



CSE Policy and Practices Study

Bangladesh and India Legal
and Policy Compendium

Executive summary

Governing frameworks for CSE in Bangladesh and India

In both Bangladesh and India, a plethora of laws and policies intersect to govern instances of commercial sexual exploitation and facilitate protection, support, reintegration, and repatriation of victims and survivors. This multiplicity of domestic laws, and differences between national and international standards, create challenges in the legal response and its implementation. Key considerations related to legal fragmentation and complexity include the following.

In Bangladesh:

In Bangladesh, the offence of trafficking in persons is dealt with through both the Penal Code 1860 and the Prevention and Suppression of Human Trafficking Act 2012 (PSHTA). Trafficking is also addressed, alongside other offences, in the Prevention of Oppression against Women and Children Act 2000, as well as in the Suppression of Immoral Traffic Act 1933. In addition, there are a range of laws dealing with related offences, including exploitation of children, sexual abuse and oppression of women and children, and activities related to prostitution. Each of these laws operate independently, have their own enforcement machinery, and prescribe penalties for offences.

The PSHTA deals with almost all forms of trafficking in persons recognised in international law, and does not require coercive means be used in cases involving trafficking of children. However, issues in translating the text from English (in which it was drafted) to Bangla have been noted.

Organised offences of human trafficking attract higher penalties under the PSHTA, recognising the role of organised criminal actors in human trafficking.

While Bangladesh's legislative frameworks provide a solid starting point for criminalisation, law enforcement, protection, and victim support, gaps in protection have been noted. In particular, work is needed to ensure frameworks in place effectively facilitate survivor recovery, reintegration, and safe and appropriate repatriation.

In India:

In India, the offence of trafficking in persons is primarily dealt with under the Indian Penal Code, 1860 and the Immoral Traffic (Prevention) Act 1956 (ITPA). Trafficking is also prohibited in the Constitution at article 23. In addition, there are a range of laws that deal with related offences, including bonded labour, exploitation of children, and money laundering. Each of these laws operate independently, have their own enforcement machinery, and prescribe penalties for offences.

The ITPA mainly focuses on trafficking for sexual abuse or exploitation while being silent on the other reasons for trafficking. While trafficking for other purposes (including labour exploitation) is addressed in the Penal Code, pre-existing assumptions about what constitutes trafficking have been noted to restrict application of the penalties in practice to continue focus on sexual exploitation.

Trafficking is a crime that relies on an established network. Therefore 'organised crime' has been defined and is an important part of the international convention but not part of the two domestic or national laws in India- the IPC and ITPA.

Conflicts between different legal frameworks and the perceptions of enforcement officials result in failures to identify victims of trafficking. In particular, trafficking victims are often regarded as offenders for crossing the border illegally or without the correct documents, seen as a violation of the Foreigners Act 1946.

Legislative frameworks addressing CSE in both Bangladesh and India are supplemented by national policy and international instruments. Policy frameworks tend not to deal specifically with the issue of CSE in isolation, but include this offence in broader policy related to women (including policy addressing women's empowerment, development, and combatting violence against women), children (including general child policy and child labour policy), and human trafficking.

The governments of India and Bangladesh have a Memorandum of Understanding in place between them to facilitate bilateral cooperation for the prevention of human trafficking, particularly of women and children. This instrument aims to support rescue, recovery, repatriation, and reintegration of victims, emphasises preventative measures, and facilitate cooperation and information sharing by police and relevant authorities. A Joint Task Force monitors and assesses implementation of the MoU.

Law and policy in practice: key areas for improvement

The legal and policy frameworks in place in both Bangladesh and India cover substantial ground in ensuring addressing CSE, although further development and reform is needed to close gaps in protection and prosecution. The success of these frameworks is not only determined on their own terms, however, but in their implementation and enforcement in practice. Both countries have taken significant efforts towards effectively combatting CSE and supporting victims. However, a range of shortcomings have also been identified that require concerted effort to close the implementation gap between policy and practice.

Identification and investigation of CSE cases

Investigations of CSE cases must be timely, sensitive, and victim-centred. Training for those involved in the criminal justice system is further emphasised in relation to both Bangladesh and India, calling for expansion of training for both law enforcement officials and other actors who might come into contact and identify CSE victims (including border officials and healthcare providers). Other key areas for improvement identified include: consistent application of laws (including identification and investigation of cases) across the country; development of national standard operating procedures for victim identification, particularly amongst vulnerable populations; adequate resourcing of law enforcement activities; timeliness of investigations; dealing with official corruption and complicity; and ensuring victim-centred processes.

Prosecution and conviction

Consistent with global trends, prosecutions and convictions in CSE cases in both countries are significantly lower than reported cases, and the difference between conviction rates and the prevalence of the phenomenon in both countries is stark. In Bangladesh, the conviction rate for suspected traffickers under the PSHTA is 1.7%. Recent decreases in cases in India have also been marked as a matter of concern. Judges are noted to be reluctant to impose harsh penalties prescribed by the relevant laws, resulting in lower conviction rates. Backlogs, delays, and procedural loopholes are also noted to interfere with prosecution and conviction. Greater specialisation of processes for CSE cases, combined with increased resourcing, is identified as a positive movement which can help improve criminal justice mechanisms.

Support for victims and survivors

Care for survivors must be victim-centred and responsive to individual needs, circumstances, identities, and experiences in order to effectively support recovery and reintegration. A range of mechanisms exist in Bangladesh and India to put into practice the legal and policy commitments of the governments to victim and survivor protection and care. In both countries, government provision is further supplemented by intergovernmental and non-governmental organisational programming. However, despite efforts to ensure access to support for survivors of CSE, a number of key areas for improvement have been identified.

- **Lack of long-term and ongoing support:** while short-term support needs of CSE victims may be met in Bangladesh and India, ongoing long-term support is noted to be rare. Such support is crucial to survivors' recovery and reintegration, and therefore is an important area for reform.
- **Incomplete implementation of compensation frameworks:** frameworks enabling compensation for CSE victims exist in both countries. However, gaps in implementation of these frameworks exist, resulting in many survivors not being able to access compensation.
- **Support for adult male victims:** the focus on support for women and children in CSE programming has resulted in male victims (particularly adults) being overlooked. While specialised services and shelters for women and children are common within the countries' support systems, specialised support for males is rare. This can result in a lack of access to necessary support and care for these victims, exacerbated by gendered social stigma and narratives around CSE.
- **Detention of victims:** in both countries, victims have been reported to have been detained in shelters for long periods of time. This is particularly noted in India where victims are also witnesses in criminal justice processes. In Bangladesh, the requirement of government shelters for a family member's consent to leave has resulted in some victims being trapped for as long as ten years.
- **Reliance on international and non-governmental organisations:** in Bangladesh in particular, support frameworks are reported to rely heavily on programming and funding from international and non-governmental organisations. This is noted to result in insufficiently comprehensive care.
- **Monitoring and oversight of provision:** with abuses in shelters recorded in both Bangladesh and India, the need for increased monitoring and oversight of care provision is emphasised.
- **Intersectional support:** while specific identity-based vulnerabilities vary between the two countries, the importance of support that is accessible to different victim and survivor groups is noted in both contexts. In Bangladesh, access for foreign nationals is identified as a key area for development, while in India identity factors such as sexuality, gender identity, ethnicity, and socio-economic status are noted as requiring greater attention.

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Acronyms and abbreviations

BCTIP	Bangladesh Counter Trafficking in Persons programme
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BNWLA	Bangladesh National Woman Lawyers' Association
CCI	Child Care Institution (India)
CSE	Commercial sexual exploitation
CSEC	Commercial sexual exploitation of children
CWC	Child Welfare Committee (India)
GGGI	Global Gender Gap Index
HDI	Human Development Index
ICDS	Integrated Child Development Scheme (India)
ICPS	Integrated Child Protection Scheme (India)
ILO	International Labour Organisation
IOM	International Organisation for Migration
ITPA	Immoral Traffic (Prevention) Act 1956 (India)
JJA	Juvenile Justice (Care and Protection of Children) Act (India)
NPA 2018-2022	National Plan of Action 2018-2022 (Bangladesh)
NREGA	National Rural Employment Guarantee Act (India)
PCSOA	Protection of Children from Sexual Offences Act (India)
PSHTA	Prevention and Suppression of Human Trafficking Act (Bangladesh)
SAARC	South Asian Association for Regional Cooperation
SDG	United Nations Sustainable Development Goals
SITA	Suppression of Immoral Traffic Act 1933 (Bangladesh)
TVPA	Trafficking Victims Protection Act (United States)
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime

1. Introduction

The Declaration of the First World Congress against Commercial Sexual Exploitation of Children in 1996, described commercial sexual exploitation of children (CSEC) as comprising sexual abuse by an adult accompanied by remuneration in cash or in kind to the child or a third person.¹ The Worst Forms of Child Labour Convention makes all engagement of minors in prostitution or pornography one of the prohibited worst forms of child labour.² CSEC is also considered to constitute forced labour and a contemporary form of slavery, according to the Stockholm Declaration.³

With regard to CSEC of adults, on the other hand, the threshold for classifying practices as exploitative differs, and is particularly influenced by how the jurisdiction treats commercial sexual activity in law. The United Nations defines sexual exploitation as ‘the actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.’⁴ Thus, commercial sexual exploitation of adults may be characterised as sexual exploitation (in line with the preceding definition) accompanied by payment (in cash or in kind) to the person being exploited, or to a third person.

Estimating the prevalence of CSEC globally, or in any given context, presents significant challenges, as the hidden nature of the phenomenon inhibits accurate accounting of scale. The International Labour Organisation (ILO) and Walk Free estimate that globally, 4.8 million people—almost exclusively female—were victims of forced sexual exploitation and commercial sexual exploitation of children in 2016.⁵ This category of forced labour exploitation includes all people “who have involuntarily entered a form of commercial sexual exploitation, or who have entered the sex industry voluntarily but cannot leave” as well as “all forms of commercial sexual exploitation involving children”.⁶ The majority of these victims (73%) are estimated to be in Asia and the Pacific, with 21% of victims estimated to be children under the age of 18. Although these figures are contested—limited by the inherent difficulties of prevalence estimation in this context, and methodological challenges—they begin to illustrate the scale of the problem globally.

Commercial sexual exploitation also overlaps with trafficking in persons, and is often addressed primarily through anti-trafficking policy efforts—particularly in cases involving adults. Trafficking for sexual exploitation remains the most identified form of trafficking globally (59% of cases in 2016; 50% in 2018), with the vast majority of detected victims being female (68% women and 26% girls in 2016; 67% women and 25% girls in 2018).⁷ In South Asia specifically,⁸ sexual exploitation represented half (50%) of all detected trafficking cases in 2016, and 36% of cases in 2018.⁹ However, it should be noted that this predominance may be reflective of the focus of interventions rather than the dynamics of prevalence.

Trafficking for sexual exploitation makes up 50% of trafficking cases globally, with females representing 92% of detected victims

¹ First World Congress against Commercial Sexual Exploitation of Children, ‘Declaration and Agenda for Action’ (Stockholm, Sweden, 27-31 August 1996), para 5. This was later reaffirmed in the Second World Congress against Commercial Sexual Exploitation of Children, ‘Report of the Second World Congress against Commercial Sexual Exploitation of Children’ (Yokohama, Japan, 17-20 December 2001), and the Third World Congress against Commercial Sexual Exploitation of Children, ‘The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents’ (Rio de Janeiro, Brazil, 25-28 November 2008).

² The Convention specifically speaks to: ‘the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances’. Worst Forms of Child Labour Convention (adopted 17 June 1999, entered into force 19 November 2000) C182, article 3(b).

³ First World Congress against Commercial Sexual Exploitation of Children, above n 2, para 5.

⁴ United Nations Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse (United Nations 12 December 2019) https://www.un.org/en/pdfs/UN%20Victim%20Assistance%20Protocol_English_Final.pdf last accessed 27 November 2020, p 3.

⁵ ILO and Walk Free, ‘Global Estimates of Modern Slavery’ (International Labour Organisation and Walk Free 2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf last accessed 27 November 2020, p 39.

⁶ Ibid.

⁷ UNODC, ‘Global Report on Trafficking in Persons 2018’ (United Nations 2018) https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf last accessed 27 November 2020; UNODC, ‘Global Report on Trafficking in Persons 2020’ (United Nations 2021) https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_15jan_web.pdf last accessed 04 February 2021, p 34.

⁸ Including Bangladesh and India, in addition to Afghanistan, Bhutan, Maldives, Nepal, Pakistan, and Sri Lanka.

⁹ UNODC (2018), above n 8, p 30; UNODC (2021), above n 8, p 149.

In Bangladesh, trafficking data is not disaggregated by exploitation type, preventing the identification of the scale of CSE in these cases. A total of 778 trafficking cases were recorded in 2017, and 561 cases in 2018.¹⁰ 30% of identified victims of trafficking identified in 2017 were female, a figure which rose to 42% in 2018, and 20% and 16% respectively in 2017 and 2018 were children.¹¹

In India, trafficking data is disaggregated by exploitation type, making identification of CSE in the aggregate of trafficking cases possible. 1922 victims of trafficking for sexual exploitation were rescued in 2018 (an increase from 1275 in 2017), as well as 154 victims of child pornography.¹² In 2015, 3087 cases of procurement of minor girls were recorded in the country, as well as 2641 cases of immoral trafficking, 111 cases of selling minors for prostitution, 11 cases of buying minors from prostitution, and 6 cases of importation of minor girls from foreign countries.¹³

In both Bangladesh and India, a plethora of laws and policies intersect to govern instances of commercial sexual exploitation and facilitate protection, support, reintegration, and repatriation of victims and survivors.¹⁴ This multiplicity of domestic laws, and differences between national and international standards, create challenges in the legal response and its implementation. CSE may therefore fall outside of established structures of international, regional, and national governance, while also residing within several different areas of law and policy.

The fragmentation of CSE law and policy can also result in inconsistent application of protections, misunderstanding of the applicability of relevant legal provisions to a particular situation, and lack of awareness and understanding amongst key officials and stakeholders—as well as among survivors themselves—of the relevant governing regime. Ultimately, this can result in victims and survivors falling through the cracks of fragmented governance. Greater harmonisation of different legislative and policy regimes, as well as increased coordination of relevant official and non-governmental actors in the CSE governance and support systems of both Bangladesh and India is therefore needed to ensure victims receive the support they need for recovery, reintegration, and repatriation.

¹⁰ UNODC, 'Global Report on Trafficking in Persons 2020: Country Profile South Asia' (United Nations 2021) https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_CP_South_Asia.pdf last accessed 04 February 2020, p 3.

¹¹ Ibid. Data on children is not disaggregated by sex.

¹² Ibid, p 8.

¹³ UNODC, 'Global Report on Trafficking in Persons 2018: Country Profile West and South Asia' (United Nations 2018) https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_WEST_AND_SOUTH_ASIA.pdf last accessed 04 February 2021.

¹⁴ The authors note that the terms used to describe persons who have experienced CSE are contested, and that the language of victimhood has been highlighted as particularly problematic. First and foremost, the authors recognise that these individuals should be empowered to identify with terms that align with their own experiences and ongoing choices in defining themselves. Given the specific focus of this report, the language of 'victims' is used in its legal sense. That is, to describe individuals experiencing violations of legal rights and as the directly harmed party in a criminal offence related to CSE. The language of survivors is used to recognise those individuals who have experienced such violations, but who have exited exploitation and continue on their life's journey.

2. Overview of international commitments

Bangladesh and India's domestic legal frameworks operate within the context of the States' international commitments. These commitments determine the countries' international obligations under international law, as well as providing reference points for the construction of domestic law. The table below highlights key international instruments of relevance to consideration of commercial sexual exploitation of children, and modern slavery more broadly, although is not an exhaustive list. An overview of the basic obligations contained in each instrument can be found in Annex I. International commitments.

Table 1. Ratification of relevant international treaties by Bangladesh and India¹⁵

	Bangladesh	India
1926 Slavery Convention and the 1953 Protocol to the Slavery Convention	✓	✓
1930 Forced Labour Convention	✓	✓
1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation and of the Prostitution of Others	✓	✓
1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	✓	✓
1957 Abolition of Forced Labour Convention	✓	✓
1966 International Covenant on Civil and Political Rights (ICCPR)	✓	✓
1979 Convention on the Elimination of All Forms of Discrimination against Women	✓	✓
1989 Convention on the Rights of the Child	✓	✓
2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	✓	✓
1999 Worst Forms of Child Labour Convention	✓	✓
1998 Rome Statute of the International Criminal Court	✓	-
2000 United Nations Convention against Transnational Organized Crime	✓	✓
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)	✓	✓
2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children	✓	✓
2003 United Nations Convention against Corruption	✓	✓
2014 Protocol to the Forced Labour Convention	-	-
2017 Call to Action to End Forced Labour, Modern Slavery and Human Trafficking	✓	-

¹⁵ UN Treaty ratification data sourced from United Nations, 'Depository: Status of Treaties' (United Nations Treaty Collection 2020) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en last accessed 28 November 2020. ILO Convention ratifications: International Labour Organisation, 'Ratification by Convention' (NORMLEX 2020) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12001:0::NO::> last accessed 28 November 2020. Membership data on the 2017 Call to Action: Delta8.7, 'Call to Action' (Delta 8.7 2020) <https://delta87.org/call-to-action/> last accessed 28 November 2020.

India and Bangladesh's responses to CSE domestically are also influenced by non-binding instruments of international law (soft law) and guidelines developed by international actors. Key instruments in this regard include:

- Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking.
- UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006).
- United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).
- United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005).
- UN Protocol on the Provision of Assistance to Victims of Sexual exploitation and Abuse (2019).

Both Bangladesh and India, as Member States of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), are parties to the BIMSTEC Convention on Cooperation in Combating International Terrorism, Transnational Organised Crime and Illicit Drug Trafficking.

While providing an important starting point for considering Bangladesh and India's legal and policy frameworks governing CSE, and providing some external measures against which to assess these measures, international instruments do not provide a complete framework for assessing effective government efforts to address CSE. The Palermo Protocol, for instance, has faced criticism for over-emphasising criminal justice responses to trafficking, and failing to ensure mandatory obligations in relation to victim protection.¹⁶ Notably, article 6, which addresses assistance and protection of victims, only requires States Parties 'consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons' and thus does not create a mandatory obligation. Likewise, article 8 (repatriation of victims) prefers voluntary repatriation of foreign national victims and requires *due regard* for victims' safety, but does not establish a prohibiting framework against involuntary or unsafe repatriation.

¹⁶ See for instance Meha Dixit, 'Cross-Border Trafficking of Bangladeshi Girls' (2017) *Economic and Political Weekly*, p 2.

3. Efforts against Commercial Sexual Exploitation in Bangladesh and India

Existing global efforts to measure and track governments’ efforts to prevent, combat, and redress modern slavery and trafficking in persons provide insights into Bangladesh’s and India’s responses, both as individual States and in global perspective. They provide comparative insights on the countries’ efforts in relation to State action globally, as well as in relation to key measures of success. No such index report provides perfect assessments of States’ efforts, and each face their own methodological limitations and challenges. However, they can provide useful indications of how countries’ efforts are assessed to perform against notable international metrics, which have a significant role in international discourse in the antislavery and anti-trafficking movements.

3.1. US Department of State TIP Rankings 2001-2019¹⁷

The Trafficking in Persons report ranks countries into one of four tiers, as mandated by the Victims of Trafficking and Violence Protection Act 2000 (TVPA). A country’s ranking is based on an assessment of the government’s efforts to address trafficking in persons, rather than on the extent of trafficking within the country, and considers government action against the TVPA’s minimum standards.¹⁸ Countries are therefore organised into rating bands, rather than being ranked against one another on an individual basis.

In 2020, 34 countries were rated in Tier 1 and thereby assessed as having the strongest responses to trafficking in persons globally according to the TVPA standards. Tier 2 held 88 countries, including Bangladesh and India, while 44 were placed on the Tier 2 Watchlist, and 19 in Tier 3. Three countries were considered special cases (Libya, Somalia, and Yemen). India has maintained its Tier 2 rating for a decade, considered to be making significant efforts towards compliance with the TVPA standards, but not achieving these standards over the ten years it has remained in this position. On the other hand, after three years on the Tier 2 Watchlist, Bangladesh improved its placement in 2020 to Tier 2.

Figure 1. US State Department TIP ratings over time: Bangladesh



Figure 2. US State Department TIP ratings over time: India



Tier 1: Countries whose governments fully meet the TVPA’s minimum standards for the elimination of trafficking. To maintain a Tier 1 ranking, the country must continue to make progress in its anti-trafficking efforts each year.

¹⁷ US Department of State, ‘Trafficking in Persons Report’ (2020) available [here](#); (2019), available [here](#); (2018), available [here](#); (2017), available [here](#); (2016), available [here](#); (2015), available [here](#); (2014), available [here](#); (2013), available [here](#); (2012), available [here](#); (2011), available [here](#); (2010), available [here](#); (2009), available [here](#); (2008), available [here](#); (2007), available [here](#); (2006), available [here](#); (2005), available [here](#); (2004), available [here](#); (2003), available [here](#); (2002), available [here](#); (2001), available [here](#).

¹⁸ Minimum standards for the elimination of trafficking are found in section 108, Victims of Trafficking and Violence Protection Act 2000 (United States), available [here](#).

Tier 2: Countries whose governments do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards.

Tier 2 Watch List: Countries whose governments do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards, and for which:

- (a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;
- (b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or
- (c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps over the next year.

Tier 3: Countries whose governments do not fully meet the TVPA's minimum standards and are not making significant efforts to do so. Countries ranked as Tier 3 may be subjected to restrictions on non-humanitarian, non-trade foreign assistance from the US. Impositions of such restrictions are determined by the President.¹⁹

¹⁹ See further US Department of State (2019), above n 18, 37.

4. Background and context: Bangladesh

4.1. Constitutional structure

Bangladesh is a mixed legal system mostly based on the English common law and Islamic law.²⁰ It has a unicameral House of the Nation or Jatiya Sangsad where all members serve 5-year terms. The Supreme Court of Bangladesh is the court of last resort in the country.²¹ The Court has expressed powers not only to interpret laws made by the Parliament, but to also declare them null and void when found to negate constitutional provisions.²² Regarding the executive arm, the President of Bangladesh is indirectly elected by the National Parliament for a 5-year term and is eligible for a second term. The majority party leader in the National Parliament is appointed by the President to serve as Prime Minister.²³

4.2. Political context

Executive powers mostly reside with the Prime Minister.²⁴ Sheikh Hasina of the Awami League (AL) party won a third consecutive five-year term during the 2018 elections. The election was generally marred by irregularities and was not considered to be free and fair. There were also reports of ballot-box stuffing and voter intimidation.²⁵ Bangladesh ranked 80th (among 167 countries) in the 2019 Democracy Index of the Economist Intelligence Unit. The Democracy Index measures democracy based on five criteria: Electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties.²⁶

4.3. Migration to India

Bangladeshis migrate in large numbers to its neighbouring country, India—travelling both through regular and irregular channels. The Indian government estimated that millions of Bangladeshis lived illegally in the country as of 2016, making this migration channel the largest in the world.²⁷ While some of the migrants are noted to be Hindu refugees, others are sex trafficking or forced labour victims.²⁸ Estimating prevalence of irregular migration, like estimating modern slavery and CSE, is an inherently difficult exercise, making it difficult to accurately account for the numbers of Bangladeshi migrants in key destination countries around the world. Lack of documentation and irregular status can, however, be a key driver of CSE, a tool used by perpetrators to prevent victims from escaping and reporting to officials, and has been noted to result in criminalisation and punishment of victims. Bangladesh is home to more than one million undocumented Rohingya refugees, of which approximately 700,000 arrived after August 2017.²⁹

4.4. Development profile

4.4.1. Human Development Index³⁰

The Human Development Index (HDI) measures average life expectancy, level of education and income for each country in the world. Each country is given a score between 0 and 1 - the closer a country gets to 1, the more developed it is.³¹ Bangladesh's scores place it in the 'Medium Human Development' grouping. Over the past 30 years, Bangladesh's HDI score has steadily increased, moving closer to the global average over time.

²⁰ Central Intelligence Agency, 'The World Factbook' (2020) <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html> last accessed 09 November 2020.

²¹ Ibid.

²² Ershadul Karim, 'The Legal System of the Peoples' Republic of Bangladesh' (2018) <https://www.nyulawglobal.org/globalex/Bangladesh1.html> last accessed 09 November 2020.

²³ Central Intelligence Agency, 'The World Factbook', above n 34.

²⁴ US Department of State, '2019 Country Reports on Human Rights Practices: Bangladesh' (2019) <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bangladesh/> last accessed 09 November 2020.

²⁵ Ibid.

²⁶ A higher ranking indicates a more democratic society. The Economist Intelligence Unit, 'Democracy Index 2019: A year of democratic setbacks and popular protest' (The Economist Intelligence Unit Limited, 2020)

²⁷ Ibid.

