



PUTTING JUSTICE FIRST:
LEGAL STRATEGIES TO
COMBAT HUMAN
TRAFFICKING IN INDIA





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INTRODUCTION

The **Thomson Reuters Foundation** and **Freedom Fund** have partnered to produce a report titled ***Putting Justice First: Legal Strategies to Combat Human Trafficking in India***. The report examines the legal challenges faced by victims of human trafficking in India and makes key recommendations on legal strategies to combat trafficking and improve legal outcomes for such victims. The Executive Summary, which sets out the Key Findings and Recommendations, is published here and the full report will be made available shortly.

India is home to over 14 million victims of human trafficking¹. Despite being illegal, forced and bonded labour are widespread and commercial sexual exploitation and child labour persist - often with impunity for perpetrators and limited legal recourse for victims. Victims often require legal assistance from NGOs and independent lawyers. This assistance is wide ranging, from ensuring claims are registered by the police through to briefing public prosecutors or pursuing other remedies for victims. However, legal resources and capacity are extremely limited and there is huge scope to scale up the fight against trafficking through the use of strategic legal initiatives.

The report is based on extensive qualitative research which included analysis of legislation, recent case law and relevant literature and discussions with over 80 interviewees. These included 28 representatives from NGOs working in Delhi, Bihar and Uttar Pradesh², as well as survivors, lawyers, judges and representatives from law enforcement and government. **The Key Findings** consider how trafficking victims, NGOs,

1. Global Slavery Index, 2014

2. Several National-level NGOs working across all states in India were also interviewed for this report as well as NGOs undertaking significant legal work outside of Delhi, Bihar and Uttar Pradesh.

independent (non-government) lawyers and other stakeholders navigate the criminal justice system in India, highlighting the challenges they face, from the initial filing of a claim through to trial. The findings also examine the use of strategic litigation and procedural reform to achieve systemic change. Law reform, despite being required in some areas, was not the main focus of this research

The Recommendations explore practical legal strategies that can be used to combat trafficking and obtain justice for victims. These include access to legal support (both direct funding initiatives for NGOs and centralised legal support initiatives at the national, state and community levels); legal knowledge and training; strategic litigation and procedural reform; the use of data, technology and the media; and increased collaboration between key stakeholders.

While prosecutions alone will not bring an end to trafficking, there is immense potential to use these legal strategies to deliver justice to victims, deter potential perpetrators and put traffickers out of business. The Thomson Reuters Foundation and Freedom Fund aim to identify funding partners who can help implement and scale the strategies set out in the report over the next year.

KEY FINDINGS

1

NGOS PLAY A VITAL ROLE IN IMPROVING LEGAL OUTCOMES FOR VICTIMS OF HUMAN TRAFFICKING AND SLAVERY. HOWEVER, RESOURCE AND CAPACITY CONSTRAINTS MEAN THAT ONLY A SMALL NUMBER OF VICTIMS RECEIVE LEGAL SUPPORT.

NGOs play a vital role in assisting victims of trafficking and slavery to engage with the criminal justice system to file claims, pursue prosecutions and obtain legal compensation in India. This support is critical, not only in improving legal outcomes but also in improving the victims' experience with the criminal justice system. It was widely reported that without NGO legal support and perseverance many trafficking cases would not be followed through by prosecutors in court.

NGOs provide support to victims throughout the criminal justice process by undertaking a range of measures which include:

- Providing legal assistance: Hiring lawyers to pursue legal cases on behalf of victims.
- Filing a complaint: Ensuring that if the victim wants to pursue legal action, an official complaint, known as a "First Information Report" ("FIR"), is filed and registered with the police, referencing the relevant legislative provisions.
- Pursuing claims: Liaising with senior police and government officials or courts if an FIR is not registered and working with lawyers to get all applicable charges included at trial stage.
- Opposing bail: Opposing the granting of bail to the accused to ensure the new presumption against bail in trafficking cases, pursuant to s370, is implemented.
- Preparing the victim: Supporting the victim to provide statements to the police and testify in court.
- Witness protection: Protecting victims and other witnesses who are often "re-victimised" by further threats and intimidation by traffickers.
- Assisting public prosecutors: Gathering evidence, preparing submissions and briefing public prosecutors on cases.

- Obtaining compensation: Applying for compensation for victims where eligible under the relevant legislation.

“We felt that nothing was happening in the courts – traffickers were not punished, victim felt nothing has happened and got no justice, rehabilitation is a grey area and nothing happens – so we felt that we should intervene legally. So we started to follow up on all our cases.”

NGO President and Senior Lawyer, Delhi

While there are hundreds of NGOs across India that work on combating trafficking, only a small portion pursue legal cases on behalf of victims. Those that do provide legal support have limited capacity and are only able to support a small percentage of cases through to the trial stage. For example, one NGO working at the national level is currently assisting on approximately 90 trial cases, despite having helped to lodge FIRs for approximately 900 trafficking victims in the same time period. Many other NGOs are not able to assist with legal cases at all, while some assist victims with registering an FIR, but not through the criminal justice process.

There are many cases where victims do not want to press criminal charges, preferring to move on with their lives. However, many NGOs interviewed acknowledged that a significant portion of victims who require further legal support are not able to access it due to NGO resource and capacity constraints. These constraints are compounded, or are a result of:

- Donor funding restrictions – funding is generally directed to non-legal victim assistance programmes instead of legal work;
- Longevity of cases - each trial case is resource intensive and time consuming, taking anywhere from 2-6 years on average; and
- Inadequate criminal justice system – the challenges of operating within a criminal justice system that does not function properly in many places due to extreme overload.

“We strongly feel that without prosecuting the perpetrators, fighting the modern day slavery becomes extremely difficult.”

NGO Worker, Bihar

2

NEW ANTI-TRAFFICKING LAWS IN INDIA HAVE EXPANDED THE DEFINITION OF TRAFFICKING AND INCREASED PENALTIES. THIS HAS CREATED AN OPPORTUNITY TO INCREASE PROSECUTIONS FOR A BROADER RANGE OF OFFENCES, PARTICULARLY BONDED LABOUR. HOWEVER, WITH LITTLE OR NO JURISPRUDENCE ON THE NEW LAWS, CONFUSION AS TO THEIR INTERPRETATION AND SCOPE PERSISTS. NGOS REPORT THAT WHILE THE NEW LAWS ARE BEING UTILISED FOR “TRADITIONAL” TRAFFICKING OFFENCES, IT IS DIFFICULT TO GET POLICE TO REGISTER BONDED LABOUR CASES OR CASES THAT DON’T INVOLVE MOVEMENT OF THE VICTIM.

