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Trafficking in Persons Report 2016 - Country Narratives - India

INDIA: Tier 2

India is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking. Forced labor constitutes India's largest trafficking problem; men, women, and children in debt bondage—sometimes inherited from previous generations—are forced to work in brick kilns, rice mills, agriculture, and embroidery factories. The majority of India's trafficking problem is internal, and those from the most disadvantaged social strata—lowest caste *Dalits*, members of tribal communities, religious minorities, and women and girls from excluded groups—are most vulnerable. Within India, some are subjected to forced labor in sectors such as construction, steel, and textile industries; wire manufacturing for underground cables; biscuit factories; pickling; floriculture; fish farms; and ship breaking. Thousands of unregulated work placement agencies reportedly lure adults and children under false promises of employment for sex trafficking or forced labor, including domestic servitude.

In addition to bonded labor, some children are subjected to forced labor as factory and agricultural workers, domestic servants, and beggars. Begging ringleaders sometimes maim children to earn more money. Some NGOs and media report girls are sold and forced to conceive and deliver babies for sale. Conditions amounting to forced labor may be present in the "*Sumangali* scheme" in Tamil Nadu, in which employers pay young women a lump sum, used for a dowry, at the end of multi-year labor contracts. Some children, reportedly as young as 6 years old, are forcibly removed from their families and forced by separatist groups such as the Maoists in Bihar, Chhattisgarh, Jharkhand, Maharashtra, West Bengal, and Odisha to act as spies and couriers, plant improvised explosive devices, and fight against the government.

Experts estimate millions of women and children are victims of sex trafficking in India. Traffickers use false promises of employment or arrange sham marriages in India or Gulf States, and then subject women and girls to sex trafficking. In addition to traditional red light districts, women and children increasingly endure sex trafficking in small hotels, vehicles, huts, and private residences. Traffickers increasingly use websites, mobile applications, and online money transfers to facilitate commercial sex. Children continue to be subjected to sex trafficking in religious pilgrimage centers and tourist destinations. Many women and girls—predominately from Nepal and Bangladesh, and from Europe, Central Asia, and Asia, including minority populations from Burma—are subjected to sex trafficking in India. Prime destinations for both Indian and foreign female trafficking victims include Kolkata, Mumbai, Delhi, Gujarat, Hyderabad, and along the India-Nepal border; Nepali women and girls are increasingly subjected to sex trafficking in Assam, and other cities such as Nagpur and Pune. Some corrupt law enforcement officers protect suspected traffickers and brothel owners from law enforcement efforts, take bribes from sex trafficking establishments and sexual services from victims, and tip off sex and labor traffickers to impede rescue efforts.

Some Indian migrants who willingly seek employment in construction, domestic service, and other low-skilled sectors in the Middle East and, to a lesser extent, other regions face forced labor, often following recruitment fraud and exorbitant recruitment fees charged by labor brokers. Some Bangladeshi migrants are subjected to forced labor in India through recruitment fraud and debt bondage. Some Nepali, Bangladeshi, and Afghan women and girls are subjected to both labor and sex trafficking in major Indian cities. Following the April 2015 Nepal earthquake, Nepali women who transit through India are increasingly subjected to trafficking in the Middle East and Africa. Some boys from Bihar are subjected to forced labor in embroidery factories in Nepal, while some boys from Nepal and Bangladesh are subjected to forced labor in coal mines in the state of Meghalaya, although reportedly on a smaller scale than in previous years. Burmese Rohingya, Sri Lankan Tamil, and other refugee populations continue to be vulnerable to forced labor in India.