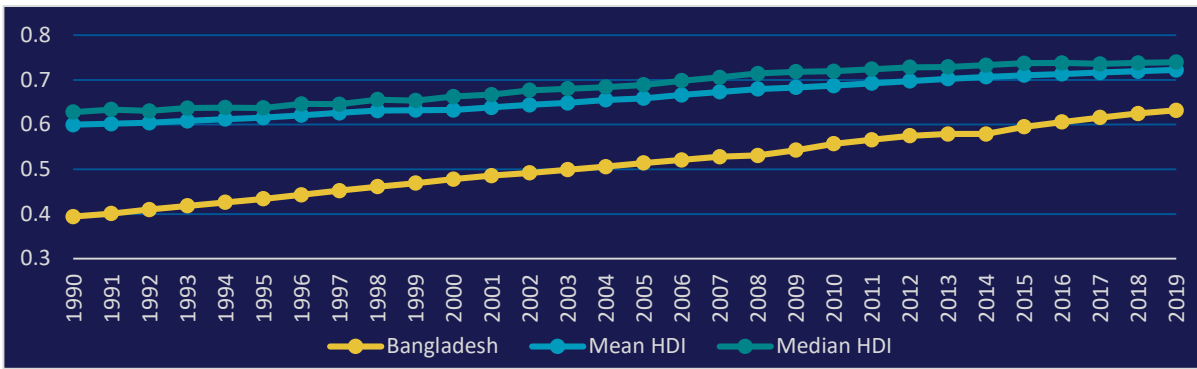
²⁸ Ibid.

²⁹ US Department of State (2019), above n 38, p 90.

³⁰ United Nations Development Programme, 'Human Development Reports' <http://hdr.undp.org/en/content/latest-human-development-index-ranking> last accessed 04 February 2020.

³¹ 'Contrasts in Development between Different Countries' (BBC) <https://www.bbc.co.uk/bitesize/guides/z838xsg/revision/2>

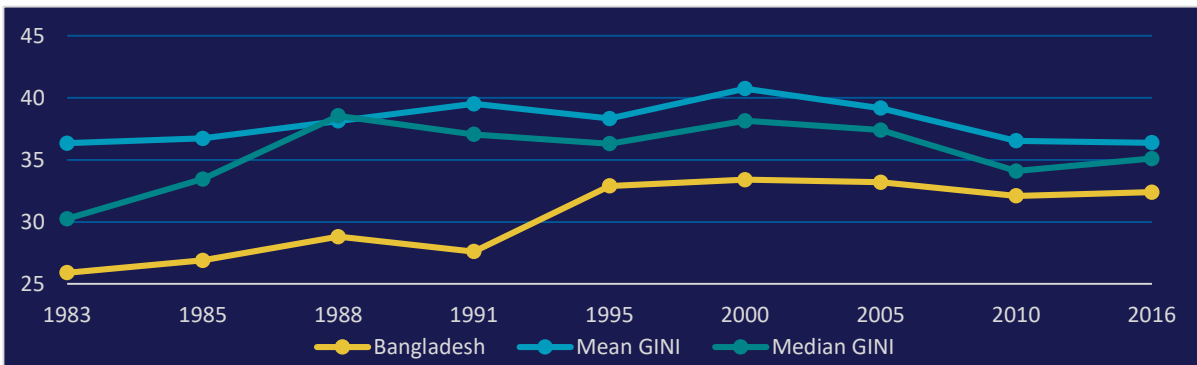
Figure 3. Bangladesh's Human Development Index score over time



4.4.2. Gini Coefficient³²

The Gini index measures the extent to which income distribution or consumption expenditure among individuals or households within an economy deviates from a perfectly equal distribution. A Gini index of 0 represents perfect equality, while an index of 100 implies perfect inequality.³³ Gini data is not reported every year, and the most recent score for Bangladesh was recorded in 2016. The many changes and significant events occurring in the intervening years should be factored into consideration of how this measure would be satisfied in the current context.

Figure 4. Bangladesh's GINI Index score over time



4.4.3. UN Sustainable Development Goals³⁴

Table 2. Sustainable Development Goal Index scores: Bangladesh

Year	Rank	Score
2019	116	60.9
2018	111	59.3
2017	120	56.2
2016	118	44.4

The Sustainable Development Reports assess implementation of, and progress towards, the 2015 UN Sustainable Development Goals. The SDG Index and Dashboards summarise countries' current performance and trends across the 17 SDGs. All SDGs are weighted equally in the index. Changing indicators, data, and methodology used to determine rankings and scores mean that SDG index results are not comparable over time.³⁵

As of 2019, the unemployment rate of the total population in Bangladesh was 4.4%, while the youth unemployment rate was estimated to be 11.6%.

³² The World Bank, 'GINI Index – Bangladesh' <https://data.worldbank.org/indicator/SI.POV.GINI?locations=BD> accessed 09 November 2020. Mean and median calculations sourced from The World Bank Development Research Group, 'GINI Index (World Bank Estimate)' (*The World Bank*) <https://data.worldbank.org/indicator/SI.POV.GINI?end=2011&locations=IN&start=1983&view=chart> last accessed 28 November 2020. Note: timescale reflects years for which country-specific data for Bangladesh is available.

³³ Knoema, 'World Data Atlas' <https://knoema.com/atlas/India/topics/Poverty/Income-Inequality/GINI-index> last accessed 09 November 2020.

³⁴ 'Sustainable Development Reports' (2015)-(2019) <https://sdgindex.org/reports/> last accessed 09 June 2020.

³⁵ Bertelsmann Stiftung and Sustainable Development Solutions Network, 'Sustainable Development Report 2019' (June 2019), p 19.

4.5. Gender equality in Bangladesh

The Global Gender Gap Index (GGGI) published by the World Economic Forum ranks countries on their status of gender equality through various parameters. In the GGGI published in 2018, Bangladesh ranked 48th of 149 countries for its performance on gender equality. In the 2020 GGGI, the number of countries increased to 153, with Bangladesh ranking 50th.³⁶ Bangladesh's score moved from 0.721 in 2018 to 0.726 in 2020. Bangladesh's scores made it the only one of the seven South Asian countries in the 2020 report to feature in the top 100 of the GGGI. Bangladesh ranks highest for the most years with a female head of state in the past 50 years, and is the only country in the world where the number of years with a female head of state exceeds 50% (25.6 years). Areas highlighted as requiring further attention in Bangladesh included: representation in political offices (particularly in cabinet and parliament); participation of women in the labour market; representation of women in leadership roles; and income equality.

4.6. Social support systems

Article 15 of the Bangladeshi Constitution mandates the state to provide:

...the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

The 2013 Rights and Protection of Persons with Disabilities Act, governs the provision of social assistance to persons living with disability.

The Ministry of Social Welfare is one of the key entities addressing issues concerning poverty eradication, social welfare, and development in Bangladesh. The Ministry has been implementing programmes including Widows Allowances, Old Age Allowances, and Allowances for Persons with Disabilities.³⁷ The Ministry also has programmes for other disadvantaged groups including children, unemployed, landless, etc.³⁸ The World Bank has noted that social welfare programmes in Bangladesh have been contributing to poverty reduction.³⁹ The Bank has been supporting the Bangladeshi government since 2010 to maximise the impact of these programmes to address the needs of the most vulnerable.⁴⁰ The Government also allocates significant resources to its social programmes. For instance, about 2.5% of the country's GDP was allocated to various social welfare programmes in 2019.⁴¹

Table 3. GGGI 2006-2020: Bangladesh

	Ranking	Score
2020	50 /153	0.726
2018	48 /149	0.721
2017	47 /144	0.719
2016	72 /144	0.698
2015	64 /145	0.704
2014	68 /142	0.6973
2013	75 /136	0.6848
2012	86 /135	0.6684
2011	69 /135	0.6812
2010	82 /134	0.6702
2009	93 /134	0.6526
2008	90 /130	0.6531
2007	100 /128	0.6314
2006	91 /115	0.6269

³⁶ World Economic Forum, 'Global Gender Gap Report 2020' (*World Economic Forum*, 16 December 2019) http://www3.weforum.org/docs/WEF_GGGR_2020.pdf last accessed 28 March 2021.

³⁷ Development Aid <<https://www.developmentaid.org/#!/donors/view/145927/ministry-of-social-welfare-of-bangladesh>>accessed 09 June 2020.

³⁸ Ibid.

³⁹ The World Bank, 'Social Safety Nets in Bangladesh Help Reduce Poverty and Improve Human Capital' <https://www.worldbank.org/en/news/feature/2019/04/29/social-safety-nets-in-bangladesh-help-reduce-poverty-and-improve-human-capital> last accessed 09 November 2020.

⁴⁰ Ibid. <https://www.worldbank.org/en/news/feature/2019/04/29/social-safety-nets-in-bangladesh-help-reduce-poverty-and-improve-human-capital>

⁴¹ Ibid.

5. Background and context: India

5.1. India's constitutional structure

India has a common law system based on the English model.⁴² The country operates a multiparty, federal, parliamentary democracy system with a bicameral legislature. The Prime Minister is the Head of Government, and the President, elected by an electoral college composed of the state assemblies and Parliament, is the Head of State. Under the country's constitution, the 28 states and 9 union territories have a high degree of autonomy and are primarily responsible for maintaining law and order.⁴³ The Supreme Court, consisting of 28 judges, including the Chief Justice, is the court of last resort.⁴⁴ India's approach to governing CSE through legal and policy instruments is complicated by the federal structure of governance in the country.

5.2. Political context

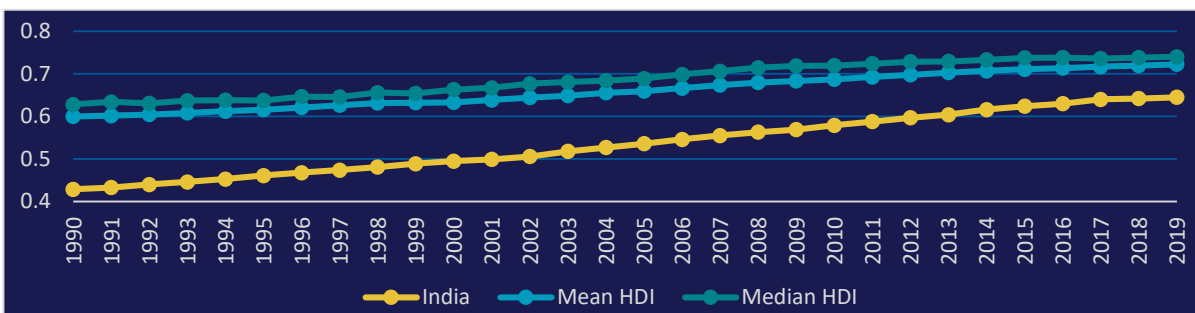
India's current President, Ram Nath Kovind, was elected into office in 2017 to serve a five-year term, while Narendra Modi became Prime Minister for the second time in 2019, following the victory of the National Democratic Alliance coalition led by the Bharatiya Janata Party (BJP).⁴⁵ The country's Ministry of Home Affairs (MHA) is responsible for the internal intelligence bureaus, national law enforcement agencies and most paramilitary forces. The Ministry also provides training for senior officials from state police forces.⁴⁶ India ranks 51st globally in the 2019 Democracy Index of the Economist Intelligence Unit.⁴⁷ The country dropped ten places from the preceding year, owing to suppression of civil liberties by central authorities.⁴⁸

5.3. Development profile

5.3.1. Human Development Index⁴⁹

The Human Development Index (HDI) measures average life expectancy, level of education and income for each country in the world. Each country is given a score between 0 and 1 - the closer a country gets to 1, the more developed it is.⁵⁰ India's scores place it in the 'Medium Human Development' grouping. Over the past 30 years, India's HDI score has steadily increased, moving closer to the global average over time.

Figure 5. India's Human Development Index score over time



⁴² Central Intelligence Agency, 'The World Factbook' (2020) <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html> accessed 08 November 2020.

⁴³ US Department of State, '2019 Country Reports on Human Rights Practices: India', (2019) <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/india/> last accessed 08 November 2020.

⁴⁴ Central Intelligence Agency, above n 82.

⁴⁵ US Department of State, above n 83.

⁴⁶ Ibid.

⁴⁷ A higher ranking indicates a more democratic society. The Economist Intelligence Unit, 'Democracy Index 2019: A year of democratic setbacks and popular protest' (The Economist Intelligence Unit Limited, 2020), 26.

⁴⁸ Ibid.

⁴⁹ United Nations Development Programme, 'Human Development Reports' <http://hdr.undp.org/en/content/latest-human-development-index-ranking> last accessed 04 February 2020.

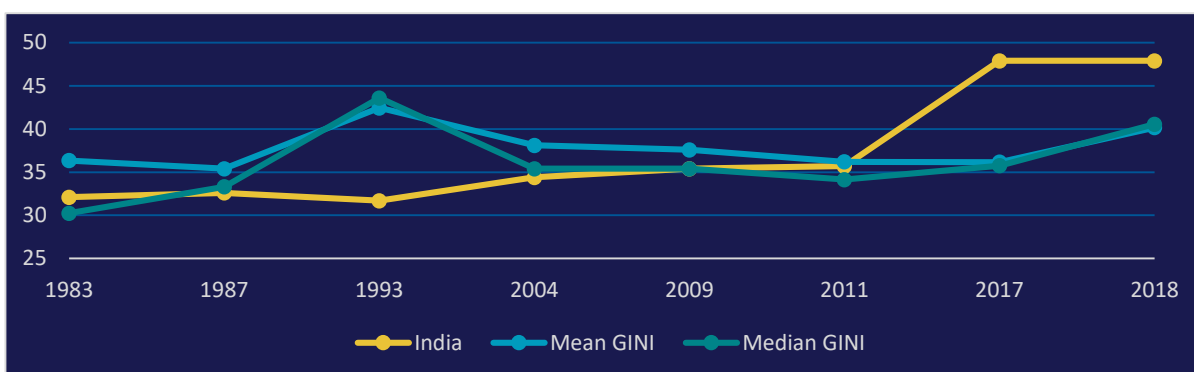
⁵⁰ 'Contrasts in Development between Different Countries' (BBC) <https://www.bbc.co.uk/bitesize/guides/z838xsg/revision/2> last accessed 09 November 2020.

India ranked 131 of 189 countries in the Human Development Index 2020 prepared by the United Nations Development Programme.⁵¹ With an HDI value of 0.645, the country fell in the medium human development category. Since 1990, India's HDI score has increased from 0.429 to 0.645, an increase of over 50%. During the same period, the life expectancy at birth in India rose by nearly 12 years, while mean years of schooling witnessed an increase of 3.5 years. During this time, the expected years of schooling also rose by 4.5 years, and gross national income per capita increased by nearly 274%.⁵²

5.3.2. GINI Coefficient⁵³

The Gini index measures the extent to which income distribution or consumption expenditure among individuals or households within an economy deviates from a perfectly equal distribution. A Gini index of 0 represents perfect equality, while an index of 100 implies perfect inequality.⁵⁴

Figure 6. India's GINI Index score over time



5.3.3. UN Sustainable Development Goals⁵⁵

Table 4. Sustainable Development Goal Index scores: India

Year	Rank	Score
2019	115	61.1
2018	112	59.1
2017	116	58.1
2016	110	48.4

The Sustainable Development Reports assess implementation of, and progress towards, the 2015 UN Sustainable Development Goals. The SDG Index and Dashboards summarise countries' current performance and trends across the 17 SDGs. All SDGs are weighted equally in the index. Changing indicators, data, and methodology used to determine rankings and scores mean that SDG index results are not comparable over time.⁵⁶

As of 2019, the unemployment rate of the total population in India was 3.5%, while the youth unemployment rate was estimated to be 10.6%.⁵⁷

⁵¹ United Nations Development Programme, 'Human Development Report 2020: The Next Frontier – Human Development and the Anthropocene' (UNDP 2020) <http://hdr.undp.org/sites/default/files/hdr2020.pdf> last accessed 28 March 2021.

⁵² Bulbul Dhawan, 'India Ranks 131 on Human Development Index 2020: All you need to know' (*Financial Express*, 23 December 2020) <https://www.financialexpress.com/lifestyle/health/india-ranks-131-on-human-development-index-2020-all-you-need-to-know/2155827/> last accessed 28 March 2021.

⁵³ 1983 to 2011 data on India, mean and median calculations sourced from The World Bank Development Research Group, 'GINI Index (World Bank Estimate)' (*The World Bank*) <https://data.worldbank.org/indicator/SI.POV.GINI?end=2011&locations=IN&start=1983&view=chart> last accessed 09 November 2020. 2017 and 2018 data sourced from World Data Atlas, 'India – GINI Index' (*Knoema*) <https://knoema.com/atlas/India/topics/Poverty/Income-Inequality/GINI-index> last accessed 09 November 2020. Note: timescale reflects years for which country-specific data for India is available.

⁵⁴ Knoema, 'World Data Atlas' <https://knoema.com/atlas/India/topics/Poverty/Income-Inequality/GINI-index> last accessed 09 November 2020.

⁵⁵ 'Sustainable Development Reports' (2015)-(2019) <https://sdgindex.org/reports/> last accessed 09 November 2020.

⁵⁶ Bertelsmann Stiftung and Sustainable Development Solutions Network, 'Sustainable Development Report 2019' (June 2019), p 19.

⁵⁷ Migration Data Portal, above n 89.

5.4. Gender equality in India

The Global Gender Gap Index (GGGI) published by the World Economic Forum ranks countries on their status of gender equality through various parameters. In the GGGI published in 2018, India ranked 108th of 149 countries for its performance on gender equality. In the 2020 GGGI, the number of countries increased to 153, with India ranking 112th.⁵⁸ India's score moved from 0.665 in 2018 to 0.668 in 2020. Areas highlighted as requiring further attention in India included: the condition of women in large fringes of society; the economic gender gap; participation of women in the labour market; income equality; representation of women in leadership roles and professional and technical work; violence and forced marriage; access to healthcare; and female political representation. The literacy gap is one area that India has shown improvement, with a significant increase in female literacy (to 66%).

The Government of India has declared that it has “given utmost priority to end the gender based inequities, reducing disparity between men and women, improving socio-economic status of women and increasing their participation in various fields.”⁵⁹ The Ministry of Women and Child Development set out some of the major initiatives taken by the Government of India to ensure that women gain equal rights, opportunities and access to resources as follows:⁶⁰

Constitutional provisions

Articles such as Article 14, Article 15 (3), Article 39A, and Article 42 make special provisions for rights of women to ensure gender equality.

Legislative provisions

The Dowry Prohibition Act, 1961; Pre-Conception and Pre-Natal Diagnostics Act (PCPNDT), 1994; Sexual Harassment of Women and Workplace (Prevention, Prohibition and Redressal) Act, 2013; Equal Remuneration Act, 1976; Minimum Wages Act, 1948 and Maternity Benefit Act, 1961 (Amended in 2017) aimed at mandating women's rights.

Schemes and programmes

Economic Participation & Opportunity

Various programmes and schemes intended towards development and empowerment of women have been established in India, including:

- Beti Bachao Beti Padhao ensures the protection, survival, and education of the girl child.
- Mahila Shakti Kendra aims to empower rural women with opportunities for skills development and employment.
- The Working Women Hostel ensures the safety and security for working women.
- Mahila Police Volunteers envisages engagement of Mahila Police Volunteers in States/Union Territories, acting as a link between police and community and supporting women in distress.
- Rashtriya Mahila Kosh is an apex microfinance organisation that provides micro-credit at concessional terms to poor women for various livelihood and income generating activities.
- The National Crèche Scheme enables women to take up gainful employment through providing a safe, secure, and stimulating environment to children.

Table 5. GGGI 2006-2020: India

	Ranking	Score
2020	112 /153	0.668
2018	108 /149	0.665
2017	108 /144	0.669
2016	87 /144	0.683
2015	108 /145	0.664
2014	114 /142	0.6455
2013	101 /136	0.6551
2012	105 /135	0.6442
2011	113 /135	0.619
2010	112 /134	0.6155
2009	114 /134	0.6151
2008	113 /130	0.6060
2007	114 /128	0.5936
2006	98 /115	0.601

⁵⁸ World Economic Forum, 'Global Gender Gap Report 2020' (*World Economic Forum*, 16 December 2019) http://www3.weforum.org/docs/WEF_GGGR_2020.pdf last accessed 28 March 2021.

⁵⁹ Ministry of Women and Child Development, 'Global Gender Gap Index' (*PIB*, 07 February 2020) <https://pib.gov.in/PressReleasePage.aspx?PRID=1602397> last accessed 28 March 2021.

⁶⁰ Ibid.

- Pradhan Mantri Matru Vandna Yojna aims to provide maternity benefits to pregnant and lactating mothers.
- Pradhan Mantri Awaas Yojana aims to provide housing under the name of the woman.
- Deen Dayal Upadhyay National Urban Livelihoods Mission focuses on creating opportunities for women in skills development leading to market-based employment.
- Pradhan Mantri Ujjwala Yojana empowers women and protects their health by providing LPG cylinders free of cost.
- Pradhan Mantri Sukanya Samridhi Yojna economically empowers girls by opening their bank accounts.
- To promote female entrepreneurship, the Government has also initiated schemes like Stand Up India and Mahila e-Haat (online marketing platform to support women entrepreneurs/ SHGs/NGOs). Pradhan Mantri Mudra Yojana provides access to institutional finance to micro/small businesses.

Educational attainment

Several steps and initiatives have been taken up in the school education system, such as the National Curriculum Framework 2005 and flagship programmes like Samagra Shiksha and the subsequent Right to Education Act. Kasturba Gandhi Balika Vidyalayas have been opened in Educationally Backward Blocks. Gender sensitisation is also conducted, including a gender sensitisation module as part of in-service training, construction of toilets for girls, construction of residential quarters for female teachers, and curriculum reforms.

Political participation

To bring women into the mainstream of political leadership at the grassroots level, the Government has reserved 33% of the seats in Panchayati Raj Institutions for women. The Capacity Building of Elected Women Representatives programme by Ministry of Women and Child is conducted with a view to empower women to participate effectively in the governance processes.

5.5. Social support systems

India has put in place a range of social assistance and support schemes at both the national and state level. The current social security programs in the country may be broadly categorised into five areas: school meals; the Integrated Child Development Services; the National Rural Employment Guarantee Act; the public distribution system; and social security pensions for widows, the elderly, and disabled persons.⁶¹

During the last two decades, the country has adopted more inclusive forms of social security.⁶² With these changes, social security has shifted from the notion of risk to the idea of need—basic human needs such as shelter, health care, nutrition—and is now widely deployed as a tool to fight poverty and address economic and social inequalities.⁶³ Individuals working in the ‘unorganised’ sector may be offered social protection through the Unorganised Workers Social Security Act 2008. Under the Act, the Central Government is required to provide suitable welfare schemes on matters relating to life and disability cover, health and maternity benefits, and old age protection, among others, to unorganised workers. State governments are further required to formulate suitable welfare schemes for unorganised workers in relation to provident fund, employment injury benefit, housing, education schemes for children, skills upgrading, funeral assistance, and old age homes.⁶⁴

On 28 November 2001, following public-interest litigation on the right to food, the Supreme Court of India directed all state governments to start providing cooked meals in primary schools across the country. India’s Integrated Child Development Services (ICDS) provides nutrition, health, and pre-school education services for children under the age of six years. There is evidence of slow but steady progress of the ICDS program.⁶⁵

In August 2005, the Indian Parliament passed the National Rural Employment Guarantee Act (NREGA) unanimously. The Act came into force on 2 February 2006 in 200 of India’s poorest districts, and was extended to the whole country on 1 April 2008. Under the Act, any adult residing in rural areas who demands

⁶¹ International Social Security Association, India Country Profile <<https://www.issa.int/en/country-details?countryId=IN®ionId=ASI&filtered=false>> last accessed 09 November 2020.

⁶² Ibid.

⁶³ Indira Hirway, ‘Social Protection for Women Workers: With special reference to unpaid domestic workers’ in Priti Darooka (ed), *Road to Rights: Women, Social Security and Protection in India* (Sage Publishers 2016) 61.

⁶⁴ See sections 1-3, Unorganised Workers Social Security Act, 2008.

⁶⁵ Drèze Jean and Khera Reetika, ‘Recent Social Security Initiatives in India’ (2017) 98 *World Development*, 555-572, 559.

work has to be employed on local public works within 15 days. Failing that, an unemployment allowance is due. Despite its promise, delays in wage payments have plagued NREGA since 2008, when central authorities mandated payments through banks or post offices. In spite of these challenges, however, it has been observed that the NREGA has led to some major achievements, including increased female participation in the workforce. Also, more than half the workers belong to scheduled castes or scheduled tribes.⁶⁶

5.5.1. Pradhan Mantri Jan Dhan Yojana 2014

Pradhan Mantri Jan Dhan Yojana aims at the comprehensive financial inclusion of all households in the country. The aim of the scheme is to facilitate universal access to banking facilities for all households. The scheme wishes to ensure at least one bank account to every household besides promoting financial literacy, pension facility, insurance and access to credit.

5.5.2. Stand Up India Scheme

The Stand Up India scheme provides a bank loan between Rs 10 lakh and Rs 1 crore to at least one borrower from the scheduled caste or scheduled tribe category and at least one woman borrower per bank branch for the purpose of setting up greenfield enterprises in any one of the sectors including manufacturing, services or trading.

5.5.3. Save the Girl Child; Educate the Girl Child

The Beti Bachao, Beti Padhao (Save the Girl Child; Educate the Girl Child) scheme was launched on 22 January 2015 by PM Narendra Modi at Panipat, Haryana. It aims to address the issue of the declining child sex ratio and is a national initiative jointly run by the Ministry of Women and Child Development, the Ministry of Health and Family Welfare and the Ministry of Education. It initially focused on multi-sector action in 100 districts throughout the country where there was a low CSR. It aims to encourage education for girls.

5.5.4. Sukanya Samriddhi Yojana

Sukanya Samriddhi Yojana is a savings scheme launched back in 2015 as part of the Government initiative Beti Bachao, Beti Padhao campaign. This scheme enables guardians to open a savings account for their girl child with an authorised commercial bank or India Post branch.

