommendations and Solutions for Repatriation / Rehabilitation of Victims of Trafficking from Nepal in India:

Putting a system in place for Repatriation for victims of Human Trafficking from Nepal

There is no officially binding agreement between India and Nepal for the repatriation of victims of human trafficking. For respondents in our study who opposed the drafting of an SOP, the primary reason was that such an SOP would be ineffective unless it is made binding and strong systems are put in place for it to be workable.

A long-term solution requires that a system be put in place for repatriation of victims of human trafficking. This system must ensure Judges and CWCs have requisite training on when to pass an order for repatriation of victims. It requires binding obligations on state institutions for tracing of families, providing shelter and meaningful skill development in the interim, providing victim compensation upto a certain uniform minimum and maximum amount for all victims of human trafficking (and not just those who have been sexually exploited), monitoring of cases and follow up of cases once repatriation takes place to Nepal. Division of responsibilities between the government of India and the government of Nepal need to be clearly spelt out. A list of NGOs who can assist in these matters needs to be made publicly available.

Trainings for the Judiciary on Human Trafficking

As repatriation of victims is dependent on court orders, Judges must be sensitized to the difference between repatriation and deportation. The legal system must differentiate between adult victims and children. In the case of adults, the court needs to determine whether it is (1) safe for the victim to be repatriated; and (2) that she will not be re-trafficked. In case it is unsafe
for the victim to be repatriated back to Nepal and she is likely to be re-trafficked, then an order can be given for her protection in the interim.

In the case of children, the best interest of the child has to be kept paramount before an order is given for the child to be repatriated. In case it is not in the best interest of the child to be repatriated, the child must be treated as a child in need of care and protection by the Juvenile Justice Board.

**Convergence**

The lack of convergence between government departments and NGOs has led to a situation where cases of cross border trafficking are not monitored by a single body and there is lack of government accountability. State accountability for repatriation, victim compensation, providing alternative livelihood options, and legal aid requires coordination between different departments.

1. *Convergence Meetings between different stakeholders:* The Embassy of Nepal in India and the Indian Embassy in Nepal need to hold regular meetings with anti trafficking NGOs. The meetings should aim to further cooperation between the state and NGOs not just on identification and rescue of victims, but also on follow up of victims who have been repatriated, sharing of information regarding stakeholders, and the nature of rehabilitation (including vocational training) received. The State Commissions for Women and the Legal Service Authorities need to coordinate for the purpose of providing legal aid to the rescued victims. As rescue is often done by the state commissions for women and legal aid provided by the legal aid authorities, the two bodies must coordinate on specific cases. Further, victim compensation (without necessitating a court order) is provided by the legal service authorities. The state commissions need to keep themselves updated on cases after the rescue, including compensation received by the victim. Police must have regular interactions with civil society, which can be in the form of regular meetings organized, or special police events at Pujas or Melas or other events where awareness on police functioning can be generated.

2. *Trainings for stakeholders:* Regular trainings for police officers, AHTU officers, CWC members, Judges, and legal aid lawyers on human trafficking is critical in order to avoid
situations where blame games are played. For example, the IO must be informed that it is his / her responsibility to have an FIR registered quickly so that the CWC can pass an order for the protection of the child. Judges must order for video recording of statements by witnesses in case the witness has been transferred or left the country. Witness protection (which includes ensuring the victim and accused do not come together face to face in court, escort for the witness to and from court, in-camera trials and other protective measures) is the responsibility of both the police and legal aid authorities.

3. **Identifying more stakeholders:** School teachers, Panchayat leaders, Anganwadi workers can be trained on human trafficking and co-opted in attempts to reduce stigma / rehabilitate children who are repatriated.

4. **Updated Resource Directory:** An updated resource directory must be made available online and with each stakeholder for coordination purposes.

**Rehabilitation: Victim Compensation, Vocational Training, Skill Development**

5. As the revised victim compensation scheme developed by NALSA does not specifically cover human trafficking cases, the Trafficking Bill or a government notification needs to stipulate what is the minimum amount and maximum amount of compensation that can be granted in human trafficking cases. This amount must be uniform in all states of India.

6. In all FGDs, participants pointed out that the skill development imparted to victims largely leads to income generation of less than what is required for successful rehabilitation. At the Kolkata FGD, participants mentioned that the state needs to invest in setting up enterprises that will support the victims once they have been skilled. Basic education cannot be overlooked, and some victims may benefit from receiving formal education instead of vocational training. Vocational training has to cater to each individual’s specific needs.

