



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

Area: The vague and operationally undefined term ‘Victim’ - the dangerous consequences and implications thereof

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

There are no two opinions that the victims of human trafficking must be adequately compensated for the damage they have suffered. People like us who are engaged in victim protection, post rescue operation, psychological recovery, economic rehabilitation, social reintegration and repatriation of the traffic victims are fully committed to this idea and welcome every measure that makes up for their losses and suffering. We strongly feel that a trafficking offence indicates the failure of the State and the society to protect their members against the harm of trafficking. We also hold that victim assistance and compensation are not the gestures of charity but are the rights of the victim.

The term ‘victim’ appears 83 times in the main text of the 2018 proposed Anti trafficking law’s Bill (Bill-2018). Additionally, it appears 8 times in 6 out of the 10 most important features of the Bill mentioned in the Bill. That is enough to establish how important the term and the phenomenon it represents are.

A policy for its implementation requires a proper operationalization of the term lest justice should be vitiated and tax payers’ money should be misused or usurped.

We are living in times when the public domain is rotten with rampant corruption and scams involving public money. The police and petty officials are routinely accused of privatizing public life for personal gains by opportunistically implementing the law or by its non-enforcement.

Some anti trafficking activists are on record in public domain for accusing that the perpetrators of trafficking offence and their agents get themselves ‘rescued’ in police raids posing as victims and get placed in shelter facilities in order to muffle the voice of the true victims and to prevent them from cooperating with the investigation officer. The activists have also blamed the riotous outbreaks of the ‘victims’ in their shelter facilities to such agents of traffickers. There are many anti trafficking activists who corroborate this.

Section 2 of the Bill-2018 presents a definition of the term victim as follows;

- (x) “victim” means any person on whom an offence of trafficking has been committed or attempted by any other person or persons

- *provided that for the purpose of receiving compensation or relief under this Act, any dependent or legal heir, as the case may be, of a deceased victim, shall also be construed as a victim*

The term victim is neither defined under the ITP Act 1956 dealing with sex trafficking and commercial sexual exploitation, nor in the Bonded Labour Act. Sec 2-23-wa of The Code of Criminal Procedure 1973 defines the term victim as follows;

‘(wa) **“victim”** means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression **“victim”** includes his or her guardian or legal heir;’

There are three problems with this provision in CrPC. It is a very general definition covering all types of victims of crimes while the Bill-2018 should have defined victims of human trafficking. Secondly, it lacks operationalization. It also makes the definition dependent upon the ‘charges on the accused’ and thus ‘the accused’. The scope of the term and the rights of a victim as claimed by the Bill 2018 are not to be dependent upon investigation and prosecution of the offence or outcome thereof. Thirdly, going by Sec 59 of the Bill-2018, the provisions of the bill override every other provision in any other law which is inconsistent with the provisions of the Bill-2018. Hence a comparatively superior definition of victim as given in CrPC cannot prevail over the loose and non-operationalised definition given in the Bill-2018.

The definition given in the Bill-2018 raises more questions than it answers. It seeks far more clarity than given in its theoretical definition.

It is any person on whom an offence of trafficking has been committed **or attempted**. Hence as per Sec 2(x) a victim is also a person against whom an offence of trafficking has been attempted but not necessarily committed. Furthermore, going by the definition ‘any dependent or legal heir, of a deceased victim is also considered as a victim and will be qualified for compensation or relief purposes.

Activists working in the antitrafficking field and empirical research in South Asia abundantly show that often the traffickers are family members and known persons from the neighbourhood of the person who gets trafficked. Doesn’t the above definition qualify the ‘legal heir’ for compensation and relief if the victim is dead but not if the victim is alive.

Operationally, how would it be decided if one is a victim or not? What is the process employed to decide if one is a victim or not? The Bill-2018 does not state the criteria or the process required for determining victimhood.

The Bill-2018 does not clarify as to who is the competent authority to decide if someone is a victim of trafficking or not? Is it to be declared by the officer of the local police station or the district officer of one of the government departments?