5.5.5. National Rural Employment Guarantee Act 2005

The National Rural Employment Guarantee Act (NREGA) provides at least 100 days of employment to rural households who have voluntarily agreed to do unskilled work every year. Any Indian citizen above the age of 18 years and residing in a rural area can apply for the NREGA scheme. NREGA job card empowers you to apply for work transparently and protects from any fraud. To apply for the NREGA job card, you need to submit the application form along with required documents. The payment is made by directly transferring the wages into the bank/post office account of the applicants

⁶⁶ Ibid, 562.

6. CSE law and policy in Bangladesh

6.1. Criminal prohibition of modern slavery practices

Bangladesh has enacted criminal prohibitions against several of the practices that make up modern slavery, including human trafficking, forced labour, bonded labour, abducting women into forced marriage, and slavery itself.⁶⁷ This places Bangladesh in the 51% of UN Member States that have criminalised slavery, the 42% that have criminalised forced labour, and the 96% of States that have criminalised trafficking.⁶⁸ It also places Bangladesh in the group of 93% of States that have failed to criminalise servitude as a distinct offence, and 88% that have not criminalised each of the four institutions and practices similar to slavery, although some of these practices may form elements of the offence of trafficking.⁶⁹

6.2. Legislative frameworks governing CSE in Bangladesh

Commercial sexual exploitation is addressed through legislative provisions in Bangladesh. Key documents are considered below, and further outlined in [Annex II. Bangladesh legal frameworks](#).

- The [Penal Code, Act No XLV 1860](#) prohibits a range of offences related to CSE, including:
 - Kidnapping or abducting a child (under 10) for the purpose of, amongst others, slavery, or lust, or disposing of such a person to put them in danger of those crimes (section 364A).
 - Kidnapping or abducting a woman into forced marriage or forced or seduced into illicit intercourse (section 366).
 - Inducing a girl (under 18) to go from any place or do any act with intent that such girl may be, or knowing it is likely she will be, forced or seduced to illicit intercourse (section 366A).
 - Importing any girl (under 21) to be forced or seduced into illicit intercourse (section 366B).
 - Kidnapping or abducting for the purpose of slavery or subjecting them to the ‘unnatural lust’ of any person (section 367).
 - Trafficking in persons (section 370).
 - Habitual dealing in slaves (section 371).
 - Selling, letting or disposing of a minor (under 18) for the purpose of prostitution, illicit intercourse, or for any unlawful and immoral purpose (section 372).
 - Buying, hiring, or obtaining possession of a minor for the purpose of prostitution, illicit intercourse or for any unlawful and immoral purpose (section 373).
 - Rape, which includes sexual intercourse with a child under fourteen, with or without her consent (section 375).
- The [Suppression of Immoral Traffic Act \(Act No. VI of 1933\)](#) is targeted at suppressing brothels and traffic in women and girls for immoral purposes. The Act punishes those who induce a female into the prostitution (section 9), import a female for prostitution (section 10), or detain someone under 18 against their will, or have custody, charge or care of them and encourage or abet them for prostitution (sections 11-12).
- The [Constitution of Bangladesh 1971](#) does not deal expressly with CSE. The Constitution enshrines general protections, deeming that there is freedom from exploitation (Article 10), that fundamental human rights and freedoms are guaranteed (Article 11) and emancipation of people from exploitation (Article 14). The state has a duty to prevent prostitution (Article 18(2)) and forced labour is prohibited (Article 34).

⁶⁷ Katarina Schwarz and Jean Allain, ‘Bangladesh’ (*Antislavery in Domestic Legislation*, 2020) <https://antislaverylaw.ac.uk/country/bangladesh/> last accessed 14 November 2020.

⁶⁸ Katarina Schwarz and Jean Allain, ‘Antislavery in Domestic Legislation: An Empirical Analysis of National Prohibition Globally’ (*The Rights Lab and Castan Centre for Human Rights Law*, February 2020) <https://antislaverylaw.ac.uk/resources/summary-of-findings/> accessed 14 November 2020, p 11.

⁶⁹ *Ibid.* The institutions and practices similar to slavery are set out in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

- The [International Crimes \(Tribunals\) Act 1973](#) provides for detention, prosecution and punishment of persons for crimes under international law, which includes ‘enslavement’ and ‘rape or other inhuman acts’ (Article 3(2)(a)).
- The [Prevention of Oppression against Women and Children Act 2000 abolishes a prior 1995 Act](#). It aims at the prevention of oppression, including offences committed by corrosive or other substances, trafficking, kidnapping, rape or death in consequence of rape, sexual oppression and causing death for dowry. It prohibits trafficking of women (Section 5) and children (Section 6). A Women and Children Repression Prevention (Amendment) Bill 2020 is incorporating a death penalty for rape.⁷⁰ The prior penalty was life imprisonment. The 2000 Act is a more prescriptive act in its penalties than the 1995 Act.
- The [Prevention of Cruelty against Women and Children Act 2000](#) follows the same vein as the above Act. It aims to protect women and children from heinous crimes like rape, dowry and grievous injury. Related cases can be tried by a summary tribunal: The Women and Children Repression Tribunal.
- The [Labour Act 2006, amended in 2013](#) does not deal specifically with trafficking, CSE or forced labour. It is aimed towards employment protections. Children (under 14) and adolescents (over 14, under 18) are prohibited from employment, the latter can work with certain conditions (Article 34). The Act covers ‘workers’, the definition of which includes those who are employed in ‘any establishment or industry’ undertaking unskilled, skilled or manual work (Article 2). They can be of permanent or casual posts (Article 4). The definition is broad enough to include sex workers.
- The [Domestic Violence \(Prevention and Protection\) Act 2010](#) aims at preventing and protecting people from domestic violence. This includes sexual abuse against a woman or child (Article 3). Victims can be referred to a safe shelter home (Article 6(g)).
- The [Prevention and Suppression of Human Trafficking Act 2012](#) to prevent and suppress human trafficking, ensure the protection of victims and their rights and ensure safe migration. Relevant provisions include:
 - Prostitution or sexual exploitation or oppression are included as forms of exploitation (Chapter 1.2(15)).
 - The definition of human trafficking includes that of persons for the purpose of sexual exploitation or oppression (Chapter 1.3).
 - Human trafficking is criminalised (Chapter II.6). This specifically includes the import or transfer for prostitution, or any other form of sexual exploitation or oppression (Chapter II.11).
 - Keeping a brothel or allowing a place to be used as a brothel is also criminalised (Chapter II.12).
 - Relevant to victim support is a provision allowing penalties for those who threaten, intimidate, or use force against victims of trafficking, witnesses, or family members, obstructing an investigation or trial under the act (Chapter II.14).
 - Anti-human trafficking offence tribunals are established to try offences under the Act (Chapter IV).
 - Chapter V deals with the assistance, protection and rehabilitation of the victims of human trafficking and witnesses. The government commits to making procedures for the identification, rescue, and rehabilitation of victims, working in partnership with the government and NGOs (Chapter V.32).
 - Victims are entitled to be informed by the government, or NGOs, of the actions taken against traffickers (Chapter V.34).
 - Chapter V.36 addresses ‘protection, rehabilitation and social integration’. If not returned to families, victims are sent to ‘any government or non-government protective home or rehabilitation centre’ where they are entitled to give ‘consent on the concerned matter’, ‘medical treatment and legal and psychological counselling service including sustainable

⁷⁰ Star Online Report, ‘Death Penalty for Rape: Amended Women and Children Repression Prevention Bill passed’ *Daily Star* (17 November 2020) <www.thedailystar.net/country/news/death-penalty-rape-amended-women-and-children-repression-prevention-bill-passed-1996573>

rehabilitation and social integration facilities'. Joint or mutual legal assistance is provided to victims (Chapter VI).

- The Overseas Employment and Migration Act 2013 (Act No. VLVIII of 2013) aims to promote opportunities for overseas employment and establish a safe and fair system of migration, ensuring the rights and welfare of migrant workers and members of their families (Preamble). Relevant provisions include regulation of recruitment agents (Chapter III), the provision of an employment contract (Chapter V), establishment of a labour welfare wing (Chapter VI) and rights of migrant workers (Chapter VII).
- The [Children's Act \(Act No. 24 of 2013\)](#) deals with child offenders and child welfare of various kinds. There are a number of provisions relevant to CSE. There is a penalty for allowing a child to be in a brothel (Section 77). There is also a penalty for leading or encouraging a child to seduction, inducing a child to prostitution, or causing or encouraging anyone other than her husband to have sexual intercourse with her (Section 78). There is a penalty for exploitation of a child, specifically where those entrusted with custody or care of a child leads a child to seduction or exposes a child to the risk of engaging in prostitution or immoral activities (Section 80(2)). Those who avail themselves of the labour of a child so exploited is also liable for penalty (Section 80(3)). Section 84(1) provides for care for 'disadvantaged' children who need 'special protection, care and development' (Section 84(1)). Disadvantaged children include those who are engaged in 'anything against the welfare of the child' or victims of 'sexual oppression', or those staying with someone in prostitution (section 89). Reintegration with parents is a priority (section 84(2)), unless parents engage the child in immoral or illegal activities (ss(5)). Institutional care is provided for disadvantaged children (section 85), including government children homes and government shelter homes, which is decided by the child welfare board (section 86).

Bangladesh's legislative frameworks governing CSE—enabling criminalisation, law enforcement, protection and support for victims—provide a solid starting point for protection. This is weakened by Bangladesh's expanse of laws overlapping, yet still evidencing gaps in protection. The recent enactment of The Prevention and Suppression of Human Trafficking Act 2012 and the Children's Act 2013 provide a robust move in the right direction of victim-oriented support, although serious work is still needed to ensure law and policy frameworks in place effectively facilitate survivor recovery, reintegration, and safe and appropriate repatriation. The Ministry of Home Affairs and the Ministry of Women and Child Affairs are the dominant bodies working in CSE.

6.2.1. The Penal Code of 1860

The existence of the Penal Code of 1860 adds confusion to the legal make-up in Bangladesh on the crimes of trafficking and CSE. There is a mix of 'old concepts' with new ones, resulting in 'coexistence of incoherent colonial and modern legal patterns in a single textual body', for example discrepancies in rape.⁷¹ This has the follow-on effect that the judiciary face a confusing breadth of provisions when bringing cases, and can add to the length of cases, thus their build up and subsequent backlog.

Under the penal code, sections 372 and 373 are most relevant to CSE:

Section 372.

'Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Selling minor for purposes on prostitution, etc.'

Section 373.

'Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose,

⁷¹ Arpeeta Shams Mizan, 'Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights' (2017) 6 International Journal of Legislative Drafting and Law Reform 3, p 15.

shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.’

There are age discrepancies throughout the Penal Code in provisions relevant to CSE, leading to inconsistencies with international legislation defining a child as under 18, such as the Convention on the Rights of the Child. For example, for persons under 10, kidnapping or abduction for the purpose of slavery or lust, brings death, life imprisonment, or imprisonment for at least 7 years (section 364A). Inducing girls under 18 to go from any place, or doing any act leading to forced or seduced illicit intercourse also leads to a punishment of imprisonment up to 10 years and a fine (section 366A). For girls under 21, import with the ‘intent that she may be, or knowing it to be likely that she will be forced or seduced to illicit intercourse’ (‘trafficking’) shall be punishable with imprisonment up to 10 years and a fine (section 366B). As the age of a child in the 2012 Act and the Children’s Act is under 18, it produces inconsistencies in penalties which, at times, do not meet the crime. The Penal Code of 1860 further requires substantial amendments to address gaps including in child prostitution, child pornography, trafficking in children and child sex tourism.⁷²

Whilst there is, at least, some protection in the Penal Code for those under 18, the situation for those over 18 is more ambiguous, and the importance of protecting over 18s from trafficking for the purpose of CSE is more or less side-lined. Section 366 provides for their protection as follows:

Section 366.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Thus, while those under 18 can be trafficked for the purpose of prostitution, over 18s cannot. They can only be trafficked for the purpose of ‘illicit intercourse’, which means ‘sexual intercourse between person not united by marriage or by any union or tie which, though not amounting to marriage, is recognized by the personal law or custom of the community to which they belong, or where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation’. Such terminology weakens protection,⁷³ and emanates a sense of disbelief as to the ability of a woman to be trafficked for prostitution.

In addition, some provisions refer only to girls, leaving boys lacking protection and at risk of prosecution under Bangladesh’s Sodomy Act.⁷⁴ This also contributes to creating an environment where solely women and girls are consistently viewed as the victims of CSE. The Suppression of Immoral Traffic Act 1933 continues the female focus, criticised for its effective denial of the existence of boys in CSE.⁷⁵ The laws concluded in 2000, on the oppression of women and children, follow the same vein.

The Penal Code evidences an underpinning philosophy focused on crime control as opposed to human rights.⁷⁶ While this is expected in the context of fundamental criminal legislation, it should be noted that best practice in criminal justice in relation to CSE (as well as more broadly) shifts away from traditional penal philosophy to adopt more victim-centred approaches.⁷⁷ Victim-centred and victim-friendly processes and approaches must therefore be embedded in criminal justice mechanisms in order to ensure prevention, identification, and support.

⁷² ECPAT, *Bangladesh* (ECPAT International, 2nd Edition, 2011), p 35.

⁷³ *Ibid*, p 35.

⁷⁴ *Ibid*, p 35.

⁷⁵ *Ibid*, p 35.

⁷⁶ UNODC and others, *Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka* (UNODC 2011), p 11.

⁷⁷ Katarina Schwarz et al, ‘What Works to Address Modern Slavery? A Review of Policy and Interventions in the Context of Justice’ (*United Nations University Center for Policy Research and Rights Lab* 2020), pp 35-37.

6.2.2. The Prevention and Suppression of Human Trafficking Act 2012

The 2012 Prevention and Suppression of Human Trafficking Act (PSHTA 2012) is ‘the most comprehensive legislation in Bangladesh’ encompassing ‘almost every form of human trafficking’.⁷⁸ The Act underwent multiple drafts and was re-drafted in 2001, 2009 and 2012. Critique points to the ‘foreign’ pressure to enact it and its resultant preparation in English as opposed to Bangla, leading to language difficulties with its later translation.⁷⁹ The Act acknowledges the crime of human trafficking and brings it forward as a separate issue to be legally dealt with. Here, it is criminalised to import or transfer for prostitution or any other form of sexual exploitation or oppression (Chapter II.11). The penalties in the 2012 Act have been determined by the US TIP report as ‘sufficiently stringent’ and commensurate with other serious crimes.⁸⁰ The United Nations Office on Drugs and Crime (UNODC) considers Bangladesh’s legislation on trafficking in persons to cover all forms of trafficking indicated in the Palermo Protocol.⁸¹

The PSHTA defines human trafficking as follows:

Section 3. Human Trafficking

- (1) “human trafficking” means the selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring either inside or outside of the territory of Bangladesh of any person for the purpose of sexual exploitation or oppression, labour exploitation or any other form of exploitation or oppression by means of—
 - a. Threat or use of force; or
 - b. Deception, or abuse of his or her socio-economic or environmental or other types of vulnerability; or
 - c. Giving or receiving money or benefit to procure the consent of a person having control over him or her.
 - (2) If the victim of trafficking is a child, it shall be immaterial whether any of the means of committing the offence mentioned in clause (a) to (c) of sub-section (1) is used or not.
-

“Exploitation” is defined in section 2(15) to include: exploitation through prostitution of sexual exploitation or oppression; taking benefits from a person engaged in prostitution and production or distribution of pornography; forced labour; debt bondage, slavery, servitude, practices similar to slavery, and household servitude; fraudulent marriage; forcibly engaging a person in the amusement trade or begging; and maiming a person for removing organs for trade.

Unlike in the Penal Code, prostitution is defined in this act as ‘the sexual exploitation or abuse of any person for commercial purpose or for consideration in money or kind’ (Chapter 1.2(8)). Prostitution or sexual exploitation or oppression is included as ‘exploitation’ (Chapter 1.2(15)). The definition of prostitution may cause some overlaps with voluntary sex work, an overlap which can carry through into activities such as raids. This is further exacerbated by the criminalisation of the keeping of a brothel or allowing a place to be used as a brothel (Chapter II.12). There is also a penalty for soliciting for the purpose of prostitution (Chapter II.13). This is despite the legality of prostitution itself in Bangladesh.

Importantly, the Act also contains provisions relevant to victim support, enabling penalties for those who threaten, intimidate or use force against victims of trafficking, witnesses, or family members, obstructing an investigation or trial under the Act (Chapter II.14). This should provide encouragement for victims to take cases to tribunals, especially as anti-human trafficking offence tribunals are established under the Act to try offences under it (Chapter IV). The provision of legal assistance to victims is an additional welcome provision (Chapter VI).

Chapter V is likewise a welcome addition to the Bangladeshi legal framework, dealing with the assistance, protection, and rehabilitation of victims of trafficking and witnesses. Including NGOs in the legislative provisions ensures the Act takes a bottom-up perspective to addressing CSE. It could also ensure more appropriate victim support and rehabilitation beyond government protective homes which have been

⁷⁸ Rowshan Farhana and Md. Easin, ‘SAARC Trafficking Convention and Human Trafficking Crisis in Bangladesh: A Critical Appraisal’ (2015) 20(12) *IOSR Journal of Humanities and Social Science* 67, p 70.

⁷⁹ Arpeeta Shams Mizan, ‘Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights’ (2017) 6 *International Journal of Legislative Drafting and Law Reform* 3, p 17.

⁸⁰ US Department of State, ‘Trafficking in Persons Report’ (2020), p 102.

⁸¹ UNODC, ‘Country Profiles: West and South Asia’ (United Nations 2018) https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_WEST_AND_SOUTH_ASIA.pdf last accessed 27 November 2020.

criticised for their prison-like environment.⁸² The Act is particularly important in its provision outlining the consent necessary on the part of victims and rehabilitation, protection and social integration (Chapter V.36). Victims are intended to be returned to their families, and if this is not possible are sent to ‘any government protective or non-government protective home or rehabilitation centre’ (Chapter V.36). A protective home is defined in Chapter I.2(1) as an ‘institution except a prison which is established for the reception, shelter and rehabilitation of the victims of human trafficking or of the persons rescued from human trafficking’.

There are special provisions for children, where any person, including the Tribunal dealing with a child victim, applies the principle of welfare and the best interest of the child and ‘follow the provisions of any other law for the time being in force...and take necessary measures to avoid the child victims to be convicted or the stigmatisation and social marginalisation of the child victim and the child witness’ (Chapter V.38(1)). This provision goes some way to avoiding the situation created by the Penal Code whereby boy victims are at increased risk of prosecution. Child victims are also not permitted to be ‘sent or detained in any development centre or in a remand home’ (Chapter V.38(2)). However, the meaning of development centre or remand home is not defined in the Act.

Despite the promising developments to the Bangladeshi legal frameworks created by the Act, gaps remain. The Act prohibits arresting victims of trafficking who are foreigners (Chapter V.33), sitting in conflict with the 1946 Foreigner’s Act, which was not amended to incorporate this provision.⁸³ Further confusion is added with the multitude of laws. This Act adheres to other laws with better standards, but otherwise overrides them (Chapter I.4).⁸⁴ This has been criticised for the resultant confusion for the judiciary and executive to decide which law could be better to override this Act, which was designed to bring together laws and reduce confusion.⁸⁵

6.2.3. The Children’s Act 2013

Section 4 of the Children’s Act 2013 defines a child as under 18, providing welcome clarity that contrasts to previous laws. This Children’s Act replaces a 1974 Act which listed a child as under 16, in contravention of the Convention on the Rights of the Child. There is a penalty for leading or encouraging a child to seduction, as follows:

Section 78. Penalty for leading or encouraging a child to seduction

If any person having the actual charge or supervision of a child leads the child to seduction, or induces the child to prostitution or encourages for doing so, or causes or encourages any person other than her husband to have sexual intercourse with her, the person shall be deemed to have committed an offence under this Act and shall, for such offence, be punished with imprisonment for a term up to 5 years or with fine up to Taka 1 lac or both.

On the basis of a complaint made by any person, if it appears to the court that any child with or beyond the knowledge of his parents or, in the absence of both of them, the caregiver or the authority in supervision or legal or lawful guardian or, as the case may be, members of the extended family is being led to seduction, or exposed to the risk of engaging in prostitution, then the court may direct the concerned parents, the caregiver or the authority in supervision or legal or lawful guardian or, as the case may be, members of the extended family to execute a bond for the purpose of taking due care and keeping supervision of such child.

There is also a general prohibition of child exploitation in prostitution in section 80 as follows:

Section 80. Penalty for exploitation of a child

(2) If any person entrusted with the custody or care of or with the duty of rearing, a child by the Children’s Court, or any other person secures a child ostensibly to employ as a servant or to employ in a factory or in other establishments in accordance with the provisions of the Labour Act, 2006, but in fact leads the child to seduction or exposes the child to the risk of engaging in prostitution or immoral activities, such acts shall be deemed to be an offence under this act and,

⁸² Ratna Kapur, ‘India’ in GAATW, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) 123.

⁸³ Arpeeta Shams Mizan, ‘Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights’ (2017) 6 *International Journal of Legislative Drafting and Law Reform* 3, 16.

⁸⁴ Arpeeta Shams Mizan, ‘Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights’ (2017) 6 *International Journal of Legislative Drafting and Law Reform* 3, 16.

⁸⁵ Arpeeta Shams Mizan, ‘Continuing the Colonial Legacy in the Legislative Drafting in Bangladesh: Impact on the Legal Consciousness and the Rule of Law and Human Rights’ (2017) 6 *International Journal of Legislative Drafting and Law Reform* 3, 16.

for such offence, the person involved shall be punished with imprisonment for a term which may extend to 5 years or with fine which may extend to 1 lac or with both.

(3) If any person avails himself of result of the labour of a child exploited or employed in the manner referred to in subsection (1) or (2), or uses such child for his immoral gratification, the person shall be liable to be an abettor of the relevant offence.

The Act provides a strong framework of protection, including care, reintegration, and rehabilitation of children. The penalties are less severe than the 2012 Trafficking Act, the exploitation of a child for the purpose of prostitution leading to imprisonment for up to five years, fine, or both. Leading, inducing or exposing a child to engaging in prostitution, as in the previous provisions, contrasts to the prohibition of human trafficking in the 2012 Act which provides for imprisonment not exceeding imprisonment for life but not less than five years and a fine (Chapter II.6). Leading, inducing or exposing a child to engaging in prostitution seems similar to the definition of human trafficking in the 2012 Act, including ‘recruiting or receiving...sending...of any person for the purpose of sexual exploitation’, as the means are not necessary for child trafficking victims (Chapter I.3). There are unclear boundaries here, and the discrepancy provides an ‘easier’ route for potential traffickers.

Additionally, the 2013 update is, as with several laws relevant to CSE in Bangladesh, again quite female-focused, such as the language of ‘her’ in section 78(1). There is a need to reform legislation to ensure boys have protection from sexual exploitation.⁸⁶ However, the legal definition of exploitation is deficient in meeting international standards, and there is no legal definition of child trafficking to conform to the Palermo Protocol, even in the 2012 Act.⁸⁷

The child is placed at the centre of the provisions on alternative care. The Act refers to the ‘best interest’ of the disadvantaged children ‘for whom special protection, care and development need to be ensured upon consideration of their familial, social, cultural, financial, ethnic, psychological and educational background’ (Chapter X.84). Parental reintegration is a priority (Chapter X.84(2)). This is consistent with the 2012 Trafficking Act’s emphasis on returning victims to their families (section 36, Trafficking Act). Where this is not possible, there is a provision for institutional care in government children homes, baby homes, training and rehabilitation centres for the destitute children, government shelter homes and ‘other institutions to be determined by the government’ (Section 85).

6.3. Bangladesh’s CSE law and policy in practice

6.3.1. Investigation and law enforcement

The process of investigation into CSE, and the operation of law enforcement, needs to be timely, sensitive and victim-centred. Bangladesh’s process of investigation has been criticised for its lack of rapidity, sensitivity and caring about victims and their needs.⁸⁸

There are several elements to investigation and law enforcement that can ensure victim protection. Training for law enforcement is a significant element of ensuring effective investigations into instances of CSE can be undertaken.⁸⁹ This helps to ensure victims are speedily identified and law enforcement are aware of the law, such as the provision outlining that foreign trafficking victims should not be prosecuted. This is especially pertinent because many officials do not understand human trafficking, confusing it with migrant smuggling, some officials even deny the existence of internal trafficking.⁹⁰

In theory, the Bangladeshi police should implement and enforce the law. Bangladesh has a high rating of 146/180 on the Corruption Perception Index.⁹¹ Corruption filters down into law enforcement, which is not adequately investigated.⁹²

⁸⁶ ECPAT, Bangladesh (ECPAT International, 2nd Edition, 2011), p 37.

⁸⁷ Aparajeyo Bangladesh and others, ‘Submission on Sexual Exploitation of Children in Bangladesh for the Universal Periodic Review of the human rights situation in Bangladesh’ (2 October 2017) 4

⁸⁸ Md Akond and Sharmin, ‘Combating Trafficking in Persons and Migrant Smuggling in Bangladesh: Conceptual Understanding and Lessons from International Community Based Approach’ (2017) 66 *Journal of Law, Policy and Globalisation* 38, p 44.

⁸⁹ Md Akond and Sharmin, ‘Combating Trafficking in Persons and Migrant Smuggling in Bangladesh: Conceptual Understanding and Lessons from International Community Based Approach’ (2017) 66 *Journal of Law, Policy and Globalisation* 38, p 45.

⁹⁰ US Department of State, ‘Trafficking in Persons Report’ (2020), p 94.

