



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

Area: Lip Service to Protection and Rehabilitation

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

The civilized world, the UNCRC-1989, the established policy of the central government are all strongly moving away from institutionalization of victims and in favour of community-based rehabilitation. Today, many Homes whether run by the State or civil society sector are emerging as problems rather than solutions. There is an increasing demand not to have the right and access to rehabilitation/victim assistance conditional to institutionalization.

Is this not a regressive move? The government is expected to come up with policies clearly in favour of non-institutionalization and supporting innovative approaches to community-based rehabilitation.

21. (1) The appropriate Government shall maintain either directly or through voluntary organizations or non-Governmental organizations as many Protection Homes as necessary and to be managed in the manner, as may be prescribed for the immediate care and protection of the victims or any person rescued.

(2) The Protection Homes shall provide for shelter, food, clothing, counselling and medical care that is necessary for the victims or any person rescued and such other services in the manner, as may be prescribed.

22. (1) The appropriate Government, as it deems fit, shall maintain either directly or through voluntary organisations or non-Governmental organisations, one or more Rehabilitation Homes in each District managed in the manner as may be prescribed for the purpose of providing long-term rehabilitation of victims or any person rescued.

(2) The appropriate Government may also utilise any existing shelter home for the purposes of rehabilitation under sub-section (1).

What are these 'existing shelter homes'? Does this mean that the bureaucracy will be empowered to take over or forcibly put to use private Homes meant for whatever legitimate purposes. Will this provision not lead to extortion and corruption?

23. (1) Notwithstanding anything contained in any other law for the time being in force, a Protection Home and Rehabilitation Home shall be registered under this Act in such manner as may be prescribed by the appropriate Government.

(2) If any person in-charge of Protection Home and Rehabilitation Home providing shelter and rehabilitation to victims or any person rescued contravenes any of the provisions of sub-section (1), he shall be punished with imprisonment which may extend to one year or with fine which shall not be less than one lakh rupees, or with both.

A similar provision in the J J Act 2000 and subsequently in 2006 has already led to vagueness and confusion and made the shelter service providers belonging to the civil society sector to arbitrariness and arms twisting by the petty government officers. The shelter service providers can at the most submit their papers for registration, how can they be responsible for registering the Home? Does any law give them power to register themselves? Since the powers to register a Home is vested in the bureaucratic officer how can a shelter service provider be punished for not having the Home registered. The J J Act 2000 and 2006 made it compulsory for the child care institutions to get freshly registered but hardly issued any registrations even after a decade.

24. (1) A victim or any person rescued on behalf of him may make an application to the Magistrate within the local limits of whose jurisdiction the victim or such other person is trafficked or suspected to be trafficked for an order that he may be kept in a Rehabilitation Home:
Provided that in case the victim or any person rescued is a child, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply.
(2) The Magistrate may, pending inquiry under sub-section (3) or sub-section (4) of section 17 having regard to the circumstances of the case direct that the victim or any person rescued to be kept in such care and protection as he may consider proper.
(3) The Magistrate shall consult the District Anti-Trafficking Committee before taking a final decision with respect to the rehabilitation of the victim or such other person.

Should there be a well-informed provision for automatic registration in case the shelter service providers have done their paperwork well but the State has delayed the decision unreasonably? The Bill-2018 is silent on this point thereby giving ample arm-twisting power to the petty bureaucrats.

What is the meaning of the text: rescued on behalf of a victim? Are any persons ‘rescued on behalf of a victim’? Is it a reference to the child or parents or any other family member of the victim who are in captivity? If so, why is it not stated clearly and directly?

25. Where the person rescued is a victim, the District Anti-Trafficking Committee shall ensure that the rehabilitation of the person is not contingent upon criminal proceedings being initiated against the accused or the outcome thereof.

Sec 25 suffers from the fallacy of circular logic when it opens as –‘Where the person rescued is a victim....’ It raises several questions

Who is a victim?

Who determines if someone is a victim, when and on what bases?

Who is to be rescued if not a victim?

Why should anyone rescue someone who is not a victim?

By ‘criminal proceedings’ if the Bill-2018 means prosecution before a judicial body then by corollary the provision also states that (a) the rehabilitation will be extended to a person without any judicial procedure confirming his/her victimhood; (b) if so, which nonjudicial will decide that? A district women and child development officer? An officer of the local police station? The responsibility of the District Anti-Trafficking Committee (DATC) as per Sec 25 is to ensure that the rehabilitation is not contingent upon prosecution. It doesn’t state that the DATC will decide if one is a victim or not.

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