The Government of India does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. For the first time, the National Crime Record Bureau's Crime in India report included data on trafficking investigations, prosecutions, and convictions. The data demonstrated vigorous efforts to combat human trafficking but reflected a relatively low number of law enforcement action for the scale of trafficking in India and a low conviction rate overall. Moreover, the scope of law enforcement action on forced labor and the range of sentences applied to convicted traffickers remained unclear because the data was not comprehensive. The Ministry of Home Affairs (MHA) revised its strategy guiding Anti-Human Trafficking Units (AHTUs), to ensure more effective identification and investigation of trafficking cases and coordination with other agencies to refer victims to rehabilitation services. Several state governments created or re-activated AHTUs, although the majority of districts remained without AHTUs. The government investigated and prosecuted some cases of official complicity, although comprehensive data was unavailable and official complicity remained widespread. The government continued to fund shelter and rehabilitation services for women and children throughout India and issued additional directives to states to find and rescue missing children, some of whom may have been trafficking victims. However, overall victim protection remained inadequate and inconsistent, and the government sometimes penalized victims through arrests for crimes committed as a result of being subjected to human trafficking. The government revised, but did not repeal, its policy restricting travel of some Indians identified as trafficking victims abroad by a foreign government and of their family members.

RECOMMENDATIONS FOR INDIA:

Increase prosecutions and convictions for all forms of trafficking, including forced and bonded labor, respecting due process; establish and fully resource AHTUs in all districts, including by providing additional dedicated, trained staff and by clarifying the mandate of AHTUs; encourage AHTUs to address all forms of trafficking, including forced labor of adults and children; cease the penalization of trafficking victims, including restrictions on their travel; increase investigations and prosecutions of officials allegedly complicit in trafficking, and convict and punish those found guilty; improve central and state government implementation of protection programs and compensation schemes to ensure trafficking victims receive benefits, release certificates, and rehabilitation funds; develop and implement standard operating procedures (SOPs) to harmonize victim identification and repatriation, and the prosecution of suspected traffickers when trafficking crimes cross state lines; take steps to eliminate all recruitment fees charged to workers and raise awareness among potential migrants on the no fee policy; promptly disburse government funding for shelters and develop monitoring mechanisms to ensure quality of care; continue to increase the transparency of government efforts to combat trafficking and provide disaggregated data on efforts to criminally investigate, prosecute, and punish sex and labor trafficking; provide funding for states to establish fast-track courts that deal with all forms of human trafficking; and provide anti-trafficking training or guidance for diplomatic personnel to prevent their engagement or facilitation of trafficking crimes.

PROSECUTION

The government demonstrated increased law enforcement efforts, although investigations, prosecutions, and convictions were low for the scale of human trafficking in India, and action on forced labor remained unclear. Section 370 of the Indian Penal Code (IPC) prohibits slavery, servitude, and most forms of sex trafficking, and prescribes sufficiently stringent penalties ranging from seven years' to life imprisonment, which are commensurate with those prescribed for other serious crimes, such as rape. Section 370 does not define the prostitution of children younger than age 18 as an act of human trafficking in the absence of coercive means—the standard of the 2000 UN TIP Protocol—although other statutes criminalize the prostitution of children. Section 370 criminalizes government officials' involvement in human trafficking, prescribing sentences up to life imprisonment. Bonded labor is specifically prohibited under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which prescribes sufficiently stringent penalties of up to five years' imprisonment and the Bonded Labor System Abolition Act, which prescribes insufficiently stringent penalties of up to three years' imprisonment. India prohibits many forms of forced labor through the Child Labor (Prohibition and Regulation) Act, the Juvenile Justice Act, and other provisions of the IPC; however, these provisions were unevenly enforced and their prescribed penalties are not sufficiently stringent, allowing for only fines or short prison sentences in some cases. The government frequently used the Immoral Traffic Prevention Act (ITPA) and various provisions of the IPC, which have sufficiently stringent penalties, to prosecute sex trafficking.

However, because the ITPA also criminalizes acts related to prostitution and officials inconsistently screened for trafficking indicators, the government prosecuted sex trafficking victims under the ITPA. In December 2015, as a result of public interest litigation, the Supreme Court directed the central government to develop comprehensive anti-trafficking legislation by June 2016. During the reporting period, the government formed an inter-ministerial committee, which met multiple times to draft the legislation.