⁹¹ Transparency International, ‘Corruption Perceptions Index: Bangladesh’ www.transparency.org/en/countries/bangladesh#c last accessed 30 November 2020.

⁹² Rowshan Farhana and Md. Easin, ‘SAARC Trafficking Convention and Human Trafficking Crisis in Bangladesh: A Critical Appraisal’ (2015) 20(12) *IOSR Journal of Humanities and Social Science* 67, p 71.

According to the US State Department 2020 Trafficking in Persons report, law enforcement have decreased investigations in trafficking cases, continue to deny reports of official complicity in trafficking, and do not open investigations or attempt to identify child victims.⁹³ The TIP Report therefore recommends the Government invest effort in ensuring a significant increase in prosecutions and convictions for trafficking offenses.⁹⁴ There were some high profile trafficking cases around the time of the release of the report in June 2020,⁹⁵ showing that the government is making steps to counter trafficking.

The US State Department also observed a range of shortcomings in Bangladeshi official and law enforcement responses to trafficking in persons in the 2019-2020 reporting period, including:⁹⁶

- Police and prosecutors did not collaborate during the law enforcement period, which led to delays and the formation of weak cases for prosecution.
- Some observers noted it could take police up to eight years after receiving a complaint of trafficking to file the charge sheet necessary to refer the case for prosecution, and trafficking cases took on average 11 years from first report to adjudication.
- NGOs reported the substantial delay contributed to the dearth of successful investigations and prosecutions because most suspects remained out of jail and could bribe or threaten victims not to testify. The government established seven anti-trafficking tribunals stipulated in the PSHTA 2012 to exclusively hear human trafficking cases, including appointing seven judges. The women and children's tribunal continued to hear trafficking cases but had insufficient staff and resources to handle the caseloads, and prosecutors lacked expertise in trafficking cases.
- Official complicity in human trafficking, trafficking-related corruption and impunity for offenders were highlighted as ongoing concerns in Bangladesh. These concerns involved bribes charged by police, local politicians or judges. In addition, there were reports of local political convincing victims to accept payment from recruitment sub-agents and flawed investigations by police.
- A lack of implementation of the PSHTA 2012 compensation fund for victims was also noted, although all trafficking victims could file civil suits seeking compensation.
- Although law enforcement were reported to screen individuals for trafficking prior to arrest, the lack of standard operating procedures to identify trafficking victims among particularly vulnerable populations (including women in commercial sex) was noted to interfere with proper identification and support. In relation to CSE, this was noted to result in potential for sex trafficking victims in particular being penalised for unlawful acts their traffickers compelled them to commit. This included the arrest of some foreign women in brothel raids for violation of visas without being screened for trafficking.

Bangladeshi police implement the PSHTA 2012 and the National Plan of Action 2018-2022. There is a Human Trafficking Monitoring Cell in the headquarters. Of the 523 victims rescued, all were reintegrated with their families.

6.3.2. Legal proceedings

Like many countries, the divides between the number of victims of CSE estimated to be in the country, the number of victims identified and supported through official mechanisms, and the number of cases investigated, prosecuted, and convicted are severe. Between May 2014 and April 2015, the police had identified 2,646 victims of trafficking.⁹⁷ Between September 2016 and February 2018, Bangladeshi police recorded over 1,000 human trafficking cases, arrested 2,100 people, and identified 1,100 victims.⁹⁸ In the same period (2016-2018), only one conviction was secured from these cases.⁹⁹ While criminal justice proceedings in CSE and trafficking cases are often lengthy processes, the extremely low number of convictions secured over time indicate serious shortcomings in law enforcement and prosecution. This picture did not substantially improve in the following year. From 2019-2020, Government investigated 403 cases under the 2012 Act, including 29 investigations from previous years, prosecuted 312 suspects (256

⁹³ US Department of State, 'Trafficking in Persons Report' (2020), p 93.

⁹⁴ Ibid, p 93.

⁹⁵ See Arifur Rahman Rabbi, 'RAB: 2 of the Bangladeshi Victims in Libya Attack sent by Kamal' *Dhaka Tribune* (1st June 2020) <www.dhakatribune.com/bangladesh/2020/06/01/rab-detains-2-over-trafficking-of-bangladeshis-killed-in-libya>

⁹⁶ Ibid, pp 94-95.

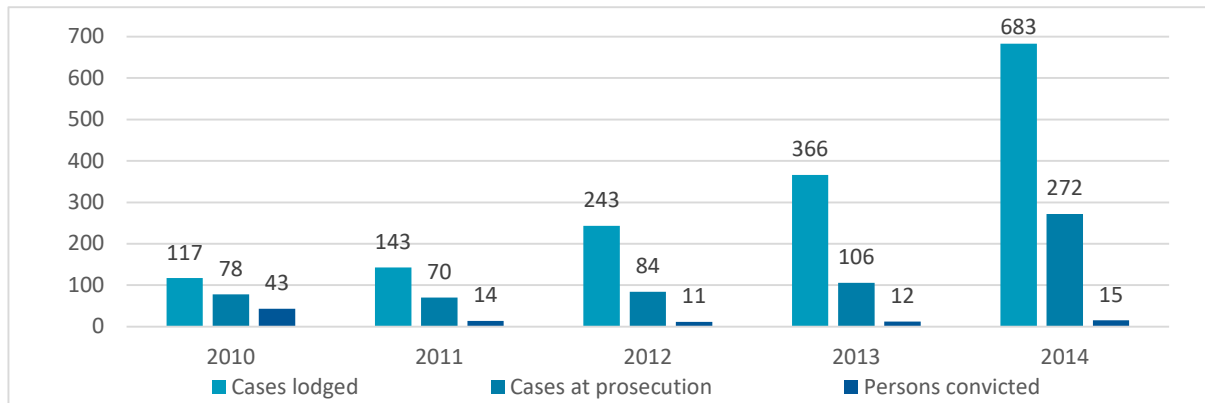
⁹⁷ UNODC, 'Country Profiles: South Asia' (United Nations 2016) https://www.unodc.org/documents/data-and-analysis/glotip/Glotip16_Country_profile_South_Asia.pdf last accessed 27 November 2020.

⁹⁸ UNODC, 'Country Profiles: West and South Asia' (United Nations 2018) https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_WEST_AND_SOUTH_ASIA.pdf last accessed 27 November 2020.

⁹⁹ Ibid.

for sex trafficking). A total of 4,407 trafficking cases remained pending investigation or prosecution as of December 2019.¹⁰⁰

Figure 7. Human trafficking cases in Bangladesh (2010-2014)



Although public data is limited, data reported to UNODC indicates that between 2010 and 2014, the ratio of cases lodged to convictions secured has grown more severe, with steadily increasing numbers of cases lodged, but convictions remaining relatively static.¹⁰¹ Where there are prosecutions – ‘the Bangladeshi judicial system is plagued by a large backlog and delays caused by procedural loopholes.’ While the penalty for trafficking is severe, judges have evidenced reluctance to impose such harsh punishments on perpetrators, which contributed to low conviction rates.¹⁰² The government has acknowledged that investigations, prosecutions, and convictions for trafficking remain inadequate when considered against the scale of the problem, and have reported that the conviction rate for suspected traffickers arrested under the PSHTA 2012 was 1.7%.¹⁰³ There is also ‘evidence of official complicity in human trafficking’.¹⁰⁴

The third goal of the Bangladesh Counter Trafficking in Persons (BCTIP) programme (a programme funded by the US Agency for International Development and implemented by Winrock International) focuses on effective prosecution of trafficking cases. The programme aimed to enhance the capacity of criminal justice actors to investigate TIP cases, prosecute traffickers, and assist victims.¹⁰⁵ In relation to prosecution, the need for a framework for victim-witness protection, as well as linking of legal aid support at governmental and non-governmental organisations, have been highlighted as critical to ensuring the aims of this programme.¹⁰⁶ Although the PSHTA 2012 entitles victims to protection during judicial proceedings, including police security and allowing testimony by video conference, insufficient implementation of this provision has resulted in the vast majority of trafficking victims not participating in criminal justice processes.¹⁰⁷

6.3.3. Care for survivors

Although frameworks for the support of victims of CSE exist within the Bangladeshi system, reliance on international and non-governmental organisations to provide care and support (and funding for such) continue to present barriers to a cohesive system. Insufficient provision across the board, lack of access to protective services for foreign national victims, and inconsistent implementation of victim identification procedures and referring of victims to care present challenges for victim care and support.¹⁰⁸ Activities of Bangladeshi Counter Trafficking Committees are oriented around awareness raising and prevention, with little mention of, or attention for, reintegration of survivors.¹⁰⁹

The second goal of the BCTIP in accordance with the NPA 2018-2022, is to protect the victims/survivors of human trafficking. The programme’s Protection partners supported 328 trafficking victims, 313 who were victims of cross-border trafficking and 15 of which were internal trafficking victims.¹¹⁰ Victims had access to

¹⁰⁰ US Department of State, above n 128, p 94.

¹⁰¹ UNODC (2016), above n 120.

¹⁰² Note: discussion prior to passage of new trafficking law. ECPAT, *Bangladesh* (ECPAT International, 2nd Edition, 2011), p 37.

¹⁰³ US Department of State, above n 128, p 94.

¹⁰⁴ *Ibid*, p 38.

¹⁰⁵ Government of the People’s Republic of Bangladesh, ‘Bangladesh Country Report, 2016: Combating Human Trafficking’ (2016), pp 54-55.

¹⁰⁶ *Ibid*, pp 56-57.

¹⁰⁷ US Department of State, above n 128, p 95.

¹⁰⁸ US Department of State, above n 128, p 93.

¹⁰⁹ Government of the People’s Republic of Bangladesh, ‘Bangladesh Country Report, 2016: Combating Human Trafficking’ (2016), p 11.

¹¹⁰ *Ibid*, pp 52-53.

shelter homes, counselling and life skills and livelihood support. Fifty-five survivors received legal support for cases filed under the PSHTA 2012.¹¹¹ Further programmes in place include the Multi-Sectoral Programme on Violence Against Women, supporting: One Stop Crisis Centres providing health care, police assistance, legal assistance and shelter services; a National Helpline Centre for violence against women; a National Trauma Counselling Centre, and a Rehabilitation Programme providing services including sewing, business, computer training and beauty training.¹¹²

Activities of inter-governmental organisations provide avenues for protection and support for CSE victims in Bangladesh. The IOM have projects directed at those who have escaped trafficking, including the Ashshash programme, which had the objective of reintegrating 60 men and women trafficking victims. It provided them with psychosocial counselling, skills training and entrepreneurial engagement in small scale businesses. At the end of the project, 35 businesses were established. Those wanting to pursue legal actions were provided with legal support.¹¹³ This programme is now being implemented by Winrock International, funded by the Swiss Agency for Development and Cooperation, from 2018-2022 with the aim of supporting 5,000 trafficking survivors by its end.¹¹⁴ In March 2020, the IOM signed an agreement with the Korea International Cooperation Agency for a five-year project on capacity-building and awareness-raising to combat human trafficking in Bangladesh.¹¹⁵ It aims to build the capacity of the national criminal justice system to prosecute traffickers, support reintegration and sensitise those to the risks of trafficking.

The UNODC has likewise provided support for protection shelter home services for adult trafficking victims. Here, there are individual plans of action and legal aid, prosecution and follow up of cases is one of the important aspects of the project where survivors are provided with legal aid.¹¹⁶ Critical to the UNODC's operation in Bangladesh is the Global Action Against Trafficking in Persons and the Smuggling of Migrants (GLO.ACT Bangladesh) project running from 2018-2022. This addresses trafficking and smuggling through five pillars: strategy and policy development; legislative assistance; capacity building; regional and trans-regional cooperation, and protection and assistance to victims of trafficking and smuggled migrants.¹¹⁷ However, the significant role of these intergovernmental organisations in providing institutional support demonstrates institutional and structural shortcomings in the national and local systems—systems that must be bolstered in order to ensure effective, ongoing, and consistent support for survivors.

Effective and consistent care would also be supported by the development, adoption, dissemination, and implementation of national guidelines and standards of care. Guidelines on minimum standards in care would facilitate those involved in giving care and follow national and international laws and fill a gap in Bangladesh where there are no standardised guidelines on institutional care, including legal services.¹¹⁸ The US State Department emphasised the need for such guidelines for provision of adequate care and standard operating procedures for the referral of victims of human trafficking to services.¹¹⁹ The Bangladesh National Woman Lawyers' Association (BNWLA) has created the guidelines on the basis that a survivor deserves minimum and basic advantages for his/her survival that is called minimum standard of care even when living in an interim shelter.¹²⁰ The suggested guidelines look at institutional care, including: management and administration (e.g., bedding and sanitary materials); care and development services, including legal services, life skills education, and food and nutrition; and supervision and monitoring.¹²¹ Action plans for safe houses, free hot line services and free health and legal aid to survivors are also important areas for further consideration and development.¹²² It is recommended that victim-witness

¹¹¹ Ibid, p 55.

¹¹² Government of the People's Republic of Bangladesh, 'Bangladesh Country Report, 2016: Combating Human Trafficking' (2016), pp 40-41.

¹¹³ Ibid.

¹¹⁴ Winrock, 'Bangladesh Ashshash Project' (2019) <https://winrock.org/wp-content/uploads/2019/03/SDC-Ashshash-2-Pager-Final.pdf> last accessed 01 February 2021.

¹¹⁵ See IOM, 'IOM and KOICA Sign Agreement to Combat Human Trafficking in Bangladesh' (19 March 2020) <https://bangladesh.iom.int/news/iom-and-koica-sign-agreement-combat-human-trafficking-bangladesh> last accessed 01 February 2021.

¹¹⁶ Government of the People's Republic of Bangladesh, 'Bangladesh Country Report, 2016: Combating Human Trafficking' (2016), p 46.

¹¹⁷ UNODC, 'GLO.ACT Objectives' www.unodc.org/unodc/en/human-trafficking/glo-act2/objectives.html last accessed 01 February 2021.

¹¹⁸ BNWLA, 'Institutional Practice: Guideline on Minimum Standard Care for the Survivors' in Save the Children, 'Breaking the Vicious Cycle: Protecting Children from Sexual Abuse, Exploitation and Trafficking' (Save the Children 2019), p 23.

¹¹⁹ US Department of State, above n 128, p 94.

¹²⁰ BNWLA, above n 169, p 24.

¹²¹ Ibid, p 110.

¹²² Md Akond and Sharmin, 'Combating Trafficking in Persons and Migrant Smuggling in Bangladesh: Conceptual Understanding and Lessons from International Community Based Approach' (2017) 66 *Journal of Law, Policy and Globalisation* 38, p 45.

protection needs to be made operational, there must be a national guideline for psycho-social counselling and inclusion of trafficking victims in safety-net programmes of the government.¹²³

Some provision of support and protection is afforded through government mechanisms. With partial funding from a foreign government, the Ministry of Social Welfare operates some longer-term shelters for women and child victims of violence, including trafficking victims, which could provide similar care. However, these shelters require a court order referral, and victims are not permitted to leave without a family member's consent. In 2019, the Government referred only 74 victims to government or NGO shelters and 84 to NGOs for other services.¹²⁴ The government also required NGOs and international organisations obtain a court order to contact victims in government shelters to provide further rehabilitation services.¹²⁵ Allowing NGOs to provide services to trafficking victims in government shelters without a court order is therefore a critically necessary measure required to ensure appropriate care and protection for CSE survivors.

The lack of support for male victims within this government scheme is notable—a gap in support evidenced in several countries around the world, which both arises from, and contributes to, gender stereotypes about CSE offending that marginalise adult male victims. Further provision is therefore needed to ensure appropriate care and support for male survivors, to ensure both that they have access to care and that they are identified and protected by the authorities, rather than overlooked. Foreign nationals also experience a significant failure in support, precluded from accessing government services and instead being reliant on NGOs.¹²⁶

NGOs often provide responsive, careful, and appropriate support for survivors. For instance, Bangladesh Legal Aid and Services Trust provides legal assistance to ensure the rights of trafficked victims, migrant workers and their family by providing legal aid, psychosocial counselling, shelter support, rescue/release, repatriation as well as conducting research on safe migration and trafficking.¹²⁷ However, reliance on NGOs for service provision without consistent and ongoing government funding creates inconsistency in support depending on the location of the victim in question. This can result in the quality of support being determined by a survivor's proximity to an appropriate NGO with capacity at the time that the individual is seeking support. Lack of consistent and sufficient resourcing and funding for NGO activities further exacerbates risk that survivors will not be able to access the support they need to facilitate recovery and reintegration.

Abuses have also been reported within shelter provision,¹²⁸ indicating a need for greater monitoring and oversight of safeguarding procedures and implementation, as well as conditions. Authorities were also reported to have forced some victims who could not obtain family consent to remain in the shelters for as long as 10 years; with some victims referring to these homes as 'jails'.¹²⁹ Significant reform is therefore needed to the governing frameworks for shelter provision to ensure that victims are not detained against their will, potentially suffering additional harm and re-traumatisation in shelters intended to protect and support them.

The 2018-2022 National Plan of Action (NPA), included provision for enhancing victim care and operating the anti-trafficking tribunals. However, implementation of the NPA 2018-2022 has been severely limited.¹³⁰ In order to ensure the protection of survivors, and facilitate recovery and reintegration, it is critical that support provision be systematised in relevant governance frameworks, and that these be implemented in practice. However, in the absence of implementation of existing frameworks intended to protect victims, such as the NPA 2018-2022, it is likely that support will continue to be inconsistent and insufficient.

¹²³ Government of the People's Republic of Bangladesh, above n 167, pp 56-57.

¹²⁴ US Department of State, above n 128, p 95.

¹²⁵ US Department of State, above n 128, p 95.

¹²⁶ Ibid, p 95.

¹²⁷ Government of the People's Republic of Bangladesh, above n 174, p 63.

¹²⁸ Ibid, p 95.

¹²⁹ Ibid, p 95.

¹³⁰ US Department of State, above n 128, p 94.

7. CSE law and policy in India

7.1. Criminal prohibition of modern slavery practices

India has enacted criminal prohibitions against several of the practices that make up modern slavery, including human trafficking, forced labour, bonded labour, kidnapping or abducting women into forced marriage, and slavery itself.¹³¹ This places India in the 51% of UN Member States that have criminalised slavery, the 42% that have criminalised forced labour, and the 96% of States that have criminalised trafficking.¹³² It also places India in the group of 93% of States that have failed to criminalise servitude as a distinct offence, and 88% that have not criminalised each of the four institutions and practices similar to slavery, although these practices may form elements of the offence of trafficking.¹³³

7.2. Legislative frameworks governing CSE in India

Commercial sexual exploitation is addressed through a range of national-level legislative provisions in India, supplemented by State-level legislation. Key documents are considered below, and further outlined in [Annex IV. India legal frameworks](#).

- The Constitution of India 1949
 - [Article 14 states that there is equality before](#) the law, Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth.
 - Article 21 states that ‘no person shall be deprived of his life or personal liberty except according to procedure established by law.’
 - Article 23 prohibits traffic in human beings and all forms of forced labour.
 - Article 42 states that ‘[t]he state shall make provision for securing just and humane conditions of work and for maternity relief’.
 - Article 43 provides that the state ‘shall endeavour to secure, by suitable legislation or economic organisation in any other way, to all workers...work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities...’
- Penal Code 1860 (amended by the Criminal Law (Amendment) Act 2013) prohibits a range of offences related to CSE, including:
 - Kidnapping or abducting a woman into compelled marriage or forced or seduced into illicit intercourse (section 366);
 - Importing any girl (under 21) to be forced or seduced into illicit intercourse (section 366B);
 - Trafficking in persons, including for the purpose of sexual exploitation (section 370);
 - Trafficking of children for sexual exploitation (section 370A);
 - Selling minors for the purpose of prostitution, illicit intercourse, or any unlawful and immoral purpose (section 372); and
 - Buying minors for the purposes of prostitution or illicit intercourse (section 373).
- The [Immoral Traffic \(Prevention\) Act 1956](#) (ITPA) is targeted specifically towards trafficking for the purposes of sexual exploitation. The Act prohibits procuring, inducing, or taking a person into prostitution, or causing or inducing a person to carry on prostitution (article 5), as well as detaining persons in premises where prostitution is carried on (article 6). The Act also creates provision for rescued children to be placed in institutions and protective homes, which may include care and treatment (section 17).

¹³¹ Katarina Schwarz and Jean Allain, ‘India’ (*Antislavery in Domestic Legislation*, 2020) <https://antislaverylaw.ac.uk/country/india/> last accessed 14 November 2020.

¹³² Katarina Schwarz and Jean Allain, ‘Antislavery in Domestic Legislation: An Empirical Analysis of National Prohibition Globally’ (*The Rights Lab and Castan Centre for Human Rights Law*, February 2020) <https://antislaverylaw.ac.uk/resources/summary-of-findings/> last accessed 14 November 2020, p 11.

¹³³ *Ibid.* The institutions and practices similar to slavery are set out in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

- The [Protection of Children from Sexual Offences Act 2012](#) aims to protect children (under 18) from sexual assault, sexual harassment, and pornography. The Act does not speak specifically to commercial exploitation, except in criminalising storing or possessing pornographic material involving a child for commercial purpose (section 15(3)). Where commercial sexual exploitation involving children occurs, however, this would fall within the ambit of the offences established in the Act. The Act also makes provision for Special Courts to try offences under the act (section 28).
- The [Juvenile Justice \(Care and Protection of Children\) Act 2015](#) likewise addresses care and protection of children and young people (under 18) in India. The Act includes provision for procedures and decisions relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection (section 1), including children who have been, or are likely to be, abused, tortured, or exploited for the purpose of sexual abuse or illegal acts (section 2(14)(viii)). While the Act prefers family-based care where (sections 39-40), the legislation is driven by the best interests of the child principle enshrined in the Convention on the Rights of the Child. Services to be provided for the rehabilitation and reintegration of children include education, food, and shelter (section 53). The Act also establishes offences in relation to assaulting, abandoning, abusing, exposing, or wilfully neglecting children (section 75), keeping children in bondage for the purpose of employment (section 79), and selling and buying children (section 81).
- The [Scheduled Castes and the Scheduled Tribes \(Prevention of Atrocities\) Act 1989 \(as amended in 2016\)](#) establishes specific offences and protections in relation to particularly vulnerable populations in the Indian context—scheduled castes and tribes. Offences established in the Act deal specifically with acts committed by persons who are not members of a Scheduled Caste or Scheduled Tribe against persons who are, and include forced and bonded labour (section 3(1)(h)), touching a woman in a sexual manner without her consent (section 3(1)(w)(i)), using words, acts, or gestures of a sexual nature towards a woman (section 3(1)(w)(ii)), and creates specific provision for aggravated sentencing of specific offences under the Indian Penal Code when committed against a member of a scheduled caste or scheduled tribe by someone who is not a member (section 1(2)).
- The [Bonded Labour System \(Abolition\) Act 1976](#) abolishes the bonded labour system in India, frees all bonded labourers and declares all bonded debt unlawful and therefore void. Offences related to enforcement of bonded labour (section 16), advancement of bonded debt (section 17), and extraction of bonded labour (section 18) are established under the Act, as well as for failure to restore property to bonded labourers (section 19), which is required under section 7. While the Bonded Labour System (Abolition) Act does not speak to sexual exploitation directly, it should be noted that the definition of bonded labour does not preclude the possibility of sexual exploitation as the ‘labour’ extracted as a result of bonded debt. The [Central Sector Scheme for Rehabilitation of Bonded Labourer 2016](#) explicitly highlights sexual exploitation as a potential form of bonded labour, and an aggravated form which warrants increased compensation.
- The [Prohibition of Child Marriage Act 2006](#) prohibits child marriage where a male is under 21 or a female under 18. Male adults (over 18) contracting a child marriage (section 9), and anyone performing, conducting, directing, or abetting a child marriage (section 10) are liable to imprisonment and/or a fine (up to two years and/or 100,000 rupees). The Act also declares marriages null and void where a minor is sold for the purpose of marriage, and made to go through a form of marriage, or if the minor is married, after which they are sold or trafficked or used for immoral purposes (section 12).
- The Prevention of Money Laundering Act 2002 prevents money-laundering and provides for the confiscation of property involved in money-laundering. Those who directly or indirectly attempt to indulge or assist or knowingly is a party or involved in any ‘activity or process connected to the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering’ (Article 4).
- Information Technology Act 2020¹³⁴: Sections 67, 67A and 67B of the IT Act prescribe punishment for publishing or transmitting, in electronic form: (i) obscene material; (ii) material containing sexually explicit act, etc.; and (iii) material depicting children in sexually explicit act, etc. respectively which may become relevant for offences related to cyber trafficking. The punishment prescribed for an offence under section 67 of the IT Act is, on the first conviction, imprisonment of either description for a term which may extend to 3 (three) years, to be accompanied by a fine which may extend to

¹³⁴ https://www.argus-p.com/papers-publications/thought-paper/cyber-crimes-in-the-ipc-and-it-act-an-uneasy-co-existence/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

Rs. 5,00,000 (Rupees five lac), and in the event of a second or subsequent conviction, imprisonment of either description for a term which may extend to 5 (five) years, to be accompanied by a fine which may extend to Rs. 10,00,000 (Rupees ten lac). The punishment prescribed for offences under sections 67A and 67B of the IT Act is on first conviction, imprisonment of either description for a term which may extend to 5 (five) years, to be accompanied by a fine which may extend to Rs. 10,00,000 (Rupees ten lac) and in the event of second or subsequent conviction, imprisonment of either description for a term which may extend to 7 (seven) years and also with fine which may extend to Rs. 10,00,000 (Rupees ten lac).