At present, the status is determined extremely arbitrarily largely by the police. In short, a victim is a person ‘rescued’ from the site of a search (raid) operation by the raiding party of the local police station. The entire anti trafficking enforcement currently operates on this loose assumption. What if a fake person or agent of the brothel keeper, trafficker, pimp or bondage master is ‘rescued’ by the police? The activists are on record that the agents of traffickers get themselves ‘rescued’ with the connivance or negligence of the raiding police. Will they also

become victims and be qualified for the compensation and other reliefs (including monetary) assured by the Bill-2018.

Is it a self-ascribed status? i.e. is it sufficient that a person declares himself/herself as a victim of trafficking?

**CHAPTER IX:
MONETARY RELIEF AND COMPENSATION**

Sec 27. (1) Upon application for interim relief by the victim, the District Anti-Trafficking Committee or Child Welfare Committee, as the case may be, shall take immediate steps to award interim relief to the victim as deemed appropriate not later than thirty days, taking into consideration all aspects, including physical, mental trauma and the other requirements of the victim.

(2) The appropriate Government shall provide adequate funds at the disposal of the District Anti-Trafficking Committee for the purposes under sub-section (1), within a period of one month from the date of commencement of this Act.

Sec. 28 (1) The District Anti-Trafficking Committee shall take steps to ensure that appropriate relief is provided to the victim, within sixty days from the date of filing of charge-sheet.

(2) The relief amount shall be in addition to any other compensation including any amount or benefit payable by way of any scheme of the appropriate Government or pursuant to any order of the court under any law for the time being in force

It is argued that a person against whom an offence of trafficking has been committed suffers severe injuries, trauma besides other types of losses as compared to a person against whom a trafficking offence is merely 'attempted but not committed'. The Bill-2018 does not differentiate between them.

It is claimed by some antitrafficking activists that 'cross border anti trafficking vigilance' in sex and labour trafficking situations results in early rescue and hence the trauma, injury, and losses suffered by the person getting trafficked are relatively less. It sounds logical as that is the purpose of early intervention. Searches (raids) on brothels and sweatshops often rescue persons who have suffered injury, assault, trauma and losses for a number of years. The Bill-2018 does not differentiate between them.

It is on record that sometimes a trafficked person is rescued from the situation of captivity by social workers, parents, close relatives, friends, and even customers. At times they gather courage and escape the captivity. Often, we hear that the outreach teams of CHILDLINE happen to rescue trafficked children. The child when produced before the Child Welfare Committee does not analyse, articulate or complain of having been trafficked or exploited. The positive duty bearers working with the child identify and articulate the trafficking and exploitation angle and complain about it. There is no mechanism like the CWC in the cases of adults rescued by the helping professionals. There is no system of treating the latter as victims since the current established operationalised definition of a victim is a person rescued by the raiding police. Thus, the trafficked persons who rescue themselves or are rescued by the non-police sources are not considered as victims and hence are not eligible for compensation or relief. The Bill-2018 does not clarify this point and silently goes by the established flawed practice.

There is yet another problem. As per the established practice a woman rescued by the raiding police and placed in a Protective Home under the ITP or Children's Home (set up under the J.

J. Act) alone is considered as a victim. The Bill-2018 does not state as to for how long a person is considered as a victim? Is it for life time or for a certain number of years? As the benefits given under the Bill-2018 are one time while there is no clarity on the immunity granted. Is the latter for lifetime?

The Bill-2018 states that for a victim to be eligible to compensation and other reliefs (including monetary reliefs) it is not necessary that there should be arrest, trial prosecution or conviction of the accused. Which makes the ‘compensation and other (including monetary) reliefs practically unconditional.

Sec 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.

