



Series: Analysing the Bill of the proposed Anti Trafficking Law 2018

Area: Designated Courts

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

The ‘Designated Courts’ are not full-time courts dedicated to trying cases only under this Act or any other trafficking law. These Designated Courts shall not take up the trafficking cases on priority basis. As the various main offences of trafficking are a part of the IPC and other special laws like ITPA, Bonded Labour Law, Child Labour Law, POCSOA, what happens to the Special courts assigned to those respective laws (e.g. ITPA court, POCSO Court, Labour court, Family Court etc)?

As per the Bill-2018 the State Government does not have to do anything besides issuing a circular and declaring that the existing Sessions courts shall be functioning also as the Designated Courts.

It is a widely lamented fact that the load of pendency of cases at the Sessions Courts is insurmountable. The question is ‘Why and how this provision would facilitate faster disposal of trafficking cases and early clearance of the load of the pending cases?’

Let us look at the pendency of criminal cases alone. As per a 2017 release by the Press Information Bureau of Min of Law & Justice Govt of India (Source: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=137291>) the number of criminal cases pending before the High Courts for 2014 is 10,37,465 of which 1,87,999 cases are pending for more than 10 years. That numbers for District and Subordinate courts are 1,82,54,124 criminal cases of which 14,32,079 are pending for more than 10 years.

Section 46 - For the purposes of providing speedy trial of any offence under this Act, the State Government shall, in consultation with the Chief Justice of the High Court, by notification, within two months from the date of commencement of this Act, designate in each district, the court of session as a Designated Court.

A report in the New Indian Express dated 15 Jan 2017 states,

‘In an alarming scenario, a whopping 2.8 crore cases are pending in district courts across the country which are short of nearly 5,000 judicial officers. The situation has led to suggestions in two Supreme Court reports to increase the judicial manpower “manifold” — at least seven times — to overcome the crisis by appointing about 15,000 more judges in the coming few years. The suggestions and some sharp remarks came out in two reports issued by the Supreme Court — ‘Indian Judiciary Annual Report 2015-2016’ and ‘Subordinate Courts of India: A Report on Access to Justice 2016’ (Source: <https://bit.ly/2NtLvSl>)

In the last few decades the nation has progressively moved from general courts to Special courts with more specialised and sensitized judicial officers and lawyers. Besides accumulating experience and developing insight into a specific type of trafficking crime such specialised courts also enable the judges and prosecutors to identify re-trafficking when the same victim gets re-rescued and to identify a repeat offender brought to the court room.

Is it not a regressive move to have a Designated Court trying the cases of the different types of trafficking?

Although the POCSO Act 2012 provides for time frame for the disposal of cases a report in Times of India 13 Feb 2018 quoting the data of the law ministry GoI states,

‘Maharashtra recorded most number of such cases with as many as 17,300 pending trial; UP has 15,900 and Madhya Pradesh 10,950, Kerala, Odisha, Karnataka. Rajasthan. West Bengal and Gujarat have pendency of cases ranging between 3,500 to 5,000 under the POCSO Act.... There are more than 90,205 cases pending trial across 29 states and seven union territories.’
(Source: <https://bit.ly/2L90WCs>)

(Note: The POCSOA Courts too are not courts for the trials of POCSOA cases exclusively.)

Does Sec 46 add any value whatsoever to the antitrafficking cause or it is a regressive move that will only add to the burden of the Sessions courts and to the load of pendency?

It was expected that the Government will set up special trafficking courts all over the country on the lines of the Special Courts under ITP Act but addressing all types of trafficking. The Bill frustrates that expectation.

Special courts and the appointments of thousands of judges is the need of the hour. Although provided in the ITP Act since 1956 the first (and only!) Special trafficking court (fully dedicated to the cases under ITPA) of the country was set up in Mumbai more than 50 years latter sometime in 2008. Its conviction rate is far better than the regular courts.

Sec 47 (1) The appropriate Government may, by notification, appoint Special Public Prosecutors for every designated court for conducting cases under this Act.

(2) Every person appointed as a Special Public Prosecutor under sub-section (1) shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provisions of that Code shall have effect accordingly.

(3) Subject to the provisions contained in section 301 of the Code of Criminal Procedure, 1973, the victim shall be entitled to the assistance of a legal counsel of his choice for any offence under this Act:

Provided that if the victim is unable to afford a legal counsel, the Legal Services Authority shall provide a counsel to him.