- The provisions of sections 292 and 294 of the IPC would also be applicable for offences of the nature described under sections 67, 67A and 67B of the IT Act. Section 292 of the IPC provides that any person who, inter alia, sells, distributes, publicly exhibits or in any manner puts into circulation or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever shall be punishable on a first conviction with imprisonment of either description for a term which may extend to 2 (two) years, and with fine which may extend to Rs. 2,000 (Rupees two thousand) and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to 5 (five) years, to be accompanied by a fine which may extend to Rs. 5,000 (Rupees five thousand).
- Section 294 of the IPC provides that any person who, to the annoyance of others, does any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to 3 (three) months, or with fine, or with both.
- India's legislative frameworks governing CSE and establishing mechanisms for criminalisation, law enforcement, protection and support appear to be relatively robust. A variety of different offences are established to deal with the specific and varied manifestations of sexual exploitation, including against particularly vulnerable groups in Indian society. This multiplicity of provisions spread across different laws and frameworks evidences both strengths and shortcomings in ensuring appropriate responses to CSE. Each of the different legal frameworks operates independently, with their own enforcement machinery, and prescribing different penalties for offences.¹³⁵ This provides a number of different options for responding to a case, at best enabling survivors to navigate a legal route best-suited to their individual and contextualised needs and circumstances. Overlapping legal provisions can be a benefit to survivors, empowering them, and those representing them, to pursue appropriate redress and access alternative support frameworks where one system falls short. However, these overlaps can also create gaps in coverage, drive inconsistent responses, result in misunderstandings of appropriate legal provision in a case, and prevent survivors from accessing their entitlements.

Responses to the Indian legislative framework have called for the harmonisation and integration of existing laws addressing human trafficking and modern slavery through a single piece of legislation.¹³⁶

More critically, extensive shortcomings in implementation and enforcement have been noted in relation to these various frameworks, resulting in serious failings in protection, support, reintegration, and repatriation (considered further below).

7.2.1. The Immoral Traffic (Prevention) Act 1956

Prior to 2013, there was no comprehensive definition of trafficking in Indian law—the [Immoral Traffic \(Prevention\) Act 1956](#) (ITPA) purported to address sex trafficking, but did not address labour trafficking.¹³⁷

5. Procuring, inducing, or taking person for the sake of prostitution.

(1) Any person who—

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

¹³⁵ PRS Legislative Research, 'The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018' (*PRS Legislative Research*) <https://www.prsindia.org/billtrack/trafficking-persons-prevention-protection-and-rehabilitation-bill-2018> last accessed 29 November 2020.

¹³⁶ Dipa Dube, Ankita Chakraborty and John Winterdyk, 'The Anti-Trafficking Bill, 2018: Does it Fulfil India's Commitment to the International Community?' (2018) *Journal of Human Trafficking* 1, p 5.

¹³⁷ Meha Dixit, 'Cross-Border Trafficking of Bangladeshi Girls' (2017) *Economic and Political Weekly*, p 3.

(b) induces a [person] to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

This provision deals with acts associated with commercial sexual activity whether or not they involve coercive means. The Act therefore criminalises engagement in commercial sexual activity broadly (reflected also in sections 3, 4, and 6-10) rather than focusing specifically on forced or coerced sexual exploitation (as is the case for trafficking for the purpose of sexual exploitation under the Palermo Protocol). The definition of ‘prostitution’ contained in the Act encompasses all sexual exploitation for commercial purposes, preventing a restrictive interpretation of ‘prostitution’ that would preclude some instances of CSE from the coverage of the Act.

The provisions of the ITPA have the potential to result in criminalisation, punishment, or detention of those subjected to CSE. A statutory defence protecting against offences committed by a victim of trafficking as a result of their trafficking experience is not established in the Act. Section 7 establishes an offence of ‘prostitution in or in the vicinity of public places’, penalising both persons who ‘carry on prostitution and the person with whom such prostitution is carried on’. Article 8 also penalises those engaged in commercial sexual activity on both sides of the transaction, criminalising ‘seducing or soliciting for the purpose of prostitution’. Often it could be the victims of CSE who are also booked for acts like soliciting. Therefore, these provisions make those subjected to CSE vulnerable to criminalisation and prosecution, making it difficult for them to take advantage of the Act and preventing self-reporting to authorities.^{138, 139}

While the provisions of the ITPA make potential victims of CSE vulnerable to criminalisation, the provisions on brothel keepers, procurers, and pimps have been ‘rarely enforced’,¹⁴⁰ resulting in impunity for these actors. Given the continued use of the ITPA in pursuing trafficking and CSE cases (see further [section 7.3.2](#) below), this is a significant issue in anti-CSE governance. The relatively limited ‘soft’ penalties attached to offences under the ITPA have also attracted criticism for failing to ‘end impunity and reduce the risk of engaging in sex trafficking’.¹⁴¹ Law enforcement efforts have likewise been problematic, with a lack of specialised and victim-centric training for police resulting in a lack of sensitivity and brothel raids that do not adequately protect potential victims.¹⁴² The framing of the legislation—contributing to the criminalisation of potential victims of CSE and the stigmatisation of women engaged in commercial sexual activity—influences this approach to enforcement that fails to adequately protect victims and survivors. The Indian Penal Code (as amended in 2013)

India’s Criminal Law (Amendment) Act of 2013 amended Section 370 of the Indian Penal Code and enlarged the definition of human trafficking. Justice Verma Committee was set up after the aftermath of the tragic Delhi gang-rape incident. There came Criminal Amendment Act, 2013, major changes were made in relation to trafficking made to section 370 of IPC and the newly added section 370 A. Section 370 of IPC has been totally reframed by the amendment Act. The concept of human trafficking has been added in the newly amended Act. Amendment of 2013. - Vide the Criminal Law (Amendment) Act 2013 (Act 13 of 2013), the entire section has been changed so as to enlarge the scope of the offence and include within its purview not just the mischief of slavery, but trafficking in general - of minors as also adults, and also forced or bonded labour, prostitution, organ transplantation and to some extent child-marriages¹⁴³.

¹³⁸ Ratna Kapur, ‘India’ in GAATW, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007), p 122.

¹³⁹ Dipa Dube, Ankita Chakraborty and John Winterdyk, above n 186, p 5.

¹⁴⁰ Murlil Desai, ‘Challenges of Commercial Sexual Exploitation of Children in India Need for Legislative Reforms in Partnership with the Social-Work Profession’ (2008) 18(1) *Asia Pacific Journal of Social Work and Development* 63, p 69.

¹⁴¹ Maharashtra State Commission for the Protection of Child Rights and the International Justice Mission, *Commercial Sexual Exploitation of Children in Mumbai* (IJM, 2017), p 29.

¹⁴² Ratna Kapur, above n 188, p 123.

¹⁴³ Legalserviceindia.com

The UNODC considers the new provisions of the Penal Code criminalising trafficking in persons to be in accordance with the definition established in the Palermo Protocol.¹⁴⁴ The definition of trafficking established in the new section 370 reads:

370. Trafficking of person.

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

First.—using threats, or

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

Thirdly.—by abduction, or

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

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

commits the offence of trafficking.

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

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

A minimum penalty of seven years' 'rigorous imprisonment' is specified under section 370(2), with a maximum penalty of ten years, and the possibility of a fine in addition to incarceration. Penalties for trafficking in multiple victims are harsher—with a minimum of ten years and maximum of life imprisonment—with the same aggravated penalties applying to cases involving the trafficking of a minor. Trafficking of multiple minors increases the minimum penalty further, to fourteen years' imprisonment, and multiple convictions for trafficking in minors, as well as offences committed by public servants or police officers, attract a mandatory life sentence (lasting the duration of the perpetrator's natural life).

Section 370 explicitly recognises that the consent of the victim is irrelevant to a determination of trafficking, in line with article 3(b) of the Palermo Protocol. However, the terms of this recognition vary slightly. Where the Palermo Protocol specifies that it is consent to the intended exploitation that is irrelevant, the Indian provision considers the consent of the victim broadly irrelevant.

The new provisions of the Indian Penal Code also criminalised exploitation of a trafficked person, specifically addressing sexual exploitation rather than all forms of exploitation addressed in the trafficking provision. Section 370A has the effect of criminalising persons who knowingly engage victims of trafficking for sexual exploitation, dealing typically with those who purchase commercial sex services from victims of trafficking. The intent standard—knowing or having reason to believe that the person has been trafficked—sets a clear threshold for the *mens rea* requirement of the offence, which prevents those engaging victims from claiming ignorance in the face of evidence presented to them. However, this does not go so far as to permit constructive knowledge or impose liability in instances of neglect or reckless disregard. The penalties for sexual exploitation of trafficked persons also have mandatory minimum sentences of imprisonment—three years in cases of adult victims, and five years in cases of minor victims, with maximum sentences of five and seven years respectively.

Those engaged in transnational trafficking in persons might also be prosecuted under section 366B of the Penal Code, which addresses importation of females under the age of 21 (from another country, or the State of Jammu and Kashmir) with the intent that they will be 'forced or seduced to illicit intercourse'. A minimum period of imprisonment is not articulated in this provision, although the maximum penalty of ten years'

¹⁴⁴ UNODC, 'Country Profiles: West and South Asia' (United Nations 2018) https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_WEST_AND_SOUTH_ASIA.pdf last accessed 27 November 2020.

imprisonment is established. However, evidence indicates that this provision is rarely utilised in practice, and that there is a lack of police awareness of its application in trafficking cases.¹⁴⁵

Buying and selling minors for the purposes of prostitution are also criminalised under the Penal Code, with sections 372 and 373 creating offences of selling and buying respectively. Minors in these provisions are defined as all persons under the age of 18. The language of ‘immoral purpose’ also features in these provisions, which encompass prostitution, illicit intercourse, and other ‘unlawful and immoral purpose’. ‘Illicit intercourse’ is defined as:

sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

These provisions address the specific (commercial) acts of selling, letting, hiring out, buying, and hiring persons, but also the more general acts of ‘otherwise disposing of’ and ‘otherwise obtaining possession of’. The scope of these provisions therefore extends beyond CSE, but protections extend only to minors. This avoids the risk of marginalising and stigmatising consensual (commercial) sexual activities of adults (although these may still be covered by the ITPA), but also creates overlaps between the Penal Code and the ITPA that may give rise to uncertainty and confusion in practice.

7.2.2. The Protection of Children from Sexual Offences Act 2012 and the Juvenile Justice (Care and Protection of Children) Act 2015

The [Protection of Children from Sexual Offences Act 2012](#) (PCSOA) and [Juvenile Justice \(Care and Protection of Children\) Act 2015](#) (JJA) create specific offences and protections in relation to children. The PCSOA has been praised for offering a ‘clear definition’ of offences and grading of punishment according to the gravity of the offence, alongside child-friendly justice procedures.¹⁴⁶ The JJA is conceived as a ‘comprehensive legal cushion’ for children coming into contact with the criminal justice system, although ‘gaping holes’ in enforcement have been noted.¹⁴⁷

The PCSOA aims to protect children from sexual offences—namely sexual assault, sexual harassment, and pornography, labelling such offences ‘heinous crimes’. The Act does not specifically address CSE, although CSE committed against minors would generally fall within the ambit of the various offences covered in the Act. The commercial activities associated with CSE by perpetrators who do not engage in sexual activity with the minor themselves are captured by sections 16 and 17—which create liability for abetting offences under the Act—and section 18 which penalises attempts to cause an offence to be committed. Section 16 encompasses instigating offending, engaging in a conspiracy for the commission of an offence, and intentionally aiding (by act or omission) the commission of an offence. While the provisions may capture the variety of actors engaged in situations of CSE, it should be noted that the provisions are not specifically targeted towards such situations. In the absence of specific provisions outlining relevant commercial conduct that should be the focus of law enforcement and prosecutorial efforts, it is vital that other support—through training, guidelines, and institutional prioritisation—be ensured in order to adequately address CSE.

The PCSOA includes provision for the creation of Special Courts (section 28) and appointment of Special Public Prosecutors (section 32) to try offences under the Act. These special actors are expected to undertake child-friendly procedures in the Special Court, including:

- Permitting frequent breaks for the child during the trial;
- Creating a ‘child-friendly atmosphere’ by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court;
- Ensuring the child is not called to repeatedly testify;
- Preventing aggressive questioning or character assassination of the child;
- Ensuring the ‘dignity of the child’ is maintained at all times during trial;
- Ensuring that the identity of the child is not disclosed; and

¹⁴⁵ Meha Dixit, above n 187, p 5.

¹⁴⁶ ECPAT, ‘The Commercial Sexual Exploitation of Children in South Asia’ (*ECPAT International*, 2014), p 51.

¹⁴⁷ A Shreyansh and D Jain, ‘Cross-Border Sex Trafficking Between India and Bangladesh: The Largest Illegal Industry in India’ (2013) *Asian Journal of Legal Studies* 24, p 26.

- Ensuring that the child is not exposed in any way to the accused during trial.

The Court is also empowered to order compensation to be paid to the victim by the perpetrator for the trauma caused to them or for their rehabilitation (section 33(8)) and children are entitled to legal counsel of their choice, with legal aid if their parents cannot afford representation (section 40). However, the structure of these processes is not mandated in the legislation, and wrap-around care and support are not provided within the structure of the Act.

The JJA establishes the legal framework for minors (under 18) who come into conflict with the law, establishes certain offences in relation to children, and makes provision for children ‘in need of care and protection’. Thus, the Act deals broadly with two groups of children: children in conflict with the law, and children in need of care. Child Welfare Committees (CWCs) in each district in India are responsible for determining if placement of a child in a children’s home is necessary, and determining the appropriate response to the situation. CWCs are also responsible for oversight and monitoring of placement homes. The legislation requires that those appointed to CWCs be childcare professionals, having been actively involved in relevant professional activities relating to children for at least seven years, or be a qualified practicing professional. Although the JJA is intended to be a child-friendly framework, in practice this approach faces many obstacles, which ‘limit or undermine the full legal, social, educational, and health benefits to the juveniles’.¹⁴⁸

The Act articulates a set of principles for dealing with juveniles in connection to the juvenile justice system, including protecting dignity and rights, privacy and confidentiality, and safety, as well as focusing on restoration, avoiding stigmatisation, and considering institutionalisation only as a last resort. The Act makes provision for rehabilitation and reintegration services for juveniles in need of care and protection, with services provided by institutions registered under the Act and monitored by the CWCs. Mental health support, including counselling responsive to the specific needs of the individual child are a mandated component of care and support provided by these institutions.¹⁴⁹

Rehabilitative and re-integrative services form the core of the JJ Act. It mandates the registered childcare institutions to have mental health care facilities and referral facilities to mental health and de-addiction centers. The MHPs providing care to such juveniles are expected to prepare a comprehensive plan for ensuring quality and continuity of care.

However, the absence of clear distinction between the two groups of children identified in the Act—groups which have distinctive needs—can result in the detention of children in need of care and protection. This can result in additional suffering for these particularly vulnerable children.¹⁵⁰

The implementation of the legislation is also often far from the vision of safeguarding the most vulnerable children, and ensuring their best interests are protected. Lack of appropriate resourcing and funding from government for Child Care Institutions is highlighted as a key barrier to the realisation of the child safeguarding and protection goals.¹⁵¹ Funding has recently been increased in the revised Integrated Child Protection Scheme.¹⁵² However, the extent to which this change addresses current shortcomings remains to be seen. Protection, safeguarding, and support for children also requires specialised skills and knowledge, which are not sufficiently represented by social workers, staff at child care institutions, or in the child police protection unit.¹⁵³ Orientation and training are therefore critical, and must be improved to ensure appropriate support for vulnerable children under the JJA.

While it is true that the Juvenile Justice Act 2015 has laid out the possibility of an individual between 16-18 years to be tried for heinous crimes if the individual knows the consequences of their acts, the act also provides a broad category for children, ‘in need of care and protection’.¹⁵⁴ This is a significant gap in Indian law in relation to protection of CSE victims, and an important legislative step to ensure identification and protection of victims. Criminalisation of victims is noted to impede antislavery and anti-trafficking interventions globally, with failures in this regard not only resulting in additional harms to victims when they

¹⁴⁸ Gupta Snehil and Rajesh Sagar, ‘Juvenile Justice System, Juvenile Mental Health, and the Role of MHPs: Challenges and Opportunities’ (2020) 42(3) *Indian Journal of Psychological Medicine* 304.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*; Meghna Vesvikar and Renu Sharma, ‘The Juvenile Justice System in India: Observation Homes and Current Debates’ (2016) *Cultural Perspectives on Youth Justice* 185.

¹⁵¹ *Ibid.*

¹⁵² Ministry of Women and Child Development, ‘Revised Integrated Child Protection Scheme’ (*Government of India* 2020) <http://cara.nic.in/PDF/revised%20ICPS%20scheme.pdf> last accessed 30 November 2020.

¹⁵³ Preeti Jacob et al, ‘Child and Adolescent Mental Health in the Juvenile Justice System in India: Challenges and Initiatives’ (2014) 4(4) *Adolescent Psychiatry* 278.

¹⁵⁴ ECPAT, above n 195, p 51.

do come into contact with the criminal justice system, but also impeding identification by officials and having a ‘chilling effect’ on victims’ engagement with authorities.¹⁵⁵

Whether a victim falls within the purview of the ITPA or the JJA has significant repercussions for their rehabilitation. Sex workers above the age of 18 under the ITPA can be bailed out and re-trafficked.¹⁵⁶ If sex workers are removed or rescued under the ITPA, they lack protection in the process of home verification before rehabilitation.¹⁵⁷ Brothel owners thus record victims as over 18 so they can be re-victimised upon release or when victims are bailed out.¹⁵⁸ Minors are not properly identified by the police for the purpose of determining the age of victims, making it possible for brothel owners and traffickers to deceive the authorities about victims’ age.¹⁵⁹ The marginalisation of vulnerable individuals engaged in commercial sexual activity (noted above) decreases the likelihood of potential victims seeing the authorities as allies, reducing likelihood of effective cooperation and self-identification, as well as identification by the authorities themselves. The focus of both the ITPA and the JJA remains centred on prosecution of the accused, as opposed to a welfare programme for their recovery.¹⁶⁰ Child victims of CSE are not provided with rehabilitation under the JJA, only with custodial care in a shelter home.¹⁶¹ Child-centred legislation is therefore necessary ‘in partnership with a proactive social-work profession’.¹⁶²

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

In 2016, the [Trafficking of Persons \(Prevention, Protection and Rehabilitation\) Bill](#) was released for stakeholder consultation by the Government of India. The Bill was introduced in the Lower House (Lok Sabha) in 2018 by the Ministry for Women and Child Development, and passed on 26 July 2018. The Bill then progressed for debate in the Upper House (Rajya Sabha) but lapsed when the government term ended in 2019. How the proposed changes to Indian anti-trafficking legislation will progress remains to be seen.¹⁶³

7.3. India’s CSE law and policy in practice

7.3.1. Investigation and law enforcement

According to the 2019 TIP Report, the Indian government initiated 11 trafficking investigations involving at least 52 suspected traffickers during 2018. The government reportedly concluded 6 investigations and prosecutions from previous years, and convicted 19 traffickers. Trafficking sentences ranged from probation to life imprisonment.¹⁶⁴

During 2015, some 6,877 trafficking related cases were recorded in India. Of these numbers, 3,087 related to trafficking of minor girls, 111 related to selling of minors for prostitution, 6 concerned the importation of girls from foreign countries, 11 concerned buying of minors from prostitution, while the rest referred to Immoral trafficking and human trafficking under sections 370 and 370A of the amended Penal Code. Further, 824 cases prosecuted under sections 370 and 370A ended in convictions in 2015. Of the 5,003 cases relating to child trafficking, 384 trials were completed in 2015. A total of 55 child trafficking cases ended in conviction, while a total of 95 persons were convicted under various crimes relating to child trafficking.¹⁶⁵

With regard to case law, Indian courts have ruled on or made specific pronouncement on aspects of modern slavery. On the issue of victim’s rights for instance, in *Prajwala v Union of India*,¹⁶⁶ the implementation of a victim protocol was demanded by the court. There have also been cases where the court ordered the

¹⁵⁵ Iffat Idris, ‘Interventions to Support Victims of Modern Slavery: Knowledge, Evidence and Learning for Development’ (*Institute of Development Studies* 2017); Katarina Schwarz et al, ‘What Works to End Modern Slavery? A Review of Evidence on Policy and Interventions in the Context of Justice’ (*United Nations University Center for Policy Research and Rights Lab* 2020), pp 38-39.

¹⁵⁶ *Ibid*, p 27.

¹⁵⁷ *Ibid*, pp 27-28.

¹⁵⁸ *Ibid*, p 28.

¹⁵⁹ Biswajit Ghosh, ‘Trafficking in Women and Children in India: Nature, Dimensions and Strategies for Prevention’ (2009) 13(5) *The International Journal of Human Rights* 716, 727.

¹⁶⁰ A Shreyansh and D Jain, ‘Cross-Border Sex Trafficking Between India and Bangladesh: The Largest Illegal Industry in India’ [2013] *Asian Journal of Legal Studies* 24, 29.

¹⁶¹ Murli Desai, ‘Challenges of Commercial Sexual Exploitation of Children in India Need for Legislative Reforms in Partnership with the Social-Work Profession’ (2008) 18(1) *Asia Pacific Journal of Social Work and Development* 63, p 70.

¹⁶² *Ibid*, p 72.

¹⁶³ Meha Dixit, above n 187, p 3.

¹⁶⁴ US Department of State, above n 128, 235.

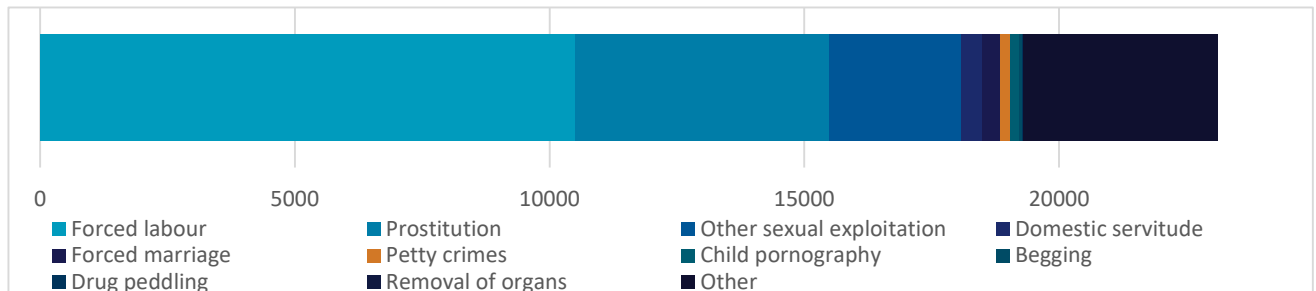
¹⁶⁵ UNODC, ‘Country Profiles: West and South Asia’ (United Nations 2018) https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_WEST_AND_SOUTH_ASIA.pdf last accessed 27 November 2020.

¹⁶⁶ 2006 (9) SCALE 531, cited in UNODC, ‘Legal and Policy Review: Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka’ (2011) <https://www.unodc.org/unodc/en/human-trafficking/2011/legal-and-policy-review---responses-to-human-trafficking-in-bangladesh-india-nepal-and-sri-lanka.html> last accessed 30 November 2020, p 26.

payment of compensation by perpetrators. For instance, in *PUCL v Union of India*,¹⁶⁷ compensation was ordered for undertaking child trafficking and bonded labour. Similarly, in November 2014, the Indian Supreme Court ordered the state governments of Chhattisgarh, Madhya Pradesh, Bihar, and Assam to find 12,591 missing children, many of whom may have been trafficked. Implementing this case, a number of missing children were found and reunited with their families.¹⁶⁸

Overall, while Indian courts are making progress in addressing modern slavery, incidents of inaction by police and prosecutors sometimes reflect inconsistent application of the law across the country. It also reflects a situation of overburdened police and under-resourced institutions dealing with trafficking cases resulting in trafficking cases not receiving adequate priority. Corruption among public officials and a lack of capacity in some parts of the country also undermines effective prosecution.¹⁶⁹ All those involved in the criminal justice system need training and corruption investigated.¹⁷⁰

Figure 8. Victims of trafficking rescued in India by type of exploitation (2016)¹⁷¹



7.3.2. Legal proceedings

Although the Criminal Law (Amendment) Act of 2013 introduced new offences of trafficking in persons into India's Penal Code, the Immoral Traffic (Prevention) Act remains the dominant legislation used to prosecute some forms of trafficking for the purpose of sexual exploitation.¹⁷² In the two years following the 2013 amendment to the Penal Code, a significant proportion of cases were still pursued under the ITPA, with an almost equal number of immoral trafficking (ITPA) and human trafficking (Penal Code) cases registered in 2014, with the proportion of cases registered under the Penal Code increasing in 2015.¹⁷³ However, the overall number of cases registered reduced dramatically. As awareness of the new Penal Code provisions increased (and continues to increase), it is likely that the proportion of cases pursued through this avenue continued (and will continue) to increase. However, the overall reduction in cases registered is a matter of concern.

Other sections of the Penal Code are also used to prosecute trafficking for sexual exploitation, including 'buying girls for prostitution,' 'selling of girls for prostitution,' 'importation of girls,' and 'procurement of minor girls'. The fragmentation of these offences, as well as alterations over time, makes tracking criminal justice processes difficult, resulting in incomparable data points over time, exacerbated by inconsistent reporting of trafficking and CSE criminal justice data more broadly.