A new Indian law – the amended section 370 of the Indian Penal Code under the Criminal Amendment Act, 2013 – has expanded the definition of trafficking, basing it on the United Nations Palermo Protocol³, which India ratified in May 2011. The law holds significant potential to increase prosecutions and act as a strong deterrent by:

- Criminalising a wide range of trafficking related crimes, including trafficking for the purpose of “exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
- Criminalising persons involved at each and every stage of the trafficking chain by defining the trafficking offence as anyone who recruits, transports, harbours, transfers, or receives a person or persons for the purposes of exploitation.
- Providing increased punishments for offences (e.g. a minimum of ten years for trafficking a minor for purposes of sexual exploitation).
- Making all offences non-bailable.
- Making consent of the victim immaterial to establishing the offence of trafficking (note that this is particularly important for trafficking cases involving child or forced marriage where the girl may “willingly” enter into an arrangement under duress or due to false promises).

³ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000

The amended 370A also criminalises the engagement of a trafficked person (adult/minor) for the purpose of sexual exploitation, targeting customers and those organising the sexual exploitation of trafficked women and girls.

Despite this immense potential, in practice NGOs have varying success in ensuring that police register claims under the amended provisions. NGOs are having much more success ensuring that section 370 is used in situations traditionally viewed as “trafficking” and “exploitation” in India, such as sex trafficking cases or those involving minors, particularly when there is movement across state borders.

“The introduction of section 370 IPC has increased the deterrence. We have seen arrest and pre-trial detention in bonded labour cases, where the suspects were booked under s370 IPC. Prior to the advent of s370 IPC, the bonded labour offences were treated like road traffic violation cases.”

Senior Lawyer, National NGO

NGOs at the district level report that it is much more difficult to ensure the registration of forced labour cases under section 370, especially if there is no “movement” (e.g. when the victim resides in the same village as the trafficker). NGOs have suggested this is due to entrenched notions about bonded and child labour not constituting human trafficking or being considered a serious offence in India.

There is significant confusion as to whether “movement” or “displacement” is material to establishing the offence of trafficking under the law. This confusion is widespread and includes both lawyers and law enforcement. Clear guidance from the courts is needed to clarify the issue.

Some Delhi-based national NGOs have succeeded in registering child labour, bonded labour and even domestic servitude cases under s370, with one NGO reporting it had registered at least 36 child labour and 23 bonded labour cases under s370. Still, these cases are mostly at the FIR or charge sheet stages. The real potential of the law is yet to be tested in court.

3

STRATEGIC LITIGATION IS CRITICAL IN CREATING SYSTEMIC CHANGE IN LAWS AND POLICY. HOWEVER, ENSURING THAT DIRECTIVES AND ORDERS FROM THESE LANDMARK JUDGEMENTS ARE IMPLEMENTED REMAINS CHALLENGING.

Some NGOs have spearheaded legal change through strategic or public interest litigation (PIL) cases. A few legally-savvy NGOs have used PIL to obtain landmark judgements in the higher courts that have led to significant legislative changes (such as the signing of the Palermo Protocol and the introduction of s370 and 370A) and critical directions on the treatment of missing children by police. However, utilising this jurisprudence in the lower courts and ensuring the directives and orders are followed in practice remains challenging.

Examples of significant anti-trafficking PIL cases run by NGOs include:

Bandhua Mukti Morcha (BMM) first highlighted the plight of bonded labourers in India in the mid-80s through a Supreme Court case which resulted in rehabilitation measures for bonded labourers and eventually to the passage of the Child Labour Act, 1986.

Bachpan Bachao Andolan (BBA) has effectively used PIL to:

- secure a ban on using child labour in circuses;
- mandate police stations across India to register compulsory FIRs for missing children under a “kidnapping” offence and after four months of untraceability, under a “trafficking” offence;
- mandate that a paralegal be posted at every police station;
- expand the definition of trafficking, prompting the government to sign the Palermo Protocol and amend section 370 to cover almost all major forms of trafficking and slavery; and
- require placement agencies in Delhi — major channels for trafficking — to register and obtain a government license or face shutdown.

Guria is currently undertaking the following cases:

- a case in the Supreme Court to address what it describes as “appalling conditions” faced by trafficked minors forced into prostitution in the brothels both within and outside red light areas in India.

- a case in the Allahabad High Court in Uttar Pradesh to get directions in respect of minor girls/children who are being trafficked/abducted through fake marriages.
- A case in the Allahabad High Court to obtain directions regulating the detention of minor girls kept in police stations after rescue.

However, PIL is incredibly resource intensive and requires extensive research and access to experienced and credible lawyers who can run cases in the higher courts. As a result, only a few district-level NGOs have the resources and expertise to run PIL cases, and those that are starting to consider pursuing them could greatly benefit from legal mentoring.

Additionally, there are huge challenges involved in ensuring that court orders and directives can and will be followed – whether by law enforcement and other public officials or other courts. There is an opportunity for NGOs to take more action to ensure that orders and directions of the court are implemented. To support implementation there is a need for NGOs to collaborate with government agencies during a case to agree on appropriate and realistic suggested outcomes that can be recommended to the court. Once orders are made, NGOs need to place pressure on the government when these orders are not implemented, including through filing contempt of court petitions.

This clear gap in enforcement of court rulings and directives requires much stronger implementation by the Executive, greater resource allocation and active monitoring by NGOs, media and other key stakeholders, including through the courts. While one NGO said it uses contempt of court petitions to try and get orders enforced, this is costly and time consuming. Sometimes, however, these actions do result in serious consequences for government officials, who are “loath to test the power of courts.” Another NGO found building relationships with senior government officials to be effective, as they can help with passing an Executive Order to comply with court rulings or issue “notifications” for law enforcement authorities to implement important SOPs.

Apart from PIL, writ petitions and habeas corpus cases (where victims have been unlawfully detained or are missing) in the higher courts have also proved effective in obtaining favourable legal outcomes for a significant number of victims of trafficking and forced labour.