In justifying the provision, the Government states, ‘*Clause 25 of the Bill provides that 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 30(3) of the Bill-2018 states The Rehabilitation Fund shall be utilised under this Act by the appropriate Government for—

(v) providing aftercare facilities for capital and infrastructure to the victims who are ready to integrate into mainstream society by setting up small business or profession;

The Bill-2018 empowers and mandates the Designated Courts to pass the orders of compensation

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 various criminal injuries compensation/ victim assistance schemes of the State governments in India created under Sec 357A of CrPC also award compensation practically unconditionally especially independent of the investigation (including arrest of the accused) or of the outcome of the prosecution. The State schemes of Andhra Pradesh, and the 2017 version of Manodhairya of Maharashtra also declare the victims of trafficking eligible for the benefit under the scheme. Operationally, it treats a person rescued by the raiding police during a search as a victim.

It is feared that the absence of a clear definition, criteria, appropriate interpretation, safeguards against misinterpretation, and the continuation of a loosely defined and operationally undefined term ‘victim’ is highly likely to lead to a hand in glove operation between the perpetrators of crime and the police thereby breeding rampant corruption.

Under section 27 and 28 of the Bill-2018, there are two proposed provisions of interim relief, to be awarded by CWC or District Anti trafficking Committee within 30 days and relief ensured by District Anti trafficking Committee within 60 days of filing the chargesheet. Section 28 (2), states that this relief amount is in addition to the compensation payable by the appropriate govt.

As we reject overreliance on institutional solutions and search for community-based rehabilitation the provision of urgent monetary compensation and other reliefs get prominence. As the Bill-2018 also grants a sweeping immunity against crimes committed under threat and undue influence the operationalization of the term victim, the need for elaborate protocols for the sanction of compensation and other relief measures etc become extremely important and indispensable. Leaving it to the prescription of the State is bound to be dangerous breeding corruption and arbitrariness.

There is yet another completely different and extremely serious dimension to the issue of the vagueness in the definition of the term victim, the absence of its appropriate operationalisation and safeguards against its misuse.

Violation of Article 14 of the constitution

Chapter XII Sec 45 of the Bill-2018 states;

<p>Sec 45- Nothing is an offence which is committed or attempted to have been committed by a victim, punishable with death or imprisonment for life or for imprisonment for ten years, if the offence is committed or attempted to have been committed, under coercion or compulsion or intimidation or threat or undue influence by any person and where, at the time of committing the offence, the victim is subjected to reasonable apprehension of his death, grievous hurt or any other injury to him or to any other person whom he is interested in.</p>

This provision on the one hand leads to disastrous consequences and on the other violates the Fundamental Rights enshrined in Article 14.

Article 14 guarantees equality before law and equal protection of the law to all persons within the territory of India. The State is allowed to treat people unequally for legitimate purposes based upon a reasonable, non-arbitrary and intelligible differentiation.

For a moment we keep aside the vagueness in operationalizing the term victim and consider that the State shall have a clear and non-arbitrary category called traffic victim is the provision under Sec 45 above based on any reasonable basis? Many people commit offence including serious ones under coercion or compulsion or intimidation or threat or undue influence by any person and at the time of committing the offence, they are subjected to reasonable apprehension of their death, grievous hurt or any other injury to them or to any other person in whom they are interested. Is it not violation of Article 14 of the Constitution of India to offer such immunity only to traffic victims and not to all citizens or other victims of crime or other social victims?

The Bill 2018 says nothing about how to establish if an offence has been committed under threat? Is it the responsibility of the ‘accused victim’ to prove that? What if the incidence of threat is very old say 15 years old and the accused has no means to prove it? What all goes under ‘undue influence by any person’?

It is a commonplace observation that the victims of sex trafficking if not helped timely end up eventually becoming brothel managers, brothel keepers, pimps or traffickers. They can vouch that they have accepted all those tasks under threat of life or grievous hurt or even undue influence of a person. Would they not be eligible for immunity or impunity? And what could happen if such

immunity is extended to all persons since Article 14 promises equality and non-arbitrariness in classification?

Do you think the Bill-2018 should get placed before the Parliament unless these concerns are properly addressed?

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