**Legal Aid**
7. The IO statement should be collected at the same time as the witness deposes. If an IO has been transferred his / her statement must be collected through video conferencing. The Judge can order for the same.

8. Facilities for video conferencing for victims who have been repatriated is necessary in all cases of cross border human trafficking.

9. Trainings for legal aid lawyers on human trafficking are necessary on a regular basis.

**Awareness on Rehabilitation Services for Vulnerable Populations**

10. Awareness on the existence of services such as shelter homes (where they are located, how to contact them), compensation facility (when to approach the POCSO court, when to approach the Legal Aid Authority), and legal awareness on the rights of Nepali citizens in India must be provided to populations who are vulnerable to human trafficking in Nepal and in India.

11. Awareness generation for families / communities is equally important to prevent stigmatization of victims and to facilitate reintegration.

**Witness Protection**

12. The Supreme Court of India in *Mahender Chawla and Ors vs. Union of India and Ors*\(^{50}\) directed all States of India to implement the “Witness Protection Scheme 2018” until Parliament comes out with a legislation. The scheme ensures the witness and accused in criminal cases do not come face to face during investigation or trial, and provides for concealment of identity of witnesses. Implementation of this judgment must be accorded priority. A scheme for witness protection can be interlinked with the One Stop Centres formed by the Ministry of Women and Child Development.

**VI. Conclusion**

While the DCW is in favour of an SOP between India and Nepal for repatriation of victims, DSLSA pointed out that in the absence of binding provisions an SOP will not help. According to

\(^{50}\) WP (Crl) 156/2016, Order dated December 5, 2018
the DSLSA, it is important for the Government of Nepal to strengthen systems for tracing of victims and traffickers. This would help investigation agencies in India. Further, linkages between NGOs working in Nepal and NGOs working in India need to be strengthened.

In the absence of any consensus on whether to draft an SOP or not, it is important to strengthen the law and ensure accountability of both the Indian Government and the Government of Nepal towards victims of human trafficking. The Trafficking Bill can be strengthened to include clear directions for the state to ensure repatriation is conducted in accordance with the principles of the Trafficking Protocol, 2000.

Presently, the Trafficking Bill 2018 suffers from several limitations. Specifically, these include:

- The Trafficking Bill demarcates certain forms of trafficking as “aggravated” under section 31 of the Bill. These include trafficking for the purpose of bonded labour or forced labour, trafficking for marriage, baring a child and begging, administering of drugs, alcohol, and chemical substance or hormones for early sexual maturity. According to most participants at the FGDs, the classification of “aggravated forms of trafficking” is not based on any intelligible differentia. It is unclear why trafficking for the purpose of begging would be more heinous than trafficking for the purpose of sex work. Further, raising the punishment for aggravated forms of trafficking will not benefit in prevention of human trafficking. However, one participant from Justice and Care pointed out that it is important to create awareness on the punishment. If by raising the quantum of punishment the Bill has created awareness that in itself is an achievement.

- The Bill does not sufficiently protect victims who have been coerced or compelled to perpetrate crimes: Section 45 of the Bill exempts offences committed by victims punishable with death, imprisonment with life or ten years. However, this leaves out minor offences such as soliciting which a sex worker may be compelled to do. The Bill consequently further stigmatizes sex work.

- The District Anti Trafficking Committee and the Child Welfare Committee have been entrusted with the responsibility of awarding interim relief to victims of human trafficking under section 27 of the Bill. As cases of human trafficking often include rape and sexual violence as well, it is necessary to note that in such cases
there will be a duplication of authorities granting interim compensation (the State Legal Services and the Special Courts for Children). The Bill needs to clarify the minimum / maximum amounts of victim compensation to be given in cases of trafficking and ensure there is no duplication of efforts.

- In the absence of an officially binding agreement between India and Nepal (and other countries) on repatriation, the Bill must place the onus on state authorities to ensure successful repatriation of victims. Tracing of families, travel arrangements and follow up of cases are state responsibilities.