4

VICTIMS FACE VAST CHALLENGES THROUGHOUT THE CRIMINAL JUSTICE PROCESS; NGOS PROVIDE CRITICAL LEGAL SUPPORT AND PROTECTION TO VICTIMS, AND ARE LIKELY TO IMPROVE THE CHANCES OF A SUCCESSFUL PROSECUTION

NGOs identified a range of challenges faced by victims who press charges against perpetrators and litigate. They include:

- **Harassment, intimidation and fear:** Victims and their families are often subjected to significant harassment and intimidation from traffickers; sometimes escalating to violence, which could be fatal. Often victims live in close proximity to their traffickers making it difficult to take legal action due to fear of retribution. Many NGOs also reported that police officers sometimes threaten, or verbally or physically assault victims and that Government officials can be insensitive and hostile to victims. NGO staff and lawyers also face threats, intimidation and assaults at rescues. It is not uncommon for police and traffickers to lodge false or counter cases against victims, NGO staff and in some cases, against lawyers.
- **Social stigma:** Victims of sex trafficking, especially minors and unmarried girls, can face crippling social stigma, and lack of acceptance from their communities and their families. As a consequence, many victims do not press charges preferring that the matter be “forgotten” rather than becoming the subject of a trial.
- **Poor investigation by the police:** Corruption, inadequate evidence gathering and reluctant investigations by the police adversely impact the chances of a successful prosecution and delivering justice and compensation to victims.
- **Slow investigation and trials:** Police investigations can last for months and trials, for years. NGOs interviewed said the average trial can take 2-6 years, making it difficult for victims to move on with their lives, curtailing their mobility (out of fear and to avoid intimidation) and limiting their chances of finding jobs or marriage partners.
- **Distance:** Many victims have to travel significant distances to depose or attend trial. This cost of travel and accommodation is a significant barrier, so too is the opportunity cost of missing a day’s wages.

- **Insensitive court environment:** Judges can be insensitive to victims and call into question the “character” of the victim where it is not relevant to the case. Defence lawyers can be hostile and intimidating. If the accused is present in court, the survivor often feels further victimized. Even though procedures exist to prevent intimidation, irrelevant enquiry and hostility, they are often not followed.

“Many victims cannot think of fighting cases for years and years with such a social stigma – they are worried about other more pressing issues. We try and tackle this by providing a minimal amount of livelihood support – to ensure economic empowerment of the family so they stand with us through the process to get justice”

NGO worker, Uttar Pradesh

The NGOs interviewed are undertaking measures to address the cited challenges, aiming to improve the chance of successful prosecution and reducing trauma to the victim. Many of them have built strong community-level mechanisms and networks that provide support, protection and assistance to the victims throughout the trial. Some NGOs have created community “witness protection schemes.” These structures are also used to provide trauma counselling to victims, although several NGOs emphasised the need to provide counselling in a more systematic way, particularly in the pre-trial stage. NGOs and lawyers also fight false and counter cases on behalf of victims. Finally, in cases where the victim and trafficker live in close proximity, some NGOs support the victim by brokering out-of-court settlements and may file FIRs but not litigate. Such strategies have proved successful in some cases. For example, where employers are keeping workers in forced labour through the use of illegal debts and the victim decides not to pursue legal action, NGOs have had the employers cancel such debts.

The research highlighted a tension between “survivor-centric” and “human rights-based” approaches to assisting trafficking victims (particularly consenting sex workers or exploited workers) and the imperatives of the criminal justice system. One NGO shared concern regarding the negative impact of the criminal justice system on victims and the effects of anti-trafficking efforts, particularly in sex trafficking cases. This includes placing the victim in danger or in traumatic situations during rescue operations and forcible rescue and detention in poorly-run government shelter homes without adequate support mechanisms. Existing legal safeguards and protocols should be followed and new protocols developed to ensure that all stakeholders prioritise the dignity, rights, choices and freedoms of survivors.

5

THE LEGAL FIGHT AGAINST TRAFFICKING – A VERY DANGEROUS, CLANDESTINE AND SOPHISTICATED CRIME – REQUIRES COMMITTED, PUBLIC-SPIRITED AND SENSITIVE LAWYERS. RUNNING SUCCESSFUL PROSECUTIONS AND STRATEGIC LITIGATION ALSO REQUIRES EXPERIENCED LAWYERS WITH SPECIALIST EXPERTISE. NGOS DO NOT ALWAYS HAVE ACCESS TO APPROPRIATE LAWYERS TO ENSURE OPTIMUM LEGAL OUTCOMES.

A number of gaps in this regard were identified:

- NGOs find it difficult to find committed and experienced lawyers who can undertake cases at an affordable cost or pro bono.
- NGOs lack access to high-quality legal advice - even when an NGO has its own lawyers, sometimes expert advice is required on a particular area.
- District level lawyers need mentoring by senior criminal lawyers to improve their legal skills and knowledge on how to run cases more successfully in lower courts, work with the public prosecutor to ensure best outcomes and address recurring legal obstacles.
- NGOs require representation and support in higher courts to oppose bail, run appeals in criminal cases and prepare and file writ petitions and public interest litigations.
- District level NGOs require junior lawyers to provide support to senior lawyers at the community level and help run cases more efficiently.
- NGO staff are often not able to access legal advice after hours when many rescues take place.
- Some NGOs that undertake rescues and lodge FIRs for victims, would like to provide further legal support (e.g. pursuing prosecutions). However, they lack access to legal expertise and other resources to support such work.
- NGO staff and lawyers need legal training and support to understand recent legal developments and procedures, as well as clear guidance on how to support each stage of a case, from rescue through to trial and appeal.

“We are not always aware of what section to put down on the FIR. We need a lawyer to help us with this. We usually go at night to the rescue and a senior lawyer will not come at that time frame.”

NGO Worker, Delhi

6

COMMUNITY-BASED STAFF ARE REQUIRED TO SUPPORT LAWYERS AND BETTER COMMUNITY ENGAGEMENT TO IMPROVE LEGAL OUTCOMES FOR VICTIMS. WHILE SOME NGOS HAVE CREATED COMMUNITY-BASED SUPPORT MECHANISMS, THERE IS A BIG, UNADDRESSED NEED FOR LEGALLY-TRAINED STAFF, PARTICULARLY FEMALE STAFF, TO PROVIDE PARALEGAL AND COUNSELLING SUPPORT AT THE COMMUNITY LEVEL.