Prior to 2014, the number of cases of trafficking for sexual exploitation investigated by authorities increased from year to year, rising from 3,422 in 2010 to 3,517 in 2011, 3,554 in 2012, and 3,940 in 2013.¹⁷⁴ As comparable data is not available for subsequent years, it is difficult to assess whether this trend continued, although the drop in trafficking cases registered in 2015 indicates a potential drop in investigations. The number of people arrested under the ITPA in each year from 2010-2015 did not evidence significant

¹⁶⁷ 1998(8) SCC 485; cited in UNODC, *ibid*.

¹⁶⁸ US Department of State, 'Trafficking in Persons Report' (2015) <https://2009-2017.state.gov/j/tip/rls/tiprpt/2015/index.htm> last accessed 30 November 2020.

¹⁶⁹ *Ibid*, p 185 and US Department of State, 'Trafficking in Persons Report' (2012) <https://2009-2017.state.gov/j/tip/rls/tiprpt/2012/index.htm> last accessed 30 November 2020, p 185.

¹⁷⁰ Rowshan Farhana and Md. Easin, 'SAARC Trafficking Convention and Human Trafficking Crisis in Bangladesh: A Critical Appraisal' (2015) 20(12) *IOSR Journal of Humanities and Social Science* 67, p 71.

¹⁷¹ PRS India, 'The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018' (*PRS India*) <https://www.prsindia.org/billtrack/trafficking-persons-prevention-protection-and-rehabilitation-bill-2018> last accessed 30 November 2020.

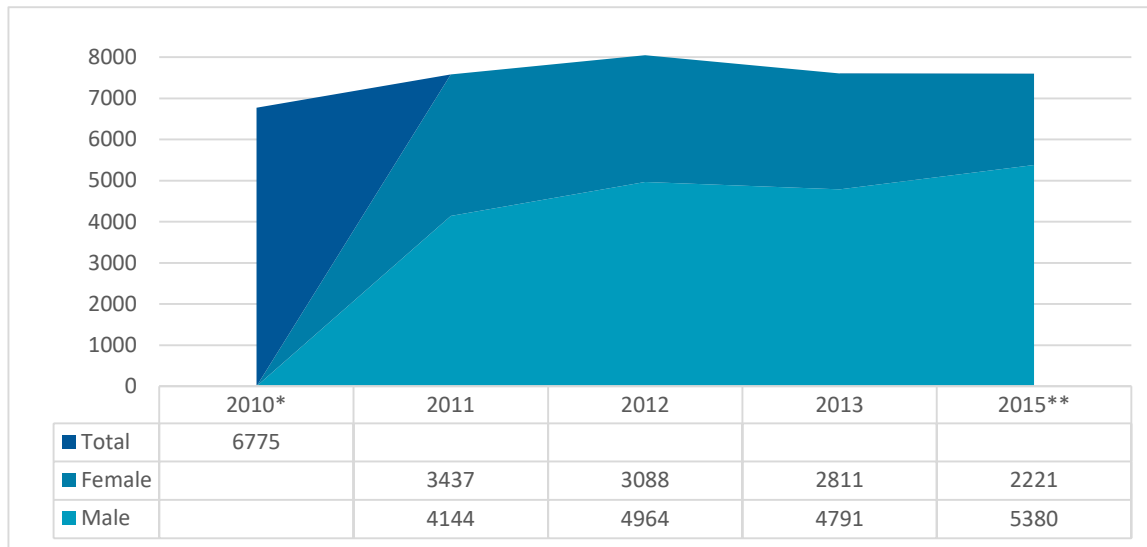
¹⁷² UNODC, *above n 214*.

¹⁷³ *Ibid*.

¹⁷⁴ UNODC, 'Country Profiles: South Asia' (United Nations 2016) https://www.unodc.org/documents/data-and-analysis/glotip/Glotip16_Country_profile_South_Asia.pdf last accessed 27 November 2020. These numbers refer to different trafficking offences (ITPA, buying of girls for prostitution, selling girls for prostitution, procurement of minor girl, importation of girls).

deviation, although an increase in overall trafficking arrests connected to the new Penal Code provisions likely resulted in increases in trafficking arrests more broadly from that year onwards.

Figure 9. Number of people arrested under the ITPA over time¹⁷⁵



*Data disaggregated by gender not available for 2010.

**Data for 2015 relates to persons charged, rather than arrested, with the result that actual numbers of persons arrested are likely to be somewhat higher.

Between 2010 and 2015, the total number of arrests made under the ITPA has remained relatively stable. Over-representation of males amongst those arrested has also remained stable, although data disaggregated by gender is not available for 2010. Criminal justice processes commenced under the ITPA demonstrate the same trend as established in relation to trafficking offences around the world: sharp differences between the number of cases and victims identified, and convictions secured (see Figure 13. Criminal justice processes under the ITPA).¹⁷⁶

The provisions of the [Foreigner's Act 1946](#) make victims of transnational trafficking within India vulnerable to criminalisation, punishment, and deportation, without proper consideration for their experiences of trafficking or their status as a victim. When transnational victims and their traffickers who have entered India illegally encounter the Indian authorities, both victim and perpetrator are liable to be arrested and charged under the Act.¹⁷⁷ According to the Foreigners Act, if an offender is a foreigner, she/he should be charged under the Act, punished, and deported. This places victims of transnational trafficking at significant risk of re-trafficking and re-victimisation, as no action has been taken to ensure safeguarding and protection. Victims are treated as criminals as a result of their irregular entry into the country, and not identified, assisted, or protected—a failure to live up to India's obligations in relation to victims of trafficking established in international law. More broadly, there is a notable absence of provisions in Indian law to protect all victims of CSE and trafficking from criminalisation for acts committed in connection to their trafficking or exploitation—a significant omission in India's safeguarding and protection of victims given the importance of non-criminalisation in protection, as well as in identification, prevention, and criminal justice responses.¹⁷⁸

7.3.3. Care for survivors

The legal framework should be used effectively against perpetrators of crimes and to provide care and protection to victims.¹⁷⁹ The government has been directed by the Indian Supreme Court in this vein to ensure the care, protection, treatment and rehabilitation of CSE victims.¹⁸⁰ The primary framework through which care and support is provided for survivors of CSE in India is UJJWALA: A Comprehensive Scheme

¹⁷⁵ UNODC, 'Country Profiles: South Asia' (United Nations 2014) https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP14_Country_profiles_South_Asia.pdf last accessed 27 November 2020; UNODC, (2016) above n 223. Note: data for 2014 not available.

¹⁷⁶ UNODC, (2014), *ibid*; UNODC, (2016), above n 223.

¹⁷⁷ Meha Dixit, above n187, p 4.

¹⁷⁸ *Ibid*; Schwarz et al, above n 204, pp 38-39.

¹⁷⁹ A Shreyansh and D Jain, 'Cross-Border Sex Trafficking Between India and Bangladesh: The Largest Illegal Industry in India' [2013] *Asian Journal of Legal Studies* 24, p 38.

¹⁸⁰ *Ibid*, pp 42-43.

for Prevention of Trafficking and Rescue, Rehabilitation, and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation. The scheme, launched by the Ministry of Women and Child Development specifically seeks to support women and children who are vulnerable to, or victims of, trafficking for CSE, and aims to:¹⁸¹

- Prevent trafficking of women and children for commercial sexual exploitation through social mobilisation and involvement of local communities, awareness generation programmes, generate public discourse through workshops/seminars and such events and any other innovative activity.
- Facilitate rescue of victims and place them in safe custody.
- Provide immediate and long-term rehabilitation services to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment including counselling, legal aid and guidance and vocational training.
- Facilitate reintegration of the victims into the family and society at large.
- Facilitate repatriation of cross-border victims to their country of origin.

Implementing agencies within the scheme can be the Social Welfare/Women and Child Welfare Department of State Government, Women's Development Corporations, Women's Development Centres, Urban Local Bodies, reputed Public/Private Trust or Voluntary Organisations. However, the organisation must have adequate experience in the field of trafficking, social defence, dealing with women and children in need of care and protection, children in conflict with law, etc, as well as be in sound financial health, have been operational for at least three years, and have necessary facilities for implementation (among other requirements) in order to be eligible.

In practice, the Ministry of Women and Child Development has been working in the area of child protection, including by providing a hotline for children in need of assistance. The ministry has also developed a system for identifying and rescuing missing children. Government-run shelters and government-funded shelters run by NGOs also provide services to trafficking victims. Nevertheless, NGOs continued to report that the number of state-run or funded shelters was insufficient, and overcrowding undermined victim rehabilitation.

The Ministry of Women and Child Development continued to fund government/NGO run shelters and rehabilitation services for women and children continued through the UJJAWALA scheme. Although the government has a program for compensating and providing services to former victims of bonded labour, the program has yet to be fully implemented.¹⁸² Further, resources to fully integrate rescued children back to their families are generally lacking. Consequently, reintegration efforts are somewhat reduced to simple return to the status quo pre-trafficking and nothing more. Alternative accommodation options are also reportedly underfunded and limited, which is creating a climate for potential neglect and re-trafficking.¹⁸³ Apart from this, such services as psychological counselling and medical treatment are generally scarce or of poor quality in certain facilities.¹⁸⁴

In March 2008, UNODC in collaboration with the Ministry of Women and Child Development, Government of India, state governments and NGO partners embarked on two projects related to anti-human trafficking and victim support in India. The project entitled 'Building the capacity of and expanding anti-human trafficking networks for improved support to victims of trafficking', sought to provide support and assistance to trafficking survivors. The second project, 'Reducing children's vulnerability to abuse and rehabilitation of survivors', set out to provide care and support services to children at risk of physical and sexual violence. It also aimed to provide comprehensive rehabilitation to trafficking survivors.¹⁸⁵ The Indian Ministry of Finance has also established the 'Nirbhaya Fund' for women, to address broader issues related to prevention, protection and rehabilitation. Similarly, the Swadhar scheme has been set up to support trafficking victims.

¹⁸¹ Ministry of Women and Child Development, 'UJJAWALA: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation' (*Government of India* 2016) <https://wcd.nic.in/sites/default/files/Ujjwala%20New%20Scheme.pdf> last accessed 30 November 2020.

¹⁸² Walk Free Foundation, 'Country Studies: India' (2018), <https://www.globallslaveryindex.org/2018/findings/country-studies/india/> last accessed 09 November 2020.

¹⁸³ Elizabeth Donger and Jacqueline Bhabha, 'Dilemmas in Rescue and Reintegration: A critical assessment of India's policies for children trafficked for labour exploitation' (2018) 10 *Anti-trafficking Review* 3.

¹⁸⁴ US Department of State, 'Trafficking in Persons Report' (2019) <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> last accessed 30 November 2020, p 186.

¹⁸⁵ UNODC, 'India: "Journey of Hope" - a UNODC compendium of anti-human trafficking and victim support initiatives' <https://www.unodc.org/southasia/frontpage/2011/july/unodc-releases-journey-of-hope-a-compendium-of-anti-human-trafficking-and-victim-support-initiatives.html> last accessed 9 November 2020.

The Swadhar scheme focuses on the rehabilitation of trafficking victims taking into account the realities that women in difficult circumstances face.¹⁸⁶

The Integrated Child Protection Scheme (ICPS), adopted by the Ministry of Women and Child Development in 2009 and further revised in 2014, sets out to improve the conditions of children in difficult situations, as well as help prevent exploitation, abandonment, abuse and separation of children from their families through Government-Civil Society Partnership. In particular, it considers child protection as a primary responsibility of family, supported by community, government, and civil society. The ICPS also aims to provide preventive, care, and rehabilitation services to any vulnerable child, including children of potentially vulnerable families and families at risk, children of socially excluded groups like migrant families, extremely poor families, scheduled castes, scheduled tribes, minorities, trafficked or sexually exploited children, and street and working children.¹⁸⁷

The [Juvenile Justice \(Care and Protection of Children\) Act 2015](#) (JJA) (discussed in [section 7.2.3](#) above) provides a mechanism for support for children in need of care and protection through Child Care Institutions (CCIs). The JJA mandates that registered CCIs have provision in place for mental health support for children in their care, including counselling support for individual children's specific needs. However, in practice, many CCIs operate without regular, qualified mental health practitioners on staff, and mental health practitioners that do work in the CCIs often work on a voluntary basis or are associated with non-governmental organisations that provide additional services for children in care.¹⁸⁸ Instances of bullying and abuse have also been recorded within care homes, enabled by the absence of sufficient and appropriate resourcing and staffing.¹⁸⁹ This also indicates the need for greater monitoring and oversight of CCIs, to ensure appropriate safeguarding mechanisms are both in place and consistently implemented in practice.

An absence of continuity in care after children are exited from CCIs also hampers long-term recovery and reintegration of children.¹⁹⁰ Given the potentially significant long-term impacts of CSE on children's mental (and physical) health and social integration, the absence of structured ongoing support for these survivors is a significant gap in the frameworks governing care for CSE survivors. At the opposite end of the spectrum, lack of understanding and awareness amongst frontline practitioners of mental health issues and treatment options can also deprive survivors of CSE of early intervention.¹⁹¹

Care for survivors must be victim-centred and responsive to individual needs, circumstances, identities, and experiences in order to effectively support recovery and reintegration.¹⁹² Existing provision of care for survivors provided in accordance with law and policy frameworks in India often falls short of this benchmark, failing to grapple with the specific vulnerabilities and experiences of marginalised groups. LGBT+ youth, for instance, are increasingly coming into contact with India's juvenile justice system,¹⁹³ and are at heightened risk of mental health issues and of bullying and abuse within institutional care homes.¹⁹⁴ Yet, relatively little attention has been paid within the context of CCIs and associated mental health support to address these specificities, or to provide relevant training and support to ensure appropriate care in these cases. Socio-economic status and ethnicity can also result in social marginalisation, and reduce access to appropriate services.¹⁹⁵

The criminalisation of victims, both within the ITPA regime governing 'prostitution' and in relation to immigration offences result in failures of identification and prevention in India. These frameworks can result in CSE victims and survivors being viewed, and therefore treated, as offenders when they come into contact with authorities, rather than being identified as victims and provided with appropriate information and avenues of support and protection. Traffickers often use victims' lack of immigration status as a means of coercion, emphasising that reporting to the authorities will only result in the victim being detained, punished, and deported. As noted by ECPAT, 'lack of legal documents/identification makes trafficking victims highly

¹⁸⁶ Sarasu Esther Thomas, 'Cooperation to Combat Cross Border Trafficking: India-Nepal-Bangladesh' <http://wiscomp.org/Publications/38%20-%20Perspectives%2031%20-%20Cooperation%20to%20Combat%20Cross%20Border%20Trafficking%20India-Nepal-Bangladesh.pdf> last accessed 9 November 2020.

¹⁸⁷ Ministry of Women and Child Development, 'Revised Integrated Child Protection Scheme' (ICPS) <https://bettercarenetwork.org/sites/default/files/Revised%20Integrated%20Child%20Protection%20Scheme%202014.pdf> last accessed 9 November 2020.

¹⁸⁸ Gupta Snehil and Rajesh Sagar, above n 197; Preeti Jacob et al, above n 202; Meghna Vesvikar and Renu Sharma, above n 199; Ved Kumari and Susan L Brooks, *Creative Child Advocacy: Global Perspectives* (Sage 2004).

¹⁸⁹ Ved Kumari and Susan L Brooks, *ibid*.

¹⁹⁰ Gupta Snehil and Rajesh Sagar, above n 197.

¹⁹¹ *Ibid*.

¹⁹² Schwarz et al, above n 204, pp 74-76 and 84-85.

¹⁹³ Meghna Vesvikar and Renu Sharma, above n 199.

¹⁹⁴ Gupta Snehil and Rajesh Sagar, above n 197.

¹⁹⁵ Meghna Vesvikar and Renu Sharma, above n 199.

vulnerable to threats of apprehension by authorities, extortion, detention, prosecution, and deportation.’¹⁹⁶ In practice, these threats used by traffickers are played out in official responses to victims at the intersections of another penal regime (for instance, criminalisation of prostitution of immigration offences). This both represents a failure in identification and protection, and has a chilling effect on victims’ engagement with official actors—not only in the criminal justice system, but also in other domains.

Detention of victims, often related to criminalisation, has also represented a protection risk in Indian care frameworks. This occurs not only in cases where victims have also committed offences in connection to their experiences of exploitation, but also when they are cooperating with the criminal justice system to support prosecution of their exploiters. Where victims are acting as witnesses in criminal cases against their perpetrators, instances of them being sent to shelter home by court order and required to stay there for the duration of the case have been recorded.¹⁹⁷

¹⁹⁶ ECPAT, ‘Sex Trafficking of Children in India’ (ECPAT 2016) https://www.ecpat.org/wp-content/uploads/2016/04/Factsheet_India.pdf last accessed 30 November 2020.

¹⁹⁷ Meha Dixit, above n 187, p 5.

Annex I. International commitments

	Bangladesh	India
1926 Slavery Convention and the 1953 Protocol to the Slavery Convention	Party Bangladesh acceded to both in January 1985.	Party India acceded to both in 1954.
The 1926 Slavery Convention commits signatories to, insofar as they have not already done so: firstly, 'to prevent and suppress the slave trade', and secondly, to 'bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms' (Article 2). The Convention also details a commitment to 'preventing and suppressing the embarkation, disembarkation and transport of slaves' (Article 3). It encourages signatories to assist each other in the pursuit of this goal (Article 4).		
1930 Forced Labour Convention	Party Bangladesh ratified this convention in June 1972.	Party India ratified this convention in 1954.
By ratifying, Bangladesh has committed to 'suppress the use of forced or compulsory labour in all its forms within the shortest possible period' (Article 1(1)). This is defined as work which is undertaken involuntarily 'under the menace of any penalty' (Article 2(1)).		
1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation and of the Prostitution of Others	Party Bangladesh acceded to this convention in 1985.	Party India ratified this convention in 1953.
This convention is orientated on enforcement of crimes of trafficking and exploitation for the purposes of prostitution (Article 1).		
1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	Party Bangladesh acceded to this convention in February 1985.	Party India ratified this convention in June 1960.
This convention commits Bangladesh to taking measures towards the abolition or abandonment of practices that may be included in the definition of slavery, such as debt bondage, child servitude and servile marriage (Article 1). Slave trafficking, enslavement and giving others into slavery are also prohibited.		
1957 Abolition of Forced Labour Convention	Party Bangladesh ratified this convention in June 1972.	Party India ratified this convention in May 2000.
Under this convention, States Parties undertake to 'suppress and not make use of any form of forced or compulsory labour' (article 1).		
1966 International Covenant on Civil and Political Rights (ICCPR)	Party Bangladesh acceded to this convention in September 2000.	Party India acceded to this convention in April 1979.
The ICCPR commits parties to respect and ensure to individuals within its territory rights including 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (Article 2(1)). Coupled with this is the requirement to ensure those whose rights are violated have access to justice in the form of a remedy (Article 2(3)). The convention commits States Parties to ensure that no one is held in slavery and slavery and the slave trade in all their forms are prohibited (Article 8).		
1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)	Party Bangladesh acceded to this convention in 1998.	Party India acceded to this convention in April 1979.

<p>The preamble to the covenant speaks of ‘the ideal of free human beings’. Each state party to the convention undertakes to take steps to achieve the full realisation of rights such as the right to work (Article 1, 6). Under this covenant, everyone has the right to work, ‘the right of everyone to the opportunity to gain his living by work he freely chooses or accepts’, a right for which states must take steps to guard (Article 6). Article 10(3) commits states to recognise that ‘children and young persons should be protected from economic and social exploitation’. It adds that work ‘harmful to their morals’ should be punishable by law.</p>		
<p>1979 Convention on the Elimination of All Forms of Discrimination against Women</p>	<p>Party Bangladesh acceded to this convention in November 1984.</p>	<p>Party India ratified this convention in July 1993.</p>
<p>Article 6 of the convention states that parties ‘shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women’.</p>		
<p>1989 Convention on the Rights of the Child</p>	<p>Party Bangladesh ratified this convention in August 1990.</p>	<p>Party India acceded to this convention in December 1992.</p>
<p>Article 19 states that state parties ‘shall take all appropriate legislative, administrative and educational measures to protect the child from ... exploitation, including sexual abuse’, expanded in Article 34 with a commitment to ‘protect the child from all forms of sexual exploitation and sexual abuse’. Article 34 states that parties ‘shall in particular take all appropriate national, bilateral and multilateral measures to prevent’ such forms of abuse.</p> <p>Article 39 sets out appropriate measures to be taken by state parties to ‘promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation’ which ‘shall take place in an environment which fosters the health, self-respect and dignity of the child’.</p>		
<p>2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</p>	<p>Party Bangladesh ratified this in September 2000.</p>	<p>Party India ratified this in August 2005.</p>
<p>It undertakes to ‘prohibit the sale of children, child prostitution and child pornography’ (Article 1). Child prostitution is defined as ‘the use of a child in sexual activities for remuneration or any other form of consideration’ (Article 2(b)). These must be offences (Article 3).</p>		
<p>1999 Worst Forms of Child Labour Convention</p>	<p>Party This was ratified by Bangladesh in March 2001.</p>	<p>Party This was ratified by India in June 2017.</p>
<p>Ratifying members commit to taking ‘immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour’ (Article 1). This includes slavery (Article 3(a)) and ‘the use, procuring or offering of a child for prostitution’ (Article 3(b)).</p>		
<p>1998 Rome Statute of the International Criminal Court</p>	<p>Party Bangladesh ratified this convention in March 2010.</p>	<p>Not party</p>
<p>The 1998 Rome Statute establishes the International Criminal Court (ICC). Crimes within the jurisdiction of the court include ‘crimes against humanity’ (Article 5), including ‘enslavement’ (Article 7(1)(c)) and, importantly for CSE, ‘[r]ape, sexual slavery, enforced prostitution...’ (Article 7(1)(g)).</p>		
<p>2000 United Nations Convention against Transnational Organized Crime</p>	<p>Party Bangladesh acceded to this convention in 2011.</p>	<p>Party India ratified this convention in May 2011.</p>

The conventions' purpose is to 'promote cooperation to prevent and combat transnational organized crime more effectively' (Article 1).

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	Party Bangladesh acceded to this convention in September 2019.	Party India ratified this convention in May 2011.
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In this protocol, the definition of 'trafficking in persons' includes 'the exploitation of the prostitution of others or other forms of sexual exploitation' as forms of exploitation (Article 3). Assistance to victims includes in legal proceedings (Article 6(1-2)). Notably for victims of CSE, state parties consider implementing measures 'to provide for the physical, psychological and social recovery of victims of trafficking' including civil society cooperation and the particular provision of: appropriate housing; counselling and information; medical, psychological and material assistance; employment, educational and training opportunities (Article 6(3)). In doing so, state parties deem to take into account age, gender and special needs, especially those of children (Article 6(4)). State parties endeavour to provide for 'physical safety' of victims, and to ensure the possibility of compensation for damage suffered (Article 6(5-6)). Other measures in the convention span to prevention and cooperation (Article III).

The Palermo Protocol is criticised with few mandatory obligations and little hard obligation by the way of victims, states are not required to provide protection, support and remedies to victims and are merely encouraged to avoid involuntary repatriation of victims.¹⁹⁸

2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children	Party	Party
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This convention is between members of SAARC (Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka). One of its aims is to establish 'effective regional cooperation' to prevent trafficking for prostitution and enforcement of such trafficking (Preamble, para 6; Article II). It is also to deal with the 'repatriation and rehabilitation of victims of trafficking' (Article II). For the purposes of the convention, 'trafficking' is deemed to be the 'moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking' (Article I(3)). Parties undertake that trafficking in any form is an offence (Article III), and to put in place measures to prevent and interdict trafficking in women and children (Article VIII).

Of most relevance is Article IX, dealing with the 'care, treatment, rehabilitation and repatriation of the victims'. State parties commit to establishing 'protective homes or shelters for rehabilitation of victims of trafficking', providing for 'granting legal advice, counselling, job training and health care facilities' (Article IX(3)). NGOs can be authorised to provide such shelter and care and maintenance of victims (Article IX(4)), and should be encouraged in this (Article IX(5)).

The SAARC Convention is the first 'regional treaty' in Asia addressing human trafficking, increasing political awareness and cooperation on human trafficking, yet it has been criticised for its narrow scope, lack of distinction between trafficking and migration, accountability of legal persons and a treaty monitoring body.¹⁹⁹ To assist with its implementation, there should be a national repatriation law or policy and bilateral agreements on trafficked persons.²⁰⁰ SAARC countries should also establish a regional voluntary fund for rehabilitation and reintegration of trafficked victims.²⁰¹ The SAARC Convention should clarify extradition responsibilities, the prosecution of traffickers, the rescue, recovery, protection, repatriation and social integration of victims.²⁰² Victim repatriation and integration is important to avoid stigmatisation, and the convention should include a provision to pressure states to protect and repatriate victims.²⁰³ The SAARC Convention has also been appraised for providing the proper legal proceedings to be carried out in cross-border trafficking.²⁰⁴ It 'conflates

¹⁹⁸ Meha Dixit, 'Cross-Border Trafficking of Bangladeshi Girls' [2017] Economic and Political Weekly 1, p 3.

¹⁹⁹ Rowshan Farhana and Md. Easin, 'SAARC Trafficking Convention and Human Trafficking Crisis in Bangladesh: A Critical Appraisal' (2015) 20(12) IOSR Journal of Humanities and Social Science 67, p 69.

²⁰⁰ Ibid, p 71.

²⁰¹ Ibid, p 71.

²⁰² Ibid, p 69.

²⁰³ Ibid, p 72.

