

Rehabilitation and Reintegration of Trafficked Women

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Abstract

Apart from the stupendous task of dealing with human trafficking, the state is also struggling to comprehensively plan for the re-integration and rehabilitation of the victims of trafficking. The present article elucidates the international regime and national practices in the providing methods of rehabilitation and reintegration with special reference to Indian laws.

KEYWORDS:

Introduction:

Human trafficking is the trade of humans for the purpose of forced labour, sexual slavery, or commercial sexual exploitation. It is a crime against the person because of the violation of the victim's rights of movement through coercion and because of their commercial exploitation. It is the trade in people, especially women and children.

It is condemned as a violation of human rights by international conventions. Countries are affected in various ways. Some see their young women being lured to leave their home country and ending up in the sex industry abroad. Other countries act mainly as transit countries, while several others receive foreign women who become victims of sexual exploitation. Both men and women may be victims of trafficking, but the primary victims worldwide are women and girls, the majority of whom are trafficked for the purpose of sexual exploitation.

Prevention, rescue and rehabilitation of women from human trafficking¹, forced to sex and exploitation is very much essential to bring the victims back in to the main stream of the society.

Instruments Concerning the Trafficking of Women

The Convention on the Elimination of All Forms of Discrimination against Women requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. It identifies trafficking as a form of violence against women because it puts women at special risk of violence denial of equal enjoyment of rights by women.

The United Nations Convention against Transnational Organized Crime is an international instrument in the fight against transnational organized crime. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2003. It is the first global

¹http://ncw.nic.in/sites/default/files/Human_Right_Violation_of_Victims_of_Trafficking.pdf

legally binding instrument with an agreed definition on trafficking in persons with an intention to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. It also aims to protect and assist the victims of trafficking in persons with full respect for their human rights.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, 2004.²

The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation.

The United Nations Convention against Transnational Crime (UNTOC), requires States to ‘establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.’²⁷ Article 6(6) of the Protocol requires each State to ‘ensure its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered’.

Constitutional & legislative provisions related to Trafficking in India

- Trafficking in Human Beings or Persons is prohibited under the Constitution of India under Article 23 (1)³
- The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the premier legislation for prevention of trafficking for commercial sexual exploitation.
- Criminal Law (amendment) Act 2013 has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A IPC which provide for comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs.
- State Governments have also enacted specific legislations to deal with the issue. (e.g. The Punjab Prevention of Human Smuggling Act, 2012)

Measures taken by Government of India to Prevent and Combat Human Trafficking

With a view to tackle the menace of human trafficking, Ministry of Home Affairs, Government of India has undertaken a number of measures such as:

Administrative measures and interventions

Anti Trafficking Cell (ATC): Anti-Trafficking Nodal Cell was set up in the Ministry of Home Affairs (MHA) in 2006 to act as a focal point for communicating

²<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

³ Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

various decisions and follow up on action taken by the State Governments to combat the crime of Human Trafficking.

Strengthening the capacity building:

To enhance the capacity building of law enforcement agencies and generate awareness among them, various Training of Trainers (TOT) workshops on Combating Trafficking in Human Beings for Police officers and for Prosecutors at Regional level, State level and District level were held throughout the country.

Judicial Colloquium:

In order to train and sensitize the trial court judicial officers, Judicial Colloquium on human trafficking are held at the High court level. The aim is to sensitize the judicial officers about the various issues concerning human trafficking and to ensure speedy court process.

Implementation of International Conventions on Trafficking

UN Convention: India has ratified the United Nations Convention on Transnational Organised Crime (UNTOC) which has as one of its Protocols Prevention, Suppression and Punishment of Trafficking in Persons, particularly Women and Children. Various actions have been taken to implement the convention and as per Protocol, Criminal Law Amendment Act, 2013 has been enacted wherein human trafficking has specifically been defined.

SAARC Convention: India has ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. A Regional Task Force was constituted to implement the SAARC Convention.

Bilateral mechanism: For dealing with cross border trafficking and to address the various issues relating to prevention of Trafficking, victim identification and repatriation and make the process speedy and victim-friendly between India and Bangladesh, a Task Force of India and Bangladesh was constituted. Memorandum of Understanding (MoU) between India and Bangladesh on Bi-lateral Cooperation for Prevention of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking was signed in June, 2015.

The role of States in providing remedies.