Many NGOs working at the community level have staff that are not trained as lawyers but have acquired strong familiarity with anti-trafficking laws and procedures. They play a crucial role in assisting victims and lawyers, particularly in the critical first stages leading up to a trial. They help identify victims, conduct rescues, provide counselling to the victim, prepare them for making statements to the police or judges, liaise with the victim throughout the trial stage and assist NGO lawyers in working with public prosecutors.

“Someone that is rooted in the community as a paralegal is a great deterrent”

Senior Lawyer and Director, National NGO

These staff members are critical in improving the efficiency of legal work undertaken and connecting to local communities. Many NGOs stated that with improved legal training these key community-level NGO staff could significantly improve legal outcomes. As these staff members often handle entire districts, they have limited capacity and would greatly benefit from trained paralegal support cadre at the community level.

The research identified a pressing need for trained, female staff and counselors who could provide support to victims. This need is greater in cases of sexual trafficking or forced labour cases involving sexual assault. The gender component of these cases tends to be overlooked when female victims do not feel comfortable confiding in male staff or lawyers. The research also identified a need for trained counsellors, male and female, to provide trauma and psycho-social counselling to victims before, during and after trials.

Some NGOs reported very positive experiences working with survivors who became community paralegals, attributing their commitment and ability to support victims navigate the criminal justice system from a survivor perspective. These survivor paralegals can be especially useful in preparing victims for statements to the police and magistrates and accompanying them to court to testify.

Finally, it should be noted that there is a government legal scheme that mandates the creation of a “paralegal” volunteer cadre across all states in India. NGOs reported that while it is not functioning fully or reliably at this stage, it does provide a future opportunity to act as a “multiplier force” to legally empower communities and support NGOs undertaking legal work.

7

THERE IS A STARK GAP IN NGO COLLABORATION AND REFERRALS, ESPECIALLY IN INTERSTATE CASES. THIS IS LIKELY A CONTRIBUTING FACTOR TO MANY CASES GOING UNREPORTED, FIRS NOT BEING FILED AND TRIAL CASES NOT BEING PURSUED - THUS LOWERING THE RATE OF PROSECUTION AND SCOPE OF LEGAL SUPPORT PROVIDED TO VICTIMS.

There is a significant lack of collaboration between NGOs undertaking anti-trafficking work in India. Collaboration between NGOs that have acquired legal experience, skill and know-how in pursuing cases would help increase prosecution rates and improve legal outcomes for victims. The need for collaboration has been strongly underscored in the literature, which indicates a need for NGO ‘grids’ and better ‘systems thinking’ on how to work together.

The research indicated that instances of collaboration are very rare. This was apparent even in inter-state cases, where a trafficking victim is identified or rescued in a state different from their “home” state (or state of previous residence).

The process for inter-state cases poses several problems for NGOs logistically and legally, which ultimately affects the successful prosecution of cases and has led to sub-optimal outcomes. These challenges include:

- an absence of clear, well-defined and legally-binding repatriation protocols for trafficking victims between districts and states in India (and even between countries);
- difficulties dealing with different legal, police and administrative jurisdictions;
- understanding where and how to file a first police report;
- gathering evidence in multiple destinations;
- language barriers;
- travel and rescue costs;
- safety and security concerns; and
- special challenges posed in the case of child victims.

While the NGOs interviewed routinely deal with a large number of inter-state cases it was apparent that it is uncommon for them to proactively refer cases or assist each other. Collaboration could occur in these cases in a number of areas:

- As trafficking is defined as a continuing offence, it is possible to lodge an FIR at the “source” point (the home state of the victim) and to transfer the entire case to an NGO in the home state. This will reduce the need for the victim to travel interstate and will ensure that the one NGO provides holistic support throughout the process. However, it is noted that most of the witnesses will be present at the “destination” point where the rescue occurs, which may make trials at the source point difficult.
- Where the rescue and trial does occur outside the home state of the victim, when victims are repatriated to their home state, an NGO in the home state could assist with rehabilitation and victim protection. The two NGOs could also collaborate to prepare the victim for trial and facilitate the safe inter-state travel. Such collaboration would likely increase the percentage of successful prosecutions and reduce the problem many NGOs face of “losing” the victims once they are repatriated to their home state (often resulting in the victim being declared hostile at trial).

“Victims are not available at time of trial – so we let go of cases. This happens in quite a few of our cases – we lose the victim. This is despite having post rescue follow up...a relationship with other NGOs in other parts of India – where victim may return to, would be helpful, if we could all work together in some way.”

Senior Lawyer, National NGO

The lack of collaboration also extends to NGOs working in the same state. NGOs that intercept traffickers and undertake rescue of victims often don’t have legal capacity,

nor do they proactively refer the cases to other NGOs that could provide legal support. To counter some of these issues, different NGO networks have arisen to improve connectivity between states and to allow NGOs to contact like-minded partners who may assist them. Government help-lines have also been established. However, feedback strongly suggests that the existing networks are not functioning well and need to be strengthened to be truly effective, or a new and stronger referral mechanism should be established. There is certainly scope for funding agencies to actively encourage and support NGOs to provide services to victims they have not rescued themselves. Additionally, agencies could be more flexible in allowing funds to be used to assist with such collaboration.

Lastly, there is much greater scope for collaboration on PIL cases. A number of factors contribute to this potential:

- The strength of the case often depends on evidence gathered from several cases and detecting larger patterns in them – NGOs interviewed each support anywhere from 100-300 cases at any given point. However, if they collaborated and shared information, then evidence from a greater number of cases could be used to strengthen the PIL case.
- NGOs can become party to each other's PIL cases.
- NGOs are likely working towards a common aim. If a PIL case is fought collaboratively in a state where many NGOs want a certain systemic change, the outcome applies to the whole state; similarly, if brought in the Supreme Court, it will apply to the entire country thus advancing the battle against trafficking at the national level (and avoid duplicating efforts at state or local level).