²⁰⁴ A Shreyansh and D Jain, 'Cross-Border Sex Trafficking Between India and Bangladesh: The Largest Illegal Industry in India' [2013] Asian Journal of Legal Studies 24, p 36.

trafficking with prostitution’, making little distinction between them, especially with regards to consent. ²⁰⁵		
2014 Protocol to the Forced Labour Convention	Not party	Not party
<p>The protocol references that the ‘context and forms of forced or compulsory labour have changed and trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation, is the subject of growing international concern and requires urgent action for its effective elimination’ (Preamble). The protocol mandates members to ‘take effective measures to prevent and eliminate its use, to provide victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour’ (Article 1(1)). Members commit to developing a national policy and plan of action for this purpose, involving employers’ and workers’ organisations (Article 1(2)).</p> <p>In Article 2, amongst the measures to be taken for the prevention of forced or compulsory labour are included (c) ‘efforts to ensure that: (i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy’ and ‘(ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened’.</p> <p>Article 3 sets out that members ‘shall take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support’. Members shall ensure access to ‘appropriate and effective remedies’ and take the necessary measures to ensure the non-prosecution or penalties for victims (Article 4).</p>		
2017 Call to Action to End Forced Labour, Modern Slavery and Human Trafficking	Party	Not party
<p>The Call to Action was launched in 2017 during the 72nd meeting of the UN General Assembly. It outlines actions countries can take to achieve Target 8.7 of the UN SDGs. It was endorsed by Bangladesh. Countries endeavour to, amongst others, ‘put victims first’ in access to justice and appropriate support; eradicate forced labour, modern slavery, human trafficking and the worst forms of child labour from the economies. There is a call for enhanced international cooperation, which includes ensuring victims ‘can access the restorative support they need’, such as appropriate support and reintegration services.</p>		
Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking		
<p>These include ensuring that ‘trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care’ (Para 8). In the Recommended Guidelines on Human Rights and Human Trafficking, Guideline 6 details protection and support for trafficked persons.</p> <p>These include: cooperating with NGOs to ensure safe and adequate shelter; primary health care and counselling; right of access to diplomatic and consular representatives from their state of nationality; rights-driven legal proceedings; legal and other assistance; protection from harm, threats or intimidation; safe and voluntary (where possible) return of trafficked persons; if not returned, the provision of assistance and support in partnership with NGOs.</p>		
UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006)		
<p>For the interim care and protection of children, child victims have the right to immediate care and protection including security, food and accommodation in a ‘safe place’, access to social and health services, psychological support, legal assistance and education (Article 7.1). Safe and suitable accommodation must be provided ‘immediately’ after identification as a child victim (Article 7.2). The guidelines point to three options for durable solutions to reintegration of victims: 1) local integration, 2) voluntary repatriation and reintegration to the country or place of origin and 3) resettlement and integration in a third country (Article 9). Victim support also includes access to justice (Article 10).</p>		
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) UNGA A/RES/40/34		

²⁰⁵ Ratna Kapur, ‘India’ in GAATW, Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World (GAATW 2007), p 127.

This declaration addresses victims of crime and abuses of State power specifically. Victims are recognised in the instrument as all those who have suffered harm (individually or collectively) as a result of violations of criminal law within a State, irrespective of whether the perpetrator has been identified, prosecuted, or convicted. The declaration affirms victims' entitlement to access to justice and fair treatment. Articles 18-21 envisage remedies, international agreements, domestic legislation prohibiting violations, and monitoring and oversight as appropriate responses to violations.

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) UNGA A/RES/60/147

The primary direction of this is towards access to justice and reparation for victims, those persons who have suffered harm through acts or omissions constituting gross violations of international human rights law.

UN Protocol on the Provision of Assistance to Victims of Sexual exploitation and Abuse (12 December 2019)

This protocol has the aim of facilitating a 'common set of norms and standards' for the provision of assistance and support (Para 1.1). It applies to all UN system entities, which includes those operating in Bangladesh.

Amongst the principles and rights it sets out includes the principle that assistance and support will be made available to all victims of sexual exploitation and abuse (Para 3.1). This can entail safety measures 'to protect against retaliation, re-victimisation and re-traumatisation'. Victims can pursue accountability measures. The protocol highlights the necessity of providing assistance and support for victims of sexual exploitation, common services including: safety and protection; medical care; psychological support; education, livelihood support and basic material assistance; legal services and support for children born as a result of sexual exploitation and abuse. There are special considerations for children (Para 6).

Annex II. Bangladesh legal frameworks

1. Penal Code, Act No XLV 1860

Under the penal code, the phrase ‘illicit intercourse’ means sexual intercourse between person not united by marriage or by any union or tie which, though not amounting to marriage, is recognized by the personal law or custom of the community to which they belong, or where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Section 364A details punishment of death, life imprisonment or imprisonment for at least seven years, for those who kidnap or abduct a person under 10 for the purpose of, amongst others, slavery, or lust, or to dispose of such a person to put them in danger of those crimes.

Section 366 details punishment of up to 10 years, which may also include a fine, for those who kidnap or abduct a woman for the purpose, or likely purpose, of forced marriage, or such that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse. Persons are also liable to criminal penalty if they induce any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person. In brief, this provision criminalises sexual exploitation.

Section 366A criminalises the inducement of a girl under 18 to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse.

Section 366B criminalises trafficking (importing into Bangladesh from any other country) a girl under 21 with the intent that she may be or knowing it is likely she will be subject to sexual exploitation.

Section 367 criminalises the kidnapping or abduction to subject them, or to put them in danger of being subjected to, slavery or the ‘unnatural lust’ of any person.

Section 370 addresses importing, exporting, removing, buying, selling, disposing, accepting, receiving or detaining against his will of any person as a slave.

Section 371 criminalises habitual dealing in slaves.

Sections 372 and 373 are more relevant for *commercial* sexual exploitation.

Section 372: Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Selling minor for purposes on prostitution, etc.

The explanation to section 372 states when a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purposes of prostitution.

Section 373: Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The explanation to section 373 states any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

This dates back to 1860 and must be substantially amended to cover child prostitution, child pornography, trafficking in children and child sex tourism’. The Bangladeshi laws do not specifically define child prostitution, the Penal Code criminalises buying child prostitution but the terminology is ambiguous, ‘illicit sexual intercourse, which weakens protection. Most provisions, such as section 366A of the Penal Code refer to girls, leaving boys lacking protection and at risk of prosecution under the Sodomy Act.²⁰⁶

²⁰⁶ ECPAT, *Bangladesh* (ECPAT International, 2nd Edition, 2011) 35.

2. Suppression of Immoral Traffic Act (Act No. VI of 1933)

This Act is for the suppression of brothels and traffic in women and girls for immoral purposes (Preamble). This punishes people for keeping a brothel or allowing premises to be used as a brothel with a term up to 2 years or a fine or both (section 4). Soliciting for the purpose of prostitution (section 7) is also punishable with a fine or imprisonment of a month. There is a punishment for a person who induces a female to go from any place with intent that she may, for the purposes of prostitution, become the inmate of, or frequent a brothel, shall be punished with imprisonment up to 3 years or a fine (1 thousand taka) (section 9). There is also punishment for importing a female for prostitution (section 10) up to 3 years or one thousand taka. Where a person detains someone under 18 against her will, or has the custody, charge or care of them and encourages or abets them, for prostitution, there is imprisonment up to 3 years or one thousand taka, or a whipping for men (section 11-12).

3. Constitution of Bangladesh 1971

Article 10 deems that Bangladesh is a socialist economic system wherein there is freedom from the exploitation of man by man.

Article 11 states that fundamental human rights and freedoms and respect for the dignity and worth of the human person are guaranteed.

Article 14 makes it the responsibility of the state to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms of exploitation.

Article 18(2) places a duty on the state to prevent prostitution.

Article 31 guarantees every citizen the right to enjoy the protection of law wherever they may be.

Article 34 prohibits forced labour and makes contravention of this rule a punishable offence.

4. International Crimes (Tribunals) Act 1973

This provides for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law. Article 3(2)(a) details crimes within the jurisdiction of a Tribunal including 'enslavement' and 'rape or other inhumane acts'.

5. Oppression of Women and Children (Special Enactment) Act 1995

Article 8 provides a penalty for trafficking etc. in women. Para (1) states that whoever imports, exports, buys or sells or lets to hire or otherwise disposes of any woman with intent that such woman shall be employed for the purpose of prostitution or illicit intercourse or unlawful and immoral activities, shall be punishable with lifelong imprisonment and shall also be liable to a fine.

Para (2) states that whoever keeps in his possession, custody or under his guardianship any woman in order to import or export her, hire her out or otherwise dispose of her with intent that she shall be employed for the purpose of prostitution or illegal intercourse or unlawful and immoral activities shall be punishable with a term of rigorous imprisonment which may extend to 14 years, and shall also be liable to fine.

There are further penalties for abducting a woman for use in unlawful or immoral activities, including the employment or use for the purpose of prostitution or any other unlawful or immoral activity, and being forced or seduced or allured to sexual intercourse. This punishment is lifelong imprisonment which may extend to 10 years, no less than 7 years, and a fine (Article 9).

The penalty for trafficking in children extends to death or lifelong imprisonment (Article 12).

6. Prevention of Oppression against Women and Children Act 2000

Section 5 prohibits the trafficking of women and prescribes a punishment of death, transportation for life, or up to 20 years' imprisonment and payment of a fine. Child trafficking is prohibited under section 6, attracting a punishment as severe as a death sentence.

7. Prevention of Cruelty against Women and Children Act 2000

The aim of this Act is to protect women and children from heinous crimes such as rape, dowry and grievous injury. Capital punishment is available in cases of rape. A summary tribunal, the Women and Children Repression Tribunal, is formed for every district town to dispose of related cases.

8. Labour Act 2006, amended in 2013

Article 34 prohibits employment of children and adolescents. Adolescents are permitted to work if they have a certificate of fitness. An 'adolescent' is defined in Article 2 as someone who is over 14 and under 18, a 'child' is under 14. Article 284 provides a penalty for such employment as a fine, extendable to five thousand taka.

For the purpose of the Act, it covers 'workers' defined in Article 2 as any person including an apprentice employed in any establishment or industry, either directly or through a contractor, to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include a person employed mainly in a managerial or administrative capacity.

An 'establishment' is any shop, commercial establishment, industrial establishment or premises in which workers are employed for the purpose of carrying on any industry. Workers are classified in categories, including 'badli', those in a permanent post, or a casual worker if employment is of a casual nature (Article 4). Workers are entitled to a letter of appointment and identity card (Article 5). A worker would be under the scope of the Act and its rights and protections e.g., working hours. A sex worker could fall under the act, but not a modern slave in a situation of commercial sex exploitation.

9. Domestic Violence (Prevention and Protection) Act 2010

For the purpose of this act a 'child' is below the age of 18 (Article 2(4)). Domestic violence includes sexual abuse against a woman or a child of a family by any other person of that family with whom the victim is, or has been, in family relationship (Article 3). 'Sexual abuse' is any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the victim (Article 3(c)). Police officers may refer the victim to a safe shelter home (Article 6(g)). Victims have the right to reside in the shared home (Article 10), a protection order (Article 14), a residence order (Article 15) and a compensation order can be undertaken by the Court (Article 16).

10. Prevention and Suppression of Human Trafficking Act 2012

This act is aimed to prevent and suppress human trafficking, to ensure the protection of victims of the offence of human trafficking and their rights, and to ensure safe migration (Preamble). In it, 'prostitution' is defined as the sexual exploitation or abuse of any person for commercial purpose or for consideration in money or kind. (Chapter 1.2(8)). Prostitution or sexual exploitation or oppression is included as 'exploitation' (Chapter 1.2(15)). Human trafficking means the selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring either inside or outside of the territory of Bangladesh of any person for the purpose of sexual exploitation or oppression (Chapter 1.3).

Human trafficking is criminalised (Chapter II.6). It is criminalised to import or transfer for prostitution or any other form of sexual exploitation or oppression (Chapter II.11). Keeping a brothel or allowing a place to be used as a brothel is also criminalised (Chapter II.12).

Relevant for victim support is a provision allowing penalties for those who threaten, intimidate or use force against victims of trafficking, witnesses, or family members, obstructing an investigation or trial under the act (Chapter II.14).

Anti-human trafficking offence tribunals are established under this act to try offences under it (Chapter IV).

Chapter V deals with the assistance, protection and rehabilitation of the victims of human trafficking and witnesses. The government commits to making procedures for identification, rescue, and rehabilitation of victims, working in partnership with government and NGOs (Chapter V.32). Victims are entitled to be informed by the Government, or NGOs, of actions taken against traffickers (Chapter V.34).

Chapter V.36 addresses protection, rehabilitation and social integration. If not returned to families, victims are sent to any government or non-government protective home or rehabilitation centre where they are entitled to give consent to the concerned matter, medical treatment and legal and psychological counselling service including sustainable rehabilitation and social integration facilities. Joint or mutual legal assistance is provided to victims (Chapter VI).

11. Children's Act (Act No.24 of 2013)

Section 4 defines a child as under 18. Deals with child offenders, child welfare, setting up children's courts etc.

Section 77 penalty for allowing a child to be in a brothel – no child over the age of 4 is permitted to reside in or go to a brothel.

Section 78 Penalty for leading or encouraging a child to seduction:

- (1) If any person having the actual charge or supervision of a child leads the child to seduction, or induces the child to prostitution or encourages for doing so, or causes or encourages any person other than her husband to have sexual intercourse with her, the person shall be deemed to have committed an offence under this Act and shall, for such offence, be punished with imprisonment for a term up to 5 years or with fine up to Taka 1 lac or both.
- (2) On the basis of a complaint made by any person, if it appears to the court that any child with or beyond the knowledge of his parents or, in the absence of both of them, the caregiver or the authority in supervision or legal or lawful guardian or, as the case may be, members of the extended family is being led to seduction, or exposed to the risk of engaging in prostitution, then the court may direct the concerned parents, the caregiver or the authority in supervision or legal or lawful guardian or, as the case may be, members of the extended family to execute a bond for the purpose of taking due care and keeping supervision of such child.

Explanation – for the purpose of this section, the person who knowingly allows any child to live with, or to enter into or continue in, the employment of any prostitute or of a person known to be immoral character shall be deemed to have led or encouraged the seduction or prostitution of a child.

Section 80 Penalty for exploitation of a child

- (1) If any person entrusted with the custody of care or, or with the duty of rearing, a child by the Children's Court, or any other person secures a child ostensibly to employ as a servant or to employ the child in a factory or in other establishments in accordance with the provisions of the Labour Act, 2006, but in fact exploits the child for his own interest, or keeps him detained or enjoys his earnings, such acts shall be deemed to be an offence under this Act and, for such offence, the person involved shall be punished with imprisonment for a term which may extend to 2 years, or with fine which may extend to 50 thousand taka or both.
- (2) If any person entrusted with the custody or care of or with the duty of rearing, a child by the Children's Court, or any other person secures a child ostensibly to employ as a servant or to employ in a factory or in other establishments in accordance with the provisions of the Labour Act, 2006, but in fact leads the child to seduction or exposes the child to the risk of engaging in prostitution or immoral activities, such acts shall be deemed to be an offence under this act and, for such offence, the person involved shall be punished with imprisonment for a term which may extend to 5 years or with fine which may extend to 1 lac or with both.
- (3) If any person avails himself of result of the labour of a child exploited or employed in the manner referred to in subsection (1) or (2), or uses such child for his immoral gratification, the person shall be liable to be an abettor of the relevant offence.

Section 84(1) provides for alternative care for 'disadvantaged' children and those in contact with the law for whom special protection, care and development need to be ensured upon consideration of their familial, social, cultural, financial, ethnic, psychological and educational background. Reintegration with the parents is a priority (s 84(2)), unless the parents may engage the child in immoral or illegal activity (ss (5)). There is institutional care for disadvantaged children (s 85), including government children homes and government shelter homes, which is decided by the child welfare board (s 86). Disadvantaged children include those who are engaged in 'anything against the welfare of the child' or victims of 'sexual oppression', or those staying with or going usually to the workplace of someone engaged in prostitution (s 89).

This Children's Act replaces a 1974 Act which listed a child as under 16, in contravention of the Convention on the Rights of the Child. Initiatives have been taken to enforce this Act with Child Affairs Desks and Child Affairs police officers.²⁰⁷ The 2013 update is again quite female focused – note the language of 'her' in section 78(1). There is a need to reform legislation to ensure boys have protection from sexual exploitation.²⁰⁸

²⁰⁷ Government of the People's Republic of Bangladesh, Bangladesh Country Report, 2016: Combating Human Trafficking (2016) 10.

²⁰⁸ ECPAT, Bangladesh (ECPAT International, 2nd Edition, 2011) 37.

Annex III. Bangladesh policy frameworks

1. National Child Labour Elimination Policy 2010

This policy recognises, amongst other things, that children are ‘lured from their villages into towns and cities and often trafficked abroad where girls are compelled to engage in prostitution and pornography while boys get involved in many anti-social and illicit activities’ (p 2). Poverty is listed as the primary cause of child labour. The policy reiterates that forced labour is completely prohibited and access to legal remedy assured in case of violation of fundamental rights (p 3).

The policy’s main objective is to make meaningful changes in the lives of the children by withdrawing them from all forms of child labour including the hazardous work and worst forms of child labour (pp 4-5). Child labour is found in both the formal and informal sector (p 6). The policy covers both the Bangladesh Labour Act definitions of children and adolescents.

Employers will adhere to the policy that child workers are not subjected to physical, mental and sexual persecution and abuse (p 8). Children must not be employed in a degrading working environment, one contrary to their physical and mental health and wellbeing, or one that hampers their dignity or reputation (p 8).

The policy sets out running dates of 2010-2015 and beyond. It has among its working strategies the prevention of trafficking of children and protection of working children from hazardous work. Notably, it includes the strategy of social and family reintegration (p 16). The key objective here is to take necessary measures for social and family reintegration by withdrawal of working children from hazardous and worst forms of work. The relevant target activity is to bring working children in the mainstream of society, arrange reintegration with family if possible and to establish reformatory, rehabilitation centres, drop-in centres, helpline...psycho-social counselling...necessary treatment, food and entertainment (p 16).

The policy further establishes a child labour unit to coordinate such activities and a National Child Labour Welfare Council may be constituted.

2. Memorandum of Understanding (MoU) between the Government of the Republic of India and The Government of the People’s Republic of Bangladesh on Bilateral Cooperation for Prevention of Human Trafficking Especially Trafficking in Women and Children; Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking 2015

The preamble details the recognition that trafficking in women and children is a gross violation of their rights and dignity, causing a negative impact on women and children’s physical, sexual and mental health, moral development and is detrimental to the social norms and values of the society. It accounts for transnational criminal groups and organisations involved in trafficking.

Trafficking in women and children for the purpose of the MoU means the selling, buying, recruitment, receipt, transportation, transfer, or harbouring of any person for the purpose of sexual exploitation...slavery or practices similar to slavery...by means of (i) threat or use of force or other forms of coercion, or (ii) abduction, fraud or deception, or other types of vulnerability, or (iii) giving or receiving of payments or benefits to achieve the consent of a person having control over another person’ (Article 2(a)). A ‘child’ is someone who is not 18 (Article 2(d)).

Bangladesh and India commit to taking policies, programmes and measures to ensure compliance with international human rights instruments (Article 3). Amongst these is an emphasis on preventative measures (Article 4-5).

Where women and children are found victims of trafficking, authorities must take steps to ensure their protection and security (Article 6(a)), they must be treated with dignity, confidentiality and non-discrimination in protection, repatriation and judicial proceedings (Article 6(b)). Victims ‘shall’ be provided with safe shelters, health care, access to legal assistance, and other imperatives for their protection and safe guarding their best interest (Article 8). Police and relevant authorities cooperate in exchange of information regarding trafficking cases (Article 10).

As this is a transnational MoU, repatriation is undertaken (Article 11). Parties shall make all possible efforts towards the safe and effective reintegration of victims of trafficking into their families and communities in order to restore their dignity, freedom and self-esteem in their respective countries (Article 12).

To this end, there is a Joint Task Force with responsibilities to monitor and assess implementation of the MoU (Chapter VII).

3. Bangladesh 7th Five Year Plan 2016-2020

The 7th Five Year Plan is not focused on trafficking, or modern slavery. For border control, there is: a target for the Bangladesh Border Guard, responsible for border security, to stop human trafficking mainly of women and children in neighbouring countries, and a target for the Bangladesh Coast Guard to protect against human trafficking (p 174).

There is a focus on overseas labour market development and protection. Here, interventions to ensure protection of migrant workers' human and labour rights are demanded, alongside better identification of victims of human trafficking through fraudulent recruitment. Harmonisation of national laws and policies with international standards on trafficking should be pursued and followed (p 251). The government outlines its three-yearly National Plan of Action to implement the Human Trafficking Deterrence and Suppression Act, 2012 (p 253).

In the 7th five year plan, there is an emphasis on child protection whereby policies of existing national plan of actions are deemed to be used against sexual abuse and exploitation of children and trafficking (p 644). It states that effective measures will be taken to reduce child labour, and eliminate the worst forms of child labour, requiring coordination within civil society organisations and the government (p 644). Taking steps to increase efficiency to combat sexual abuse, exploitation and trafficking of children through enhanced coordination and cooperation is necessitated (p 644).

In terms of violence against women, the plan points to effective enforcement of all laws to uphold rights of women and children, including a separate tribunal to deal with human trafficking cases (p 661).

In the 6th Five Year Plan, sex workers were included as a 'sexual minority group' facing social exclusion (p 639) and this was tackled with education, health support, inclusion (more relevant for those with disabilities) and governance (p 641).

4. National Action Plan on Women, Peace and Security 2019-2022

This sets out four pillars of the Women, Peace and Security framework: 1) prevention 2) participation 3) protection and 4) relief and recovery.

The prevention pillar addresses the prevention of conflict and violence, including sexual violence. The objective here is to engage more communities and institutions in initiatives to promote social cohesion and prevent conflict, violent extremism, and gender discrimination (p 8). The policy also aims to include women and women's perspectives in decision-making processes relating to the prevention, management and resolution of conflict (p 9). The protection, relief and recovery pillar refers to the safety, physical and mental wellbeing, security and respect for human rights for women and girls. There is a focus on conflict, emergency and disaster situations and policies and procedures to decisively address any sexual exploitation and abuse by actors who have the responsibility to protect' (p 10).

Of the protection pillar, Output 1 is listed as the capacity of the security sector, law enforcement agencies...and local government is enhanced to be more gender-responsive during disasters, emergencies and humanitarian crises, including the capacity to address gender-based violence. Activity 1.3 under this is to organise trainings at all levels of security-sector institutions to promote zero-tolerance of gender-based discrimination and sexual exploitation and abuse.

Output 2 is UN peacekeeping troops deployed have a strengthened capacity to protect women and children from sexual exploitation and abuse during deployment.

5. 2000-2010 Multi-Sectoral Programme on Violence Against Women

This is a joint initiative of the governments of Bangladesh and Denmark. The objectives were (1) improved public services such as health, police assistance, criminal justice and social services (counselling, rehabilitation) which are utilised by women victims of violence; (2) increased public awareness on all forms of violence against women. It establishes networking with local government and civil society organisations for social services to victims, including shelter and legal support.

6. National Women Development Policy 2011

Amongst the objectives are (p 13):

- To ensure security and safety of women in all areas of state, social and family life.
- To establish human rights of women.
- To eliminate all forms of abuse of women and female children.
- To revise and amend existing law and make necessary legislation to ensure the human rights of women.
- Stern enforcement of legislations against ... trafficking.
- Elimination of all forms of violence to women.
- To stop trafficking of women and rehabilitation of the affected ones.
- To simplify the adjudication procedure to complete trial of offense relating to women, female children and their trafficking.
- To give necessary support and assistance through the one-stop crisis centres at the divisional towns and through women support centres in prevention of abuse of women and to take necessary steps to expand OCC at the district level. To increase activity of National Trauma Counselling Centres to give the women victim of abuse mental support and assistance.

7. Bangladesh Country Report, Combating Human Trafficking, 2016

This report details the policies and activities of government ministries and departments in combating human trafficking.

8. National Plan of Action for Prevention and Suppression of Human Trafficking 2018-2022

The executive summary briefly describes the human trafficking situation in Bangladesh, including the large proportion of 'women and children' who are trafficked for purposes including CSE. This NPA sets out two actions (p 6):

- Firstly, the NPA presents a set of actions which are included in the SDG implementation action plans of different ministries. These SDG actions that may have impacts in suppression and prevention of human trafficking are placed in a separate planning matrix.
- Secondly, based on the current context of human trafficking the NPA has identified and presented another set of actions in addition to SDG-actions in a separate matrix. These actions are selected from amongst the propositions tabled at the National Conference on NPA Implementation in 2017 and Divisional Conference held in 2018.

The NPA outlines that previous NPAs have not been fully implemented due to lack of specified source of funding (p 11). Nevertheless, the outcomes in the NPA up to 2017 include progress in promoting capacity in shelter providers and psychosocial care, upgrading of targeted service centres and expanding of shelter facilities, the 2012 Act on Human Trafficking and progress in promoting capacities of law-enforcers and other actors of criminal justice to ensure effective prosecution of human trafficking offences.

Challenges included a lack of comprehensive information to service providers, lack of initiative to promote standards for care and support, need to establish a special tribunal in prosecution cases and an absence of comprehensive victim witness protection (p 12).