The receiving country in cases of human trafficking cannot wash its hands of rehabilitation of foreign victims. The preamble of the Trafficking Protocol 2000 places obligations on the country of origin, transit and destination to protect the internationally recognised human rights of victims of human trafficking. Hence, both India and Nepal are equally responsible for the rehabilitation and successful repatriation of victims. Compensation, vocational training, legal aid, witness protection, and shelter must be provided keeping in mind the unique needs and requirements of each victim of human trafficking with the goal of ensuring the women / child is not victimised again. A legislation on human trafficking which clearly ensures State responsibilities towards victims – both foreign and citizens – will benefit in reducing cases of human trafficking.
ANNEXURE 1

Nepal Participants List
(4th October, 2018)

1. Tika Sharma, Sathi Bakey Nepal
2. Anil Giri, Tiny Hands Nepal
3. Ganaga Kumari Adhikari, Mukti Nepal
4. Sushila G.C, Tiny Hands Nepal
5. Rupa Pradhan, Dream Incubator/JVI
6. Meena Khane Ideal Home, Chitwan
7. Bhumi Raj Bhattani, P.R.C
8. Gyanu Poudyal, NAMUNA Integrated Development Council
9. Padam Oli, PEACEWIN
10. Mohammadi Siddiqi, Fatima Foundation, Nepal
11. Shila Gajunel (C.D.C Nepal)
12. Keepa Maitri Tuladhar, Children Nepal
13. Santa Roka, Samrakshak Samuha, Nepal, (SASANE)
15. Pratika Tamang, Shanti Foundation
16. Sharda Khatri Gautam, Bangels
17. Impulse NGO Network Team – Emarine Kharbhih, Shillong, India

Mumbai Participants List
(23rd October, 2018)

1. Ms. Pratibha, District Protection Officer, Department of Women and Child
2. Priyanka Panpatil, Protection Officer, DWCD
3. Ms. Nirmala, Rescue Foundation
4. Ms. Preeti, Rescue Foundation
5. Ms. G.K Suvarhala, Jeevan Aadhar
6. Dnyaneshari Pandey, Jeevan Aadhar
7. Serina D’Souza, Freedom Firm
8. Seema Arole, Freedom Firm
10. Rebecca, M, Oasis India
11. Asmita Birje, Navjeevan Mahila Vastigreh
12. Namita, Kasturba Mahila Vastigreh
13. Roshnie, Transforming Lives Foundation
14. Neha Singh, Childline India
15. Vanita Pandey, Rescue Foundation
16. Archana Pawar, Shanti Sadan
17. Sangeeta Meher, Shanti Sadan
18. Save the Children India Team – Nandini and Pravin
19. Women Power Connect – Gayatri

Delhi Participants List

(29th October, 2018)

1. Diya Nag, The Asia Foundation
2. Shruti Patil, The Asia Foundation
3. Adrian Phillips, Justice and Care
4. NabeshBohidar, CARE
5. Bharti Sharma, Shakti Shalini
6. Mercy Nimal, World Vision
7. MD. Noor Alam, MARG
8. Nikita Bhukar, CHRI
9. Satya Prakash, FXB India Sureksha
10. Deepak, HRLN
11. Sangeeta HRLN
12. Anju Anna John CHRI
13. Ranjana Srivastav, CWC Member
14. Gayatri, WPC
15. Parul, WPC
Kolkata Participants List

(7th December, 2018)

1. Susmita Mitter, All Bengal Women’s Union
2. Smriti Kana Ghose, All Bengal Women’s Union
3. Syed Surajul Alam, Anti-Human Trafficking Units DD, Lalbazar
4. S. Sengupta, Destiny Foundation (Reflection)
5. M N Mandal, ATSEC, Action Trafficking and Sexual Exploitation of Children
6. Rathin Ash, CID, West Bengal
7. Biplob Mandal, Jabala Action Research
8. Rachita Mujherjee, Jabala Action Research
9. Sara Khan, Jabala Action Research Organisation
10. Smita Singh, Mahima Homes, Jatiyo Kristiyo Prochar Samiti
11. Shruti Roy Chowdhary, Sanlaap
12. Arindam Datta, State Legal Authority
13. Manabendra Nath Mandal, SLARTC, Social Legal Aid Research and TRG Centre
14. Urba Chaudhary, Sarva Shiksha Mission, Kolkata District
15. Ritasree Bhattacharjee, Sarva Shiksha Mission, Kolkata
16. Darb Bandypadhyay
17. Naumita Chatterjee, West Bengal Commission for Protection of Child Rights (WBCPCR)
18. Parul Sethi, WPC

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