8

MORE NEEDS TO BE DONE TO ATTACK THE BUSINESS OF TRAFFICKING. FEW NGOS PURSUE LEGAL ACTION TO SEIZE ASSETS OF TRAFFICKERS AND THEIR BUSINESSES.

Laws in India (including recent amendments) and recent jurisprudence provide for the sealing or closure of business premises of slaveholders and traffickers, or seizure of their assets. They include:

- Laws relating to unlawfully acquired property: There are several laws that can be used for the seizure or forfeiture of unlawfully acquired assets, including the Code of

Criminal Procedure; Prevention of Money Laundering Act as well as specialist state laws (e.g. Uttar Pradesh Gangsters and Anti-Social Prevention Act 1986 and the Maharashtra Control of Organised Crime Act 1999). Legal experts commented that s105 of the Code of Criminal Procedure is the most useful law to use for asset seizure and forfeiture. As it is not necessary to prove the purpose for which the offence was committed in order to obtain the remedy, it has a much wider application, including in situations of forced labour and trafficking for sexual exploitation.

- Suspension of business licenses/sealing of premises in child labour cases: In *Save the Childhood Foundation v Union of India and Others*, the Delhi High Court established that where a victim of child labour is rescued, the relevant business' license can be suspended or cancelled and/or the premises can be sealed, until such time as back wages are paid to the victims or court fines, as applicable, are paid. A conviction is not required and it is an immediate, civil recovery by an executive magistrate of up to GBP 200. Delhi NGOs reported success in sealing properties in light of this judgment, however as it does not apply in other states, NGOs in Uttar Pradesh and Bihar are still having difficulties in this area.
- Mandatory licenses for placement agencies: Under a recent Executive Order made in compliance with an earlier High Court judgment in Delhi, placement agencies in Delhi are required to register to obtain a license or face shutdown. In addition, the penalty for non-compliance with the Order is GBP 500.
- Laws relating to the regulation of brothels: In the case of sex trafficking, the Immoral Traffic (Prevention) Act, 1986 provides for the closure of brothels and eviction of offenders from premises. The court can also monitor the leases of properties that have previously been used as brothels.

“The main motive of the perpetrators ...is unjust enrichment by exploitation of poor. Only when the perpetrators think that practicing bonded labour system and trafficking human beings is not economically viable and has a high risk of incarceration - this will desist them from practicing it.”

Senior Lawyer, National NGO

One Delhi-based NGO reported several cases where they managed to secure the back payment of wages to child labour victims, the sealing of business premises, and the suspension or cancellation of business licenses. An NGO in Uttar Pradesh had noteworthy success in asset seizures in sex trafficking cases, reporting assets worth GBP 300,000 were seized from traffickers and slaveholders.

However, these examples are exceptions as many NGOs do not pursue asset seizures or the sealing of businesses. This may, in part, be explained by a lack of awareness of existing legislation, jurisprudence and other mechanisms such as those outlined above or limitations on their application outside of Delhi. However, another explanation may be that NGOs wish to avoid an adversarial approach with traffickers and their businesses. Such action may have negative and potentially dangerous consequences for NGOs and victims themselves, who already face significant threats and intimidation, particularly in rural areas.

Finally, in relation to sex trafficking, some NGOs pointed to a conflict between the closure of brothels and the rights, well-being and livelihood of sex workers and those dependent on them, including children and family members who are senior citizens.

9

THERE IS A HUGE NEED TO IMPROVE CASE MANAGEMENT SYSTEMS AND COLLECTION OF CRITICAL DATA

Many stakeholders recognized the need for improved case management and data collection systems to assist them in understanding trends, key vulnerable communities and to therefore plan targeted legal interventions. However, despite heavy caseloads (with some handling upwards of 100-300 cases), most NGOs did not have adequate systems in place. Even for those with sophisticated databases that could collate large amounts of data, there was limited ability to analyse the data to extract clear findings. There is a huge need to improve case management and data collection systems in order to improve the planning and management of legal interventions.

One Delhi-based NGO has developed a legal database with 202 monitoring indicators, which allows them to:

- Identify gaps at different stages in an ongoing trial case. Some of the things they look for are the time elapsed between complaint and rescue, the time elapsed since completing a charge sheet or procedural steps that have not been taken at a particular stage (e.g. filing an affidavit) that need to be followed up.
- Document the working and living conditions of a victim, calculate wages owed and any payment of back wages.

- Track enforcement of legal orders.
- Provide real-time information to the courts during a trial. For example, on the basis of data extracted from the database, the National Commission for the Protection of Child Rights was able to provide an affidavit that provided data on trafficking activity in Delhi to the Delhi High Court. The data contained an analysis of the total number of identified trafficking victims versus the number of rescue operations and rescued victims.

“We have a database of over 13,000 trafficking victims over 202 indicators. At least 20 people can do separate doctorates on this data – on the economics of trafficking, the economics of child labour, under what children get trafficked, on the hot points of trafficking. There is huge untapped potential.”

Child Rights Activist and Lawyer, Delhi-based NGO

However, despite the relative sophistication of this case management system, the NGO is fairly limited in the data analysis that it can undertake due to resource and capacity constraints. As such, there is huge potential to strengthen capacity to analyse and utilise this data more in the courts.

At the district level, while almost all NGOs interviewed had some form of case management or record-keeping system, they were generally a lot more rudimentary. Many NGOs expressed a need to strengthen or build new case management systems that would help them in better trial monitoring and lead to better legal outcomes. Data and trend analysis from past cases to improve legal interventions was generally weak, as was institutional documentation and sharing of legal strategy and know-how. Tapping in to this information and sharing it with other stakeholders in the anti-trafficking arena would enable many organisations to improve their legal interventions.

10

MEDIA CAN PLAY A CRUCIAL ROLE IN THE FIGHT AGAINST TRAFFICKING BUT REMAINS A DOUBLE-EDGED SWORD THAT CAN ALSO NEGATIVELY IMPACT VICTIMS AND TRIALS

The role of media in combating trafficking has been documented in the literature⁴. Media articles have been used to initiate writ petitions at court, to apply public pressure when authorities are unresponsive, and to increase awareness of the incidence and effects of trafficking and slavery in India. Timely media articles have helped to obtain strong orders from judges in many cases.