The five action-areas under the NPA are (p 6, p 15):

- (1) Prevention of human trafficking – prevent and prosecute the offences of human trafficking by promoting greater access to social, natural and economic safe-nets.
- (2) Holistic protection of trafficking victims – establish a comprehensive protective regime through state interventions and social actions, including measures for their rescue, recovery from the physical/psychological trauma, repatriation, recovery and integration into families and society.
- (3) Prosecution of traffickers - ensure justice for the victims of trafficking and their families through effective implementation of legal instruments.
- (4) Partnership and cross-country legal assistance – put in place a system of co-ordination and co-operation at the state and non-governmental organisations levels, both at home and abroad, with a view to effectively combating human trafficking.

- (5) Monitoring and evaluation – distribution of responsibility for monitoring and reporting of NPA activities.

The **first objective** includes reduction of sexual violence against women and children, and elimination of harmful practices against children including child labour and child marriage as expected outputs.

The **second objective** includes:

- Eradication of forced labour, to end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour.
- Strengthened policy-legal tools for delivery of recovery and integration supports to the women and child victims of trafficking.
- Strengthened protection services to the child victims of trafficking.

Under this, strategies include (p 29): protective measures initiated, expanded, strengthened and monitored for victims/rescued persons... Sustainable social integration for the victims of trafficking initiated from the time of their rescue, national standards for care for the trafficking survivors developed and implemented and while a national and regional institutional framework is being strengthened.

Policies and strategies in accordance with Goal 2 of the NPA include:

- Revision of the National Child Labour Elimination Policy 2010 and the Prevention and Suppression of Human Trafficking Act 2012 (p 29).
- Revision of national women development policy 2011, Section 19.4 National Children Policy 2011 (p 30).
- Revision of the existing Children Act (p 31).
- A child protection and monitoring project (p 31).

In accordance with the NPA's 'SDG-Plus' goals activities to be implemented (p 43):

- To improve the quality of all types of services including health care at the existing shelter facilities.
- Protection to the irregular migrants (present in Bangladesh) in case of trafficking – this involves rescue, physical and mental care and repatriation to shelter/camps

The **third objective** includes:

- Increase the rate of and strengthen the capacity of delivering justice to the victims of trafficking.
- Implementation and revision of policy-legal tools for delivering justice to the woman and child victims of trafficking.
- Strengthening legal provisions for children.
- Priority-access of the victims of human trafficking to legal services.
- Enhanced access of the victims of human trafficking to social services.

Key strategies (p 32): Implementation of existing provisions of law; ensure prompt and effective trial; capacity of the LEAs and Public Prosecutors; ensure victims and witness protection.

Policies and strategies include:

- A special unit/cell on human trafficking (p 32).
- Inclusion of human trafficking in Dhaka city digital monitoring system (p 32).
- Expansion of legal aid service net, speedy disposal of cases affecting women, children and disabled (p 35).
- Preparation of an electronic database of all cases and filtration/deterrence of cases at the initial stages (p 35).

SDG-Plus activities involve (p 45):

- Assistance in court cases on internal and international human trafficking through the District Legal Aid Organization.
- Formation of special tribunals in trafficking prone districts' – the NPA lists 4 to be established.

Previous NPAs have been criticised for their partial implementation.²⁰⁹ In previous NPAs, children have not participated in preparing policy, thus the NPAs lack a child focus.²¹⁰

²⁰⁹ ECPAT, *Bangladesh* (ECPAT International, 2nd Edition, 2011), p 18.

²¹⁰ *Ibid*, p 47.

Annex IV. India legal frameworks

1. Constitution of India 1949

Article 14 states that there is equality before the law, Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

Article 21 states that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 23 prohibits traffic in human beings and all forms of forced labour.

Article 42 states that the state shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 provides that the state shall endeavour to secure, by suitable legislation or economic organisation in any other way, to all workers...work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities...

2. Penal Code 1860 (amended by the Criminal Law (Amendment) Act 2013)

Section 366 prohibits the kidnap or abduction of any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

Section 366B: Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person' will be punished with prison up to 10 years and be liable to a fine.

Section 367 makes it an offence to kidnap or abduct in order to subject a person to slavery with a punishment of imprisonment up to 10 years and liable to a fine.

Sections 370 prohibits trafficking in persons, recruitment, transport, harbouring or receiving of a person through methods such as threats, for the purpose of exploitation commits the offence of trafficking.

In the explanation to section 370, 'exploitation' means any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Trafficking is punished with imprisonment no less than 7 years, a maximum of 10 years, with a possible fine. This changes where there is more than one person involved, where the trafficking is of a minor(s), the trafficking of a minor has occurred more than once or when a public servant or police officer is involved in the trafficking.

Section 370A applies solely to sexual exploitation of a trafficked child

(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to a fine'.

Section 371 prohibits the habitual dealing in slaves.

Section 372 prohibits selling a minor for the purpose of prostitution or 'illicit intercourse with any person or for any unlawful and immoral purpose...' subject to imprisonment up to 10 years and a fine.

Section 373 prohibits buying a minor for the purposes of prostitution or 'illicit intercourse' subject to imprisonment up to 10 years and a fine.

3. Immoral Traffic (Prevention) Act 1956

Article 5 prohibits procuring, inducing or taking [a person] for the sake of prostitution with imprisonment of no less than 3 years and a maximum of 7 years. This punishment is a minimum of 7 years and possibly life, where a child is involved.

Article 6 prohibits detaining of a person in premises where prostitution is carried on. If a child is found in a brothel it is presumed that the person whom the child is with has committed an offence under this Article, and if they have been sexually abused, as evident from a medical exam, it is proved that the child has been detained for the purposes of prostitution or sexually exploited for commercial purposes (Article 6(2A)). Detaining persons happens if they have property such as jewellery withheld or are threatened with legal proceedings (Article 6(3)).

Under Article 17, where children are rescued, a magistrate can place the child or minor in any institution established or recognised under any Children Act, or protective home, for their safe custody (Article 17(3)(4)). This may include undertaking such as care, guardianship, education, training and medical and psychiatric treatment as necessary (Article 17(4)).

Those who are being made to carry on prostitution can apply to the magistrate for access to a protective home and care and protection by the court (Article 19).

Under Article 21, the government can establish as many protective homes and corrective institutions as it thinks fit.

4. Protection of Children from Sexual Offences Act 2012

This Act has the objective of protecting children from offences of sexual assault, sexual harassment and pornography. The preamble states that sexual exploitation and abuse of children are heinous crimes and need to be effectively addressed. The Act itself criminalises sexual offences against children and outlines special courts for the legal cases under the Act.

5. Juvenile Justice (Care and Protection of Children) Act 2015

Preamble: An Act to consolidate and amend the law relating to ... children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

Section 1(4)(ii) includes procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

Section 2(14) child in need of care and protection includes:

(iii) resides with a person ...such person (a) has ...exploited, abused...the child...(b) threatened to ...exploit or abuse the child and there is a reasonable likelihood of the threat being carried out... (c) hasexploited some other child or children...'

(viii) who has been or is being or is likely to be abused, tortured, or exploited for the purpose of sexual abuse or illegal acts.

Section 3(i) a child is anyone up to 18.

Chapter VI provides a procedure in relation to children in need of care and protection. This includes a preference for family based care (section 39-40). Section 53 outlines services to be provided in the rehabilitation and reintegration of children, including education, food, shelter.

Section 79: whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Section 81: Any person who sells or buys a child for any purpose shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Section 75: Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted,...abused...in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with a fine of one lakh rupees or both.

This is considered to constitute a “comprehensive legal cushion”, but gaping holes in its enforcement have been noted. Whether a victim falls under this Act or the Immoral Traffic (Prevention) Act has significant repercussions for their rehabilitation. Sex workers above the age of 18 under the ITPA can be bailed out and re-trafficked. If sex workers are removed or rescued under the ITPA, they lack protection in the process of home verification before rehabilitation. Brothel owners thus record victims as over 18 so they can be re-victimised upon release or when victims are bailed out. Minors are not properly identified by the police for the purpose of determining the age of victims.

The focus is on prosecution of the accused, as opposed to a welfare programme for their recovery. Child victims of CSE are not provided with rehabilitation under the JJ Act, only with custodial care in a shelter home. Child-centred legislation is necessary ‘in partnership with a proactive social-work profession’.

It is noted that virtually no South Asian laws explicitly exempt children and young people from punishment for prostitution-related crimes.

6. Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 (as amended in 2016)

This Act prohibits those who are not members of a Scheduled Caste or Tribe from making those who are members to do actions like ‘forced or bonded labour’.

7. Bonded Labour System (Abolition) Act 1976

Under section 4, the bonded labour system is deemed ‘abolished’ and every bonded labourer free. Bonded labour is defined as any labour or service rendered under the bonded labour system (Section 2(e)).

This Act is deemed “well-intentioned” but “chronically under-enforced”. Women who are trafficked for prostitution, prosecuted and imprisoned, can be bailed out by brothel owners who add this amount to their debt, such debt bondage exacerbated by the ineffective implementation of this Act.

8. Prohibition of Child Marriage Act 2006

Prohibits child marriage where a male is under 21 and a female is under 18.

9. Foreigner’s Act 1946

Under section 14, whoever violates the provisions of the act can be imprisoned up to 5 years and liable to a fine.

When cross-border trafficking victims and traffickers are arrested, they are both charged under the Foreigner’s Act, which punishes them and deports them, including the victim, thus the victim is easily re-victimised. Victims are treated as criminals despite policy that states victims should not be prosecuted under this Act.

10. Child Labour (Prohibition and Regulation) Act 1986

This Act prohibits the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The Act does not include acts of sexual exploitation, but focuses broadly on occupations and processes that are likely to be hazardous or involve working with hazardous materials. It does, however, include domestic and servant work.

11. Maharashtra Control of Organised Crime Act, 1999

This Act ‘makes special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang’ and connected matters.

12. The Maharashtra Devadasi System (Abolition) Act, 2005

(Applies only to the Maharashtra region) Act to provide a law to abolish the dedication of women as devadasi to deities, idols, objects of worship, temples and religious institutions, and punishes the person carrying out the offence.

13. The Karnataka Devadasis (Prohibition of Dedication) Act 1982 (applies only to the Karnataka area of India)

Makes as an offence the dedication of a woman as devadasi to deities, idols, objects of worship, temples and religious institutions, and punishes the person carrying out the offence.

14. The Goa Children’s Act, 2003 (applies only to the state of Goa)

Section 3(1) states that the state shall ensure that children and the young are protected against exploitation’, sub-section 6 states that for the proper implementation of the CRC and to prevent such exploitation, the government shall take adequate measures. The Act prohibits child labour for all children under 14. Under section 8, subsection 12 prohibits the making of children available to any adult or other children for purposes of commercial exploitation. Subsection 16 prohibits the sale of children.

Section 9 deals specifically with child sexual trafficking. It prohibits child prostitution (ss (1)). It is the duty of the state to remove all child prostitutes from their place of exploitation and to ensure they are rehabilitated and integrated into society (ss (2)), the state must prepare a plan of action to this purpose (ss3). Those who exploit a child for CSE are liable for a penalty up to 1,00,000 Rs/simple imprisonment of one year.

15. Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill

The draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill was released for stakeholder consultation by the Government of India in mid-2016.

Annex V. India policy frameworks

1. Memorandum of Understanding (MoU) between the Government of the Republic of India and The Government of the People’s Republic of Bangladesh on Bilateral Cooperation for Prevention of Human Trafficking Especially Trafficking in Women and Children; Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking 2015

The preamble details the recognition that trafficking in women and children is a gross violation of their rights and dignity, causing a negative impact on women and children’s physical, sexual and mental health, moral development and is detrimental to the social norms and values of the society. It accounts for transnational criminal groups and organisations involved in trafficking.

Trafficking in women and children for the purpose of the MoU means the selling, buying, recruitment, receipt, transportation, transfer, or harbouring of any person for the purpose of sexual exploitation...slavery or practices similar to slavery...by means of (i) threat or use of force or other forms of coercion, or (ii) abduction, fraud or deception, or other types of vulnerability, or (iii) giving or receiving of payments or benefits to achieve the consent of a person having control over another person’ (Article 2(a)). A ‘child’ is someone who is not 18 (Article 2(d)).

India commits to taking policies, programmes and measures to ensure compliance with international human rights instruments (Article 3). Amongst these is an emphasis on preventative measures (Article 4-5).

Where women and children are found victims of trafficking, authorities must take steps to ensure their protection and security (Article 6(a)), they must be treated with dignity, confidentiality and non-discrimination in protection, repatriation and judicial proceedings (Article 6(b)). Victims ‘shall’ be provided with safe shelters, health care, access to legal assistance, and other imperatives for their protection and safe guarding their best interest (Article 8). Police and relevant authorities cooperate in exchange of information regarding trafficking cases (Article 10).

As this is a transnational MoU, repatriation is undertaken (Article 11). Parties ‘shall’ make all possible efforts towards the safe and effective reintegration of victims of trafficking into their families and communities in order to restore their dignity, freedom and self-esteem in their respective countries (Article 12).

To this end, there is a Joint Task Force with responsibilities to monitor and assess implementation of the MoU (Chapter VII).

This MoU has been welcomed in its envisaged collaboration between the two countries, it is criticised for the unaddressed gap between the governments and NGOs on either side of the border, alongside networks between different governmental and non-governmental organisations (e.g., border force and NGOs).²¹¹

2. National Plan of Action for Children, 2005

This is divided into four sections: child survival, child development, child protection and child participation.

The preamble states that the Government shall ensure all measures and an enabling environment for survival, growth, development and protection of all children.

It identifies 12 key areas, one of these key areas is to secure for all children all legal and social protection from all kinds of abuse, exploitation and neglect (p 3).

Under pillar 2 ‘Child Development’, the sub-heading ‘rights of the girl child’, goals include:

- To ensure survival, development and protection of the girl child and to create an environment wherein she lives a life of dignity with full opportunity for choice and development.
- To ensure the girl child’s security and protect her from abuse, exploitation, victimisation and all other forms of violence.
- To eliminate all obstacles that prevent girls from full enjoyment of human rights and fundamental freedom including equal rights in succession and inheritance.

²¹¹ Meha Dixit, ‘Cross-Border Trafficking of Bangladeshi Girls’ (2017) Economic and Political Weekly 5-6.

Objectives include:

- To take steps through law, policy and programmes to eliminate all forms of violence against the girl child; and also to provide legal, medical, social and psychological support services and programmes to assist girls who have been subjected to violence.

Strategies include:

- Take preventive, protective and rehabilitative measures to address the greater vulnerability of the girl child to economic and sexual exploitation.

Under the sub-heading 'adolescents', objectives include:

- To provide social defence and protection from all forms of social, economic and sexual exploitation.
- To provide specific rehabilitation and support programmes for adolescents at risk...and victims of commercial and domestic sexual exploitation

Strategies include:

- Sensitise and educate adolescents on gender discrimination, gender violence and other forms of abuse, exploitation and violence.

Under pillar three, 'child protection', the sub-heading 'children in difficult circumstances', goals include:

- To ensure that best interest of the child is upheld in all policies, plans, programmes, interventions and in strategies for children in difficult circumstances.
- To create and uphold a safe, supportive and protective environment for all children within and outside the home.

Objectives include:

- To protect all children against...trafficking, sexual and physical abuse of all kinds...exploitation, violence and degrading treatment.
- To address the survival, development, protection and participation rights of children in difficult circumstances, such as...children of commercial sex workers...all other children in need of care and protection.
- To create an effective support system for all children in all kinds of difficult circumstances and vulnerable situations through creation of an appropriate Authority for Child Protection.
- To give priority for non-institutional services for the rehabilitation of children by restoring them to their families and ensuring their reintegration into the home and community, or through foster care sponsorship, adoption, giving primary consideration to the best interest of the child.

Strategies:

- Prevent destitution and exploitation of children by ensuring the outreach of all care, protection and developmental programmes for all children.
- Rehabilitate all children in need of care and protection and in vulnerable situations through collaboration and convergence of all government and non-government services.
- Provide temporary shelters and in some cases institutional care for street and other children in exploitative circumstances, in partnership with NGOs and community based organisations.
- Develop and provide professional counselling services for children affected by psychosocial trauma due in any of the above situations.

The sub-heading 'sexual exploitation and child pornography' includes the goals:

- To protect all children, both boys and girls, from all forms of sexual abuse and exploitation.
- To prevent the use of children for all forms of sexual exploitation, including child pornography.
- To develop new and strengthen existing legal instruments to prevent sexual abuse and exploitation of children.

Objectives:

- To identify and address the root causes leading to sexual abuse and exploitation of children, both girls and boys, and implement preventive and rehabilitative strategies against sexual abuse and exploitation of children.

- To ensure the safety, protection, and security of victims of sexual exploitation and provide assistance and services to facilitate their recovery and social reintegration.
- To criminalize, prosecute and penalise effectively, all forms of sexual exploitation and sexual abuse of children and child pornography.
- To enlist the support of the private sector, including the media, in programmes to prevent and combat sexual exploitation of children.
- To eradicate harmful, traditional or customary practices that sexually exploit women and children.

Strategies:

- Undertake research to identify the nature and magnitude of all forms of child sexual abuse and exploitation with a view to improve policy and interventions for the safety and protection of children.
- Set up Crisis Intervention Services and Centres with adequately trained personnel to deal with child victims of abuse.
- Review, revise and enact laws for prohibition and prevention of child abuse and punishment of offenders.
- Sensitize police, judiciary and medical authorities towards victims of sexual abuse and exploitation, especially during the investigation process and trial of victims of rape, incest and sexual abuse.
- Establish sound information systems regarding trafficking routes, networking of NGOs and other agencies engaged in prevention, rescue and rehabilitation of victims of sexual exploitation.
- Ensure assistance to child victims for their full physical and psychological recovery, development and social reintegration.

The sub-heading 'child trafficking' includes the goals:

- To stop sale of children and all forms of child trafficking, including for sexual purposes.

Objectives include:

- To identify and address the root causes leading to trafficking of children.
- To implement preventive, protective and rehabilitative strategies for trafficked children and those at risk.
- To ensure the safety, protection, and security of victims of trafficking and provide assistance and services to facilitate their recovery and social reintegration.
- To criminalize, prosecute and penalise effectively, all forms of sale and trafficking of children including for sexual purposes.

Strategies include:

- Implement the Plan of Action to Combat Trafficking and Commercial Sexual Exploitation, 1998.
- Establish facilities for shelter, food, clothing, health care, counselling, education, training, skill development, so as to facilitate social and economic rehabilitation of rescued victims.
- Provide assistance to voluntary organisations to organise temporary shelters for the victims, to facilitate repatriation to their homes, provide assistance during trial, and for rehabilitation of the victims.
- Establish sound information systems regarding trafficking routes and networking of NGOs and other agencies engaged in prevention, rescue and rehabilitation of victims.
- Establish communication with neighbouring countries and NGOs to prevent cross-border trafficking of children and facilitate repatriation and rehabilitation of victims.
- Create regional mechanisms to prevent cross-border trafficking and for promotion of rescue and rehabilitation.
- Prevent trafficking of boys and extend care and protection services to the victims.
- Capacity building of State Governments and NGOs to facilitate better coordination in prevention, rescue and rehabilitation.
- Create Central and State Nodal Authorities to exclusively deal with the problem of trafficking.

- Ratify UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children by 2007.

The sub-heading ‘combating child labour’ includes the goals:

- To protect children from all kinds of economic exploitation.

And the objectives:

- To take immediate and effective measures to prohibit and eliminate the worst forms of child labour and to provide for the rehabilitation and social integration of the rescued children.
- To prevent and prohibit trafficking of children for the purpose of labour including domestic service and other informal sectors.

The strategies include:

- Effectively enforce child labour regulatory legislation and rehabilitation of working children through enrolment in schools, bridge courses of education/life skills training/counselling/recreational facilities and advocacy.
- Ensure prevention of trafficking of children for domestic work and their sexual exploitation and physical and mental abuse and neglect. Establish a system for reporting of such incidents.

The sub-heading ‘child participation’ includes the goals:

- To make all children aware of their rights.
- To empower all children as citizens by promoting their participation in decisions that affect their lives.

Amongst the objectives:

- To ensure that all professionals working with children...have the knowledge of child rights and the skills to make services and proceedings child friendly, inclusive and participatory in nature.
- To ensure informed participation of children in decision making by providing access to information that aims at the promotion of their well-being, health, development, protection and participation.

Strategies include strengthening capacity of civil society, providing information on child rights and ensuring that education is child-friendly and:

- Engage with children’s forums/groups to regularly assess and review children’s needs, encourage them to speak out on issues, expose abuse and exploitation, make complaints of services, ask questions etc.

3. National Policy for the Empowerment of Women (2001)

Policy objectives include the elimination of discrimination and all forms of violence against women and the girl child (p 2). The policy states that in recognition of the diversity of women’s situations and in acknowledgement of the needs of specially disadvantaged groups, measures and programmes will be undertaken to provide them with special assistance include prostitutes etc. (p 5). Violence against women shall be dealt with effectively with a view to eliminate its incidence, including the strengthening and creating of institutions and mechanisms for assistance for rehabilitation of victims and a special emphasis on programmes and measures to deal with trafficking in women and girls (p 6).

4. National Policy for Children 2013

Para 1.1. states that the state is responsible for ensuring that childhood is protected from exploitation and moral and material abandonment.

The policy’s guiding principles cover protecting the rights of the child, including the right to a dignified life, free from exploitation. It also has as a guiding principle the safety and security of all children such that they are protected from all forms of harm, abuse, neglect, and exploitation in all settings.

Para 4 outlines key priorities as survival, health, nutrition, development, education, protection and participation. As part of survival, health and nutrition, the state aims to take measures to ensure that trafficked children are tracked, rescued, rehabilitated and have access to their right to education (para 4.6(v)).

Under ‘protection’, the government commits to protecting all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including sexual exploitation, sale or trafficking (para 4.9). It further commits to taking special protection measures to secure the rights and entitlements of children in need of special protection, including their need for rehabilitation and reintegration, which encompasses children forced into CSE (para 4.11).

5. Government of India, Twelfth Five Year Plan (2012-2017) Social Sectors:

CSE and bonded labour is mentioned as part of addressing violence against women as a major challenge, especially given the low level of conviction rates in cases against women (p 166).

In a later section on trafficked women, the plan states that trafficking for CSE is one of the worst crimes against women and children, subjecting them to humiliation and abuse, against which the government commits to intensifying its efforts to prevent. This includes the concern of cross-border trafficking from Bangladesh to cities in India.

It also aims to ensure rehabilitation of trafficked victims including those in prostitution who wish to leave the exploitative situation (p 176). The government states that skills programmes for alternative livelihoods will be provided to women in prostitution. It also states that the corporate sector will be encouraged to take up projects that provide assistance and support services and rehabilitation for trafficking victims (p 173).

Children of urban poor communities are identified as particularly vulnerable to abuse and exploitation, including sexual abuse, necessitating ensuring all children receive basic services (p 184).

The plan highlights the Ujjwala scheme that was adopted to prevent and combat trafficking, with provisions for rescue, rehabilitation and reintegration of victims, as one that integrates victims back into society (p 181).

In an effort to protect children from CSE, the plan states that the Immoral Trafficking Prevention Act (ITPA) needs to be amended to clearly define trafficking and sexual exploitation, recognising different aspects of the same (p 188). In addition, the plan outlines a need for a child-centric justice system dealing with abuse and trafficking of children and Homes not registered under the Juvenile Justice Act (see above, p 194).

Of the indicative actions required, the Ministry of Home Affairs has the objective of ensuring a safe and secure environment for children, women and their communities, with the implementation of provisions for security, and anti-trafficking (p 220). The Ministry of Women and Child Development and Ministry of Human Resource Development have an objective of strengthening the protective environment for all children, focusing on abuse and exploitation (p 215-6). The Ministry of Social Justice and Empowerment has an objective to undertake special interventions for children vulnerable to violence and exploitation (p 219).

The UJJWALA scheme which is highlighted here has been described as a “shining example of directed effort by the government in partnership with different organisations working towards the goal of protection and rehabilitation” of victims.²¹²

6. Government of India, Standard Operating Procedure to Handle Trafficking of Children for Child Labour – measures to be taken for rescue of trafficked child labourers’ and action against the traffickers/employers, 12th August 2013

Section 4: Trafficked child upon recovery should be counselled by a social worker and proper investigation launched against the offenders/traffickers.

Section 6: The rescue team should be multi-disciplinary and should comprise representative of Police or Labour, SDM or his representative, NGO/complainant, lady policy/volunteer and member of child welfare committee... The child rescued must be sent immediately to child welfare committee and action taken under the JJ Act 2000 (*now 2015*)... The repatriation of the child should be a prime objective in the investigation to ensure that the child goes back to safety.

This SOP also sets out relevant legal sections for connected crimes.

²¹² A Shreyansh and D Jain, ‘Cross-Border Sex Trafficking Between India and Bangladesh: The Largest Illegal Industry in India’ [2013] Asian Journal of Legal Studies 24, p 38.

7. MOLE, Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour, 2008

This protocol sets out provisions for medical examination of children, temporary shelter, transportation and restoration of rescued children, rehabilitation and prevention.

8. Central Sector Scheme for Rehabilitation of Bonded Labourer 2016

The Central Sector Scheme for Rehabilitation of Bonded Labourer was initially established in 1978, and amended in 2000 and 2016. The Central Sector Scheme provides for compensation to freed bonded labourers, funded by the central Government (costs had previously been shared by central and state governments). The Scheme provides for compensation between 100,000 and 300,000 rupees, in addition to land and housing elements such as allotment of land, provision of low-cost housing units, animal husbandry, and wage employment. Aggravating circumstances giving rise to increased compensation in the scheme include 'extreme cases of deprivation or marginalisation such as transgender, or women, or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc'.