During the reporting period, the National Crimes Record Bureau (NCRB) issued the 2014 Crime in India Report, the most recent law enforcement data available. For the first time, the report included data on trafficking investigations, prosecutions, and convictions under several relevant laws. During 2014, police investigated 3,056 trafficking cases, including 2,604 cases of sex trafficking, 46 cases of bonded labor, and 406 uncategorized trafficking cases; an additional 2,336 cases were pending investigation at year's end. In 2014, 2,782 people involving 2,538 alleged sex traffickers, 195 alleged labor traffickers, and 49 uncategorized traffickers were prosecuted, resulting in 577 traffickers convicted, 1,990 persons acquitted, and 29 persons discharged. Notably, the acquittal rate was 77 percent and only six of the convictions were for bonded labor, although bonded labor offenders may also be convicted under the Prevention of Atrocities Act, and these statistics were not reported. The government did not report sentences for convictions. One Indian media story commented the figures reported by the NCRB were ambiguous and did not reflect the large scale of human trafficking crimes in India; experts stated many cases were not registered by police or were settled at the complaint stage. Incidents of inaction by police and prosecutors reflected often inconsistent application of the law across jurisdictions, corruption among officials, and a lack of awareness or capacity in some parts of the country.

During the reporting period, MHA revised its strategy guiding the AHTUs to support trainings fostering partnership across police, prosecutors, judges, and service providers and encourage state governments to increase AHTU resources and the number of personnel. Of the more than 600 districts, only 226 had functioning AHTUs at the end of the reporting period, and most lacked clear mandates *vis-a-vis* other district- and state-level police units. In response to an increase in trafficking cases of Nepalis in India after the April 2015 Nepal earthquake, AHTUs were created or re-activated in Uttarakhand and Uttar Pradesh. Some NGOs reported significant cooperation with AHTUs on investigations, particularly in Maharashtra and Tamil Nadu states. However, coordination across states remained a significant challenge in cases where the alleged trafficker was located in a different state from the victim—jurisdictional barriers prevented confessions from one state being used as evidence in another. NGOs noted some police offices were overburdened and underfunded and lacked the necessary resources, such as vehicles and computers, to combat trafficking effectively. Some police utilized AHTU resources and personnel for non-trafficking cases. NGOs noted judges and courts did not have sufficient resources to properly prosecute cases, including an adequate number of support staff, such as stenographers and translators. State and local governments conducted training for police, magistrates, and prosecutors in collaboration with NGOs and international organizations that addressed the integration of anti-trafficking efforts post-Nepal earthquake, the law, and the non-criminalization of victims.

Official complicity in human trafficking occurred at varying levels of government. Some corrupt law enforcement officers protected suspected traffickers and brothel owners from law enforcement action, took bribes from sex trafficking establishments and sexual services from victims, and tipped off sex and labor traffickers to impede rescue efforts. The government did not report comprehensive data on investigations, prosecutions, or convictions of government officials complicit in human trafficking offenses. Eight Puducherry police officers were dismissed from their jobs; in May 2015, they were charged for a second time with rape in an ongoing case from May 2014, in which four children were rescued from a sex trafficking racket. In February 2016, a Goa water resource department official and his Mumbai-based partner were arrested for running a prostitution ring; police rescued three girls and registered the case under sections of the ITPA. However, media also reported allegations of a few complicit officials whom the government did not prosecute and who remained in government.

PROTECTION

The government demonstrated mixed efforts to protect victims; while it made positive steps to find and rescue potential child trafficking victims and improve assistance to Bangladeshi victims, the government's overall provision of services was generally inadequate and inconsistent, and the penalization of victims remained a concern. The government did not provide comprehensive information on the number of trafficking victims it identified. However, the NCRB reported the government's identification of at least 6,216 victims in 2014: 3,332 sex trafficking, 279 bonded labor, and 2,605 uncategorized victims. A 2009 MHA non-binding directive advises state officials to use SOPs for proactive victim identification and referral to protection services; however, it is unclear if all 29 states utilized such SOPs. The central government issued several directives to state- and district-level law enforcement to carry out operations to rescue and rehabilitate missing and exploited children. During the reporting period, the government reported its rescue of 19,742 children, some of whom may have been subjected to forced labor or sex trafficking. Some state- and district-level law enforcement actively partnered with NGOs to identify, rescue, and provide rehabilitation services to victims; however, other police officers believed their responsibility concluded with the rescue operation and did not complete investigations or charge suspects. In other cases, police arrested and charged alleged traffickers, but some of the alleged