The use of media is particularly useful if the victim is up against a perpetrator who is either influential themselves or has strong political or criminal linkages. The national media in India has been used effectively in such cases to apply counter-pressure during the trial. Finally, the reporting of a conviction sends a strong deterrent message to potential perpetrators.

“Suppose there is a sensitive rescue operation happening, we identify and give access to a sensitive journalist to report on it. We have also worked with journalists to report on orders given by the Child Welfare Committees.”

Supreme Court Lawyer, Delhi-based NGO

A Delhi-based NGO that has worked with the media intensively reported that continued reporting on the progress of a trial can be an important factor in obtaining successful prosecutions. They also found that the national media continues to remain interested in reporting court orders in trafficking cases and that cultivating good relationships with court journalists is useful for this purpose.

However, NGOs working at the district level expressed mixed feelings about the use of the media in trafficking cases. They reported that local media is more important at the community level and that national reportage on trafficking and cases is not widely read or easily accessible. Overall, there was a sense amongst NGOs that the media at the local level were often “against” the victim. They expressed concern about unethical

⁴ Compendium on Best Practices, On Anti-Human Trafficking by Law Enforcement Agencies, UNODC, 2007

and irresponsible journalism that has traumatised victims or been damaging to cases. Further, there are not as many court journalists as at the national level. Despite this, they recognised the need to understand how to use media more effectively in their work and as well as the need for journalists to undergo training on how to better cover trafficking and better understand relevant legislation.

RECOMMENDATIONS

To address the needs and gaps identified in the Key Findings, there are 17 recommendations to improve legal outcomes for victims of human trafficking in India. These are listed under 7 overarching categories:

- Access to legal support (direct funding to NGOs)
- Centralised legal support initiatives
- Knowledge and training
- Strategic litigation and procedural reform
- Data and technology
- Media
- Strengthening collaboration and building partnerships

ACCESS TO LEGAL SUPPORT (DIRECT FUNDING TO NGOS)

1 FUNDING FOR NGOS TO ENGAGE LAWYERS

There are a limited number of NGOs that provide legal support to trafficking victims in India, and many only assist during the initial stages of filing a complaint. The organisations that do assist with prosecutions and pursue strategic litigation are limited by funding and legal capacity, resulting in a small proportion of victims receiving legal assistance and having cases pursued in the courts.

To expand the legal capacity of NGOs, funding is required to engage:

- Senior criminal and High Court lawyers to provide expert advice, mentor junior lawyers and undertake strategic and difficult cases.
- Junior lawyers to support senior lawyers in evidence gathering, drafting legal

submissions and assisting in court.

The proposed funding could either be utilised to employ full-time or part-time legal staff, or to pay for lawyers fees to assist on cases as required (depending on the size and legal needs of the NGO). Funding should be conditional on NGOs sharing information on legal developments and strategies (possibly through the NGO networks suggested in recommendation 16).

2 FUNDING WITNESS PROTECTION AND TRAVEL FOR COURT APPEARANCES

Many prosecutions do not succeed because of the strain placed on victims and witnesses, including threats, harassment, intimidation and the need to travel long distances to appear in court. These obstacles can result in the witness turning “hostile”, and hinder the required cooperation necessary to prosecute the offender.

While witness protection mechanisms through the police and courts do exist, they are difficult to utilise in practice. Therefore, the burden often falls on NGOs to protect witnesses in order to progress cases. In interstate cases, NGOs need to travel to carry out rescues and to assist victims travelling from their home state to appear in court.

Funding to cover legal costs must also include funding for witness protection, and for transport, accommodation and expenses incurred to reach court - both crucial to the victim’s safety and successful prosecutions.

CENTRALISED LEGAL SUPPORT INITIATIVES

3 NATIONAL ANTI-TRAFFICKING INITIATIVE WITH STATE-LEVEL “LEGAL HUBS”

The creation of state-level “anti-trafficking” hubs, coordinated at the national level would greatly improve legal capacity in the anti-trafficking space. The state-level hubs would consist of full-time senior lawyers that:

- Connect with relevant NGOs in the region and provide assistance with individual cases;
- Connect to existing anti-trafficking legal networks and develop a pool of lawyers willing to undertake trafficking cases when referred by the state hub;
- Undertake strategic litigation in collaboration with relevant national, state and district level actors;
- Provide assistance with High Court matters;
- Take action to ensure enforcement of High and Supreme Court judgements on trafficking.

These hubs could be coordinated at the national level, enabling connection to the Supreme Court, national experts and other national level NGOs. If established as a separate entity, the national hub should act as a ‘national resource centre’ and provide access to advice, up to date resources and case law. For example, the national hub should manage the web portal set out in **Recommendation 14**.

The initiative should begin as a pilot programme in 3-4 states known for their vulnerability to trafficking where legal capacity is limited, such as West Bengal, Jharkhand, Chhattisgarh and Assam.

4 COMMUNITY-LEVEL LEGAL ASSISTANCE CENTRES

There is a huge need for legal assistance and support at the community level. The research indicated that providing community-level legal support improved victim engagement with the criminal justice system leading to better outcomes for victims.

Community-level legal assistance centres should be established to provide legal assistance to victims who are unable to travel to a regional city where legal services exist. The legal assistance centres should provide a range of services to victims at the district level including:

- Assistance in reporting cases and lodging an FIR; preparing victims to provide statements to the police and magistrates; and assisting victims throughout the criminal justice process.
- Assisting victims to pursue administrative and civil remedies.
- Supporting victims facing threats or intimidation, and to fight any false or counter-claims lodged against the victim.
- Assisting bonded labour victims to have debts “cancelled” by using the threat of prosecution to persuade slaveholders to settle on the basis that the debts are illegal and the worker is not obliged to work against a debt (note: the filing of FIRs for this purpose is a controversial and not widely employed practice).
- Legally empowering victims and people at the community level by raising awareness on legal rights, entitlements and the criminal justice process.
- Providing a referral service to other NGOs and government legal aid services.
- Providing assistance to victims to obtain economic benefits to which they are legally entitled, but have been unable to secure. These benefits can be crucial in giving the victim the means to re-establish their lives and enable them to pursue legal action. These benefits include ID cards, “below poverty” cards, low cost food rations, the employment guarantee scheme, pensions, housing and access to land.