Research in the State of Maharashtra shows that although provided under the POCSO Act in 2012 the Special Public Prosecutors have not been appointed in 47% of POCSO Courts. Providing legal assistance to victims, is it not an old established provision in Indian courts?

Sec 48 -(1) The designated court shall complete the trial, as far as possible, within a period of one year from the date of taking into cognizance of any offence under this Act.

Besides what is mentioned above this provision makes no sense in the cases of trafficking for commercial surrogacy as currently there is no law against commercial surrogacy. The present Bill does not address the offence of trafficking for surrogacy. A full-fledged law on commercial surrogacy and trafficking for it is overdue. Instead of coming up with that law, the Bill-2018 deals with this growing crime in almost a single line by showing it as an aggravated form of the trafficking offence under Sec 31(ii) . stating

Sec 31. Notwithstanding anything contained in any other law for the time being in force, whoever commits an offence of trafficking of person—
(ii) for the purpose of bearing child, either naturally or through assisted reproductive techniques; is said to commit an offence of aggravated form of trafficking of the person

The Bill-2018 also leaves the offence of trafficking for illegal clinical trials and hence this provision makes no sense there. Sex trafficking offences against children also being sexual offences against children go to the POCSOA Courts. ITPA cases (sex trafficking and commercial sexual exploitation) are supposed to go to the Special Trafficking courts. This section thus leads to confusion and overlapping without adding any utility.

Sec 48(2) The designated court may record the statement of any victim through video conferencing in any case, where the victim is unable to appear before the court for the reasons of safety or confidentiality.

This provision already exists under POCSO Act, 2012. What was demanded and expected from the Bill was a much better and clear provision for the ‘sight and sound separation’ (SSS) between the victim his family and the accused and his representatives. The Bill is far from meeting that requirement.

Sec 48(3) In all matters of trans-border and inter-State crimes where the victim has been repatriated to any other State or country is unable to attend the court proceedings, the court may order video conferencing to record his statement.

Provision already exists under POCSO Act 2012 which is most likely to be applied in majority of sex trafficking cases the victims being children. It is better elaborated and articulated in the POCSO Act, 2012.

Sec 48(4) Notwithstanding anything contained in this Act, the inquiry and trial of offences under this Act, may be conducted *in camera*, if an application is made in this regard by the victim.

The provision already exists in various laws. Is *in camera* trial really required in labour trafficking cases especially since *in camera* trials also give anonymity to the accused?

Sec 49(1) The designated court may order, where applicable, any backwages of the victim to be paid to him.

(2) The designated court shall on its own motion or on an application filed by or on behalf of the victim, award compensation under section 357A of the Code of Criminal Procedure, 1973, or under any other law for the time being in force or otherwise at any stage of the proceedings.

(3) The appropriate Government shall ensure that the relief ordered by the designated court is paid within sixty days from the date of receipt of the order.

The provision already exists in the Bonded Labour Systems (Abolition) Act. Victims of sex trafficking are not to given paid backwages as it amounts to treating sexual slavery as work/labour.

Does Sec 49 mean that the criminal injuries compensation will be independent and paid over and above the monetary relief given under Sec 27& 28 of this Bill?

Repetitive as stated in Chapter 27 & 28 of this Bill. A victim rescued from the trafficking situation, is invariably, in need of urgent medical and monetary reliefs among others. Giving a time limit of 2 months to the State provide the relief is cruel. Should the victim take private loan till the State relief arrives? Who would provide that loan except the traffickers, brothel keepers and pimps?

Sec 50(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of the designated court to the High Court.

(2) Every appeal under this section shall be preferred within a period of sixty days from the date of judgment, sentence or order appealed against:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

At present the different destination crimes of trafficking are covered under different specialised laws. A government department is declared as the nodal department for each of these laws. There are special courts, specialised judges, specialised prosecutors, specialised service providers. Often the victim assistance services are also specialised and the service providers are also distinct. Under the NCPCR Act and the POCSO Act the children's courts were expected to have a child friendly architecture and amenities. Putting all of them together in one Designated Court is surely a regressive and counterproductive move.

It was expected that the Bill-2018 would provide for full time dedicated courts, ensure the appointment of sensitive and experienced magistrates/judges, provide for certain infrastructure and amenities to ensure sight and sound separation (SSS) and institutionalize child friendliness where the rescued victims are below 18 years of age and facilitate victim friendliness in general. The Bill 2018 fails to meet those minimum expectations.

- *Note by Dr. Pravin Patkar assisted by Ms. Priti Patkar and Ms. Kashina Kareem*