traffickers posted bail and while awaiting trial—sometimes for several years—purportedly intimidated witnesses and subjected new victims to trafficking.

The Ministry of Women and Child Development (MWCD) continued to fund NGO-run shelter and rehabilitation services for women and children through the *Ujjawala* program, specifically for female sex trafficking victims, and the *Swadhar* program for women in difficult circumstances. Central government funding for MWCD grants to states decreased slightly in the 2015-2016 fiscal year. NGOs reported an insufficient number of government shelters, noting the increase in rescue operations further overwhelmed already overburdened shelters and victim care services. Both government- and NGO-run shelters faced shortages of financial resources and trained personnel, particularly of counselors and medical staff. NGOs relied primarily on donor contributions to provide victim services, although some received government funds. The disbursal of government funding to NGOs was sometimes delayed for multiple years and corruption reportedly drained some resources intended for victim care. In September 2015, the government suspended several government social welfare officers and two superintendents at a shelter home for women in Delhi for dereliction of duty and mismanagement; conditions in the shelter were found to be unhygienic, and the women lacked clean water and adequate food. Some victims waited months for transfer from temporary “transit homes” to shelters that provide long-term care due to shortages of government funds, shelter staff, or police escorts. Some government-run shelters did not permit adult victims to leave the premises. Child victims were placed in private shelters or in government juvenile justice homes and largely received the same government services as adults.

Rescued bonded laborers are entitled to “release certificates,” enabling them to receive government-funded compensation and services. Many victims received certificates at or soon after their rescue, especially in areas where there was significant coordination between the government and NGOs. Others experienced lengthy delays before obtaining the certificates. Other than bonded labor victims, adult male trafficking victims did not receive care or funding from the government. Victims had access to government hospitals for emergency medical services, although long waiting lists made it difficult to obtain surgery and other procedures, and NGOs often had to pay for victims’ emergency medical treatment.

Foreign victims received the same access to shelters and services as Indian nationals. MHA guidelines to all state governments specify that foreign women and children who are declared victims should not be prosecuted for immigration violations. Government policy on foreign victims dictated their return to their country of origin at the earliest possible time. Foreign sex trafficking victims were confined to government aftercare homes until repatriation and were not permitted to work in the local economy. Due to a number of constraints, this process resulted in some victims spending upwards of four years confined in these homes before being repatriated. In June 2015, the Governments of India and Bangladesh signed a Memorandum of Understanding (MOU) on human trafficking to improve coordination in preventing trafficking and protecting victims; one provision stipulated repatriation cases taking more than six months be referred to a higher-ranking authority. Bangladeshi victims were typically repatriated within 21 days. To protect both Indian and foreign national victims during trial, prosecutors may request the victim be permitted to testify by video or behind a screen, the proceeding be closed to the media and public, and irrelevant and potentially harmful questions be barred. In February 2016, a Bangladeshi trafficking victim gave testimony via video-conference from Dhaka; a lawyer commented this was likely the first time a deposition was given via live-video in a cross-border trafficking case.