The community centres should be staffed with both lawyers and paralegals (preferably recruited from within the community). This recommendation would work best in conjunction with **Recommendation 5**.

5 NETWORK OF COMMUNITY-LEVEL PARALEGALS AND COUNSELLORS

As noted in **Recommendation 4**, legal support at the community level is crucial to improving legal outcomes for victims. The creation of a district-level program to recruit and train community members as paralegals, who would provide legal support and counseling to victims, would increase legal capacity and legally empower communities. The paralegals could either work directly for the NGOs in the community or function as an independent network that liaised with the relevant NGOs.

The program should focus on recruiting female paralegals to address the lack of legally trained female staff and counsellors able to provide initial legal support and counselling to victims. This is critical to running successful prosecutions, particularly in cases with female victims, or in cases where sexual assault or exploitation has occurred. Several NGOs reported that trafficking survivors make very good paralegals due to their personal experience and familiarity with the criminal justice process.

These paralegals should either operate within the community centres suggested in **Recommendation 4**, or in a less formal capacity if Recommendation 4 was not adopted.

6 LEVERAGING PRO BONO LEGAL SUPPORT

Existing pro bono networks should be expanded and mobilised to enable NGOs to access legal support for trafficking cases. The two main pro bono networks that provide support for human trafficking cases are:

- The Human Rights Law Network provides pro bono lawyers to assist in human rights cases across India.
- State Legal Aid Services provides pro bono lawyers to assist in trafficking cases, as well as other legal aid services. Stakeholders reported that these services are not operating effectively.

A programme to strengthen the existing NGO pro bono networks and create links and partnerships with anti-trafficking NGOs would be of value. This should be done through:

- Funding existing networks to increase their size, provide training and facilitate the sharing of expertise amongst pro bono lawyers;
- Funding to partially cover administrative fees and other costs (including witness protection and travel) for priority cases; and
- Leveraging pro bono assistance from larger commercial law firms who do not currently engage in access to justice work for trafficking victims. TrustLaw's network of law firms could be utilised, however significant training would be required.

7 LEGAL HELPLINE FOR TRAFFICKING VICTIMS AND NGOS

Many NGOs provide rescue and rehabilitation services to trafficking victims but have limited resources to provide legal guidance or support. A legal helpline would enable these NGOs to refer victims to other NGOs able to provide legal support, or alternatively obtain guidance about the initial steps to be taken. The helpline would also enable victims who are not receiving support (legal or otherwise) to be referred to NGOs in their area who can help.

A legal information and referral helpline should be established to provide the following assistance to trafficking victims and NGOs:

- **Initial legal guidance:** provide information on the process for registering an FIR, providing statements to the police or magistrates.
- **Referral mechanism for individuals:** provide a list of NGOs in the area that victims can contact to seek legal assistance.
- **Referral mechanism for NGOs:** compile and share a list of organisations operating locally who offer services to complement the existing support. This may be especially useful concerning support for interstate cases.

The main purpose of the helpline would be to provide general guidance and a referral service, rather than providing legal advice on individual cases. As such, it could be staffed with well-trained paralegals or junior lawyers. As an alternative to establishing a new helpline, there are a number of existing help-lines that could be expanded to provide this additional legal information and referral service.

KNOWLEDGE AND TRAINING

8 ANTI-TRAFFICKING LEGAL TRAINING COURSE FOR NGOS AND LAWYERS

There are a limited number of NGOs and lawyers undertaking legal work in the anti-trafficking field in India. Amongst these actors, there are varying levels of expertise and knowledge regarding the specialist laws and processes. Provision of comprehensive legal training would improve the knowledge and skills of NGOs and lawyers operating in the field, and, if combined with recommendations that increase legal capacity, could have a multiplier effect.

Training should cover:

- Explanation of the relevant legislation and case law, including important new amendments and laws such as section 370, 370A of the Indian Penal Code and the Protection of Children from Sexual Offences Act.
- Explanation of relevant Standard Operating Procedures, protocols, guidelines, rules and compensation schemes and how they can be used in common cases.
- Practical, step-by-step guidance on how to support trafficking legal cases, including strategies on how to work with police, public prosecutors and the judiciary. This should include how to support survivors throughout the process including help with preparing their testimony and supporting them at the time of rescue.

The training should be directed at NGOs and lawyers; however trainings for public prosecutors and other important government stakeholders would also be beneficial.

9 LEGAL KNOW-HOW TOOLS

A range of legal know-how tools should be developed or existing ones adapted to provide guidance to NGO staff and lawyers when undertaking trafficking and forced labour cases. These tools could be used in training NGOs and lawyers (**Recommendation 8**); by the legal-hubs or community legal centres

(**Recommendations 3 and 4**); and could also be accessed on the web portal (**Recommendation 14**).

The tools should include:

- **“How-to” handbooks:** Handbooks that provide step-by-step guidance on how to undertake different stages of trafficking cases, from filing the FIR through to the prosecution and appeals process. Handbooks would be developed for different trafficking case profiles (e.g. sex trafficking, bonded/forced labour, child labour).
- **Procedural flowcharts and checklists:** Flowcharts to illustrate the legal procedural steps undertaken for different types of trafficking cases with short checklists for easy reference.
- **“Best practice” case studies:** Best practice and innovative case examples undertaken by NGOs and lawyers, explaining how each stage of the case was approached and how the outcome was achieved.

STRATEGIC LITIGATION AND PROCEDURAL REFORM

10 FUNDING MECHANISM FOR STRATEGIC LITIGATION

Almost all NGOs recognise the potential of strategic litigation to bring about systemic change in combating trafficking. Many are now pursuing strategic litigation, but only a few have demonstrated success and acquired the legal skill to run these cases successfully.

Strategic litigation is extremely resource-intensive and time consuming with the cases continuing for years. Providing funding to pursue high-potential cases would increase both the number of cases pursued, and the chances of success (due to the ability to engage experienced lawyers). A “Strategic Litigation Fund” should be created to:

- Assist NGOs and lawyers wanting to pursue high-potential cases that require funding (this could include cases that have already begun but require funding);

- Conduct a review of important court orders (e.g. Supreme Court Directives) that have not been enforced where legal advocacy and further court action is required by NGOs and lawyers.

11 SUPPORT ENFORCEMENT OF STANDARD OPERATING PROCEDURES (SOPS) AND PROCEDURAL PROTOCOLS

Standard Operating Procedures (SOPs) and protocols have been developed to improve the response of law enforcement and other government stakeholders in trafficking cases. However, in many cases, these SOPs and protocols are not followed. NGOs and other stakeholders should be supported to:

- Work with relevant government ministries to develop new SOPS and protocols where needed;
- Identify existing SOPs and protocols that are not being enforced and seek to have them enforced through executive order or notification and, if required, through the courts by judicial order; and
- In cases where the Court has previously directed the government to implement a SOP or protocol, consider follow-up legal action through contempt of court applications.

DATA AND TECHNOLOGY

12 LEGAL “ANTI-TRAFFICKING INDEX” FOR INDIA

An India anti-trafficking index could be developed to:

- Collate, analyse and publish reliable, disaggregated data at national, state and district level by type of trafficking offence (indicators may include number of FIRs, investigations, prosecutions, convictions, acquittals, pending cases). Note: The data would be limited by what information is publicly available and would require significant government cooperation to prevent ongoing lodgments of Right to Information requests. If possible, a person or team could be seconded to the relevant

government department to develop the processes and technology to do this.

- Rank states in India based on the data collated (under all major forms – sex trafficking, forced labour, child labour, bonded labour, organ trafficking, bride trafficking) and other relevant indicators. However, this may have the unintended consequence of discouraging states from filing cases in order to improve their rankings. Careful consideration would need to be given to the indicators selected for this purpose.

13 STRENGTHEN DATA COLLECTION AND CASE MANAGEMENT SYSTEMS

The NGOs interviewed manage heavy caseloads that are rapidly increasing, with several managing between 100-300 cases at any given point in time. While most of them have some form of case management and record keeping, only a few have adequate systems to cope with their workflow. The following steps should be taken to explore technological solutions to support their legal work:

- Organise a **Legal Tech Camp** – a small working group of NGOs, lawyers and information solution providers, including mobile phone companies and tech specialists, to develop an online case management and data collection system that could be tailored for individual NGOs according to their requirements.
- As part of this initiative, the working group should liaise with law enforcement to understand how NGOs and lawyers can best share information with police and other law enforcement officials about traffickers, repeat offenders and businesses engaged in exploitative labour practices.

14 ANTI-TRAFFICKING LEGAL WEB-PORTAL

NGOs expressed the need to pool resources and access reliable and updated information to inform their legal work. The development of a legal data web portal could significantly facilitate access to such information. The web portal should include:

- Disaggregated data on trafficking and forced labour FIRs and cases (similar to the index recommended above)

- Legislation, judgements, court directives, SOPs and protocols
- Summary and analysis of case law
- Know-how and training materials on providing legal assistance to victims and running trafficking cases
- GPS mapping features to dynamically track or understand trafficking routes, hotspots, source, transit and destination points and inter-state movement (if possible this could be combined with FIR and prosecution data)
- A “Solutions Exchange” platform where key stakeholders can post legal queries and receive answers from experts and practitioners
- A legal news tracker and bulletin board to post the latest legal developments online and inform stakeholders through email or mobile alerts and monthly newsletters.

MEDIA

15 MEDIA TRAINING FOR NGOS AND JOURNALIST TRAINING

The media has a crucial role to play in the legal fight against trafficking. Media articles have been used to initiate writ petitions at court, to apply public pressure when authorities are unresponsive, and to increase awareness of the incidence and effects of trafficking and slavery in India.

Media coverage of prosecutions and convictions of offenders also act as deterrents to would-be offenders. Both national and regional media sources must be used to reach different audiences: politicians and judges are more likely to follow the national media, whilst local communities can be reached using local-language media and outreach tools.

To leverage the power of media to fight trafficking the following actions should be undertaken:

- a. NGOs should be trained on how to use the national and regional media to push for outcomes and raise awareness, including the sensitive and timely coverage of cases and legal developments.

b. Journalists (both national and regional journalists interested in trafficking) should be trained on:

- The effects of trafficking on victims and the region, and the need for better responses from local and national authorities;
- The latest legal developments and cases relevant to trafficking; and
- How to report on trafficking trials in a manner that is impartial, stays clear of “trial by media” and is sensitive to the victims.

Training materials for both NGOs and journalists could be collated in a “Media Toolkit” which could be made available to those who are not able to attend training sessions in person.

BUILDING PARTNERSHIPS AND STRENGTHENING COLLABORATION

16 STRENGTHEN NGO NETWORKS

It is widely recognised that despite many laudable efforts, any decisive fight against trafficking and slavery in India will require much stronger collaboration. To assist in collaboration with particular legal cases, an online “open network” should be established, or an existing network should be strengthened. Ideally this would be coupled with a rapid funding mechanism based on the number of victims to be assisted and services provided. This would enable NGOs to assist with cases that they otherwise could not due to resource constraints.

The network would assist NGOs to connect with other vetted organisations to share information and assist each other with:

- Finding and intercepting victims that have been trafficked interstate;
- Aftercare and rehabilitation of victims once repatriated to their home state;
- Assistance with legal cases when a victim has been repatriated to their home state, such as through regularly updating the victim on the status of their case and

- assistance with preparing the victim for statements and trial; and
- Actively referring victims to organisations able to provide specialized care. For example, an NGO that primarily assists with rescue or release victims could refer the later criminal case and provision of ongoing care and support to another vetted NGO.

The legal helpline referred to in **Recommendation 7** could refer to this online network when assisting people to connect to NGOs.

17 LAUNCH WORKSHOPS OR AN ANNUAL ANTI-TRAFFICKING LEGAL CONFERENCE IN INDIA

To promote collaboration, sharing of knowledge and to develop new strategies, an annual anti-trafficking legal conference or a series of national or state-based workshops should be convened.

The conference or workshops would be held with key stakeholders including NGOs, lawyers, law enforcement, prosecutors and judges to discuss key issues, create task forces to tackle key legal challenges and to share legal expertise and resources.

A scholarship fund and access to grants should also be provided as part of the event.

FRONT COVER PHOTO

A child labourer carries bricks in Bihar-e-Sharif town, about 60 km (37 miles) from Patna April 9, 2007.
REUTERS/Adeel Halim



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