NGOs in several states reported police and prosecutors were increasingly aware of the need to identify trafficking survivors as victims and not as defendants; however, the government did, in certain cases, continue to penalize victims as a result of inconsistent identification and screening efforts. There were reports of some victims being detained and arrested for acts committed as a result of being subjected to trafficking, including sex trafficking victims prosecuted and convicted for prostitution and foreign trafficking victims charged with immigration violations. In the previous reporting period, the government began denying travel of trafficking victims and their family members, including by confiscating the passports of Indians who received a visa from a foreign government indicating the person was a trafficking victim in the foreign country or was a family member of a victim. The government revised this policy in 2015 to allow these victims and their families to renew their passports and travel if documentation of the victim’s trafficking experience could be provided and the Indian government determined the person to be a trafficking victim. However, some victims continued to cite lengthy delays, requests for private or otherwise sensitive information, and inconsistent application of the policy when attempting to renew their passports. In a limited number of cases during the reporting period, authorities confiscated the passports of some victims’ families when they were traveling from India.

PREVENTION

The government increased efforts to prevent human trafficking. In May 2015, MWCD and Ministry of Railways signed an MOU with an NGO for the protection of unaccompanied children at railway stations. During the reporting period, 20 railway stations hosted NGO staff to provide immediate support to unaccompanied children, who may be missing, abandoned, or runaways and are vulnerable to exploitation, including trafficking. In November 2015, MWCD and the railway ministry launched a project to supply posters to railway stations advising the public to call the national Childline hotline if they encounter an unaccompanied child. Some state governments also conducted anti-trafficking awareness campaigns. During the reporting period, the

governments of Telangana, Andhra Pradesh, and Odisha partnered with NGOs and a foreign donor for a large-scale survivor-run awareness campaign across 53 districts.

In August 2015, in response to public interest litigation filed in 2004, the National Legal Services Authority submitted a report to the Supreme Court with recommendations for the prevention of trafficking for commercial sexual exploitation and the rescue and rehabilitation of victims. Based on the recommendations, the Supreme Court directed the government to establish a central organized crime agency by December 1, 2016, to investigate human trafficking cases and rescue and rehabilitate victims. During 2015, the government made the Central Advisory Committee to combat trafficking of women and children for commercial sexual exploitation the lead agency on trafficking issues. The government did not have a national action plan. Some state governments had action plans and taskforces to combat trafficking; during the reporting period, both Uttar Pradesh and West Bengal established anti-trafficking taskforces and Uttar Pradesh officially launched and West Bengal drafted an action plan. MHA maintained an online portal for officials and other stakeholders to access information on trainings, meetings, statistics, laws, and shelters.

During the reporting period, the Ministry of Overseas Indian Affairs (MOIA) merged with the Ministry of External Affairs to increase the government's ability to monitor the welfare of Indian migrant workers abroad. MOIA launched eMigrate, an online system for registering foreign recruitment agencies, and registered over 20,000 domestic agents in India and 7,000 foreign agencies during the reporting period. MOIA continued to provide counseling and other resources to those considering migrant work at five resource centers in Chennai, Gurgaon, Hyderabad, Kochi, and Lucknow; it also continued to administer a welfare fund in 43 Indian Missions globally and provide shelter to migrants in distress in several countries in the Middle East. MOIA funded the repatriation of Indian victims abroad through its mandatory insurance reserves, foreign employer security deposit policies, and receipts from overseas consular fees. MOIA worked with the Central Bureau of Investigation to address cases of recruitment fraud and trafficking allegations and frequently revoked recruitment licenses. In September 2014, the local government of Delhi issued an executive order to regulate job placement agencies; during the reporting period, NGOs reported law enforcement implemented the order when cases were brought to their attention, but awareness of the order was low and proactive implementation was lacking. After the April 2015 Nepal earthquake, the government's border patrol agency organized a joint training session on trafficking with police officers from Nepal and Bhutan. Despite India being a source and destination for sex tourism, the government did not report on specific measures to reduce the participation of its nationals in child sex tourism. Goa law enforcement cooperated with law enforcement in the United Kingdom (UK) on the prosecution of British sex tourists who had returned to the UK. The government did not report efforts to reduce the demand for commercial sex or forced labor. The Indian military conducted training on trafficking for its personnel before deployment on peacekeeping or similar missions. The government did not provide information about any anti-trafficking training provided to its diplomatic personnel.