Many international human rights treaties require States to provide effective remedies to victims of within their territory. where the conduct of the State is directly or indirectly responsible for the violation of their human rights. (for example, the arbitrary detention of a trafficked person by authorities). The State has an obligation to investigate and prosecute trafficking cases and protect victims of trafficking. If it fails to take reasonable steps to prevent human trafficking and protect potential or actual victims of trafficking, to the required standard of due diligence it fails to discharge their treaty obligations to prevent trafficking or protect the rights of trafficked persons, those persons could file a complaint either with UN Treaty Bodies, the constitutional complaints procedures of the ILO, or with judicial bodies such as

the European Court of Human Rights (ECtHR) which has provided key guidance on State obligations to take positive steps to identify and protect victims.

Civil society groups

Civil society groups such as non-governmental organizations (NGO), members of the legal community, trade unions, migrant rights advocacy organizations, academics, and employer organizations can play a powerful role in enabling victims of trafficking to claim compensation and other remedies by pressurizing States to provide remedies, offer training to the legal community and public officials about facilitating access to remedies, share information about available remedies, and represent victims in compensation claims.

Remedies to be provided to victims of trafficking

The specific content of the remedy required will depend on the facts of the case, the nature of the violations suffered, the national legal framework and relevant treaty-based obligations. As a general proposition, remedies available to victims should be ‘adequate and appropriate’, ‘proportional to the gravity of the violation’ and adapted to the circumstances of the case. The term ‘remedies’ or, more specifically, reparations, can describe a range of measures. The Supreme Court has held that rehabilitation of crime victims holds as much importance as punishing the accused does and the courts have the responsibility of striking a balance between the needs of a society and a fair trial to the accused, but they should also award just compensation to victims.⁴

Rehabilitation and Reintegration

Though no victim will ever forget their experience the experience can be overcome so that the victims can move on without having to think about it each day. The small difference between the two words is that rehabilitation means for the victim to be able to live with their past and reintegration that the victim has a job, friends, etc. To help victims however, not only rehabilitation has to happen but also reintegration.⁵

The restoration of the dignity of the victim is the ultimate goal of the provision of redress. The obligation of states to provide redress to a victim of trafficking The existence of a proper legislative framework and institutional mechanisms enabling a prompt and effective investigation and, eventually, prosecution and punishment of those responsible for the violations is necessary.

Monetary compensation alone cannot be regarded as adequate redress for a victim of trafficking. Setting things “right” after such a traumatic life experience as torture or ill-treatment requires holistic and long-term rehabilitation efforts to restore

⁴<https://www.vakilno1.com/supreme-court/rehabilitation-crime-victims-utmost-importance-supreme-court.html>

⁵<http://www.munish.nl/pages/downloader?code=hrc02&comcode=hrc&year=2012>

the dignity, physical and mental ability, and social independence of the individuals concerned, as well as their full re-inclusion in society. The rehabilitation process should include not only medical and psychological care, but also social, legal, educational and other measures, as well as family support. To be effective, rehabilitation must be victim-centred and be provided at the earliest possible point in time after the trafficking event based on the recommendations by a qualified health professional. Rehabilitation should be tailored to the specific needs of a given victim.

States have the obligation to ensure that long-term programmes of rehabilitation are accessible to all victims of trafficking without discrimination and with full respect for victims' right to confidentiality. This may either be done through the direct provision of these services by states, or by support or funding to private or non-governmental programmes. Irrespective of the arrangements found, it is essential that persons who have experienced trafficking are able to place their trust in the rehabilitation services offered. It is also important to ensure that providers of rehabilitation services are protected from reprisals or intimidation for their work. Cooperation between NGOs and state services is therefore vital to ensure the effective rehabilitation services to victims.

For example, Jabala Action Research Organization⁶, an NGO based in Kolkata shelters victims of trafficking and rehabilitates them. The organisation has rescued hundreds of women and children and has created a model for rehabilitation that the government and other organisations can emulate. It's efforts have helped many young victims of trafficking find employment and lead happy lives. The organisation has helped victims of trafficking start canteens and catering services. Some are employed as security personnel in shopping malls.

Prajwala⁷ is a pioneering anti-trafficking organization working on the issue of sex trafficking and sex crime. Established in the year 1996 in South India, Prajwala has pan India and International operations. Prajwala works on the five pillars of Prevention, Protection, Rescue, and Rehabilitation & Reintegration. In the last one decade it has become one of the most powerful voices nationally and globally for ensuring holistic victim services.

However, despite the work carried out by organisations involved for decades in the fight against trafficking, most states do not implement the right to rehabilitation in accordance with established international norms and obligations. Domestic laws, public policies and state budgets frequently do not ensure the implementation of the right to rehabilitation and, even if there is a state rehabilitation programme in place, victims are often reluctant to turn to them if they have doubts about their independence. In a number of cases victims of trafficking are not properly identified by the relevant mechanisms and procedures, which prevents them from accessing rehabilitation services.

Access to justice is an essential feature of the right to redress. This implies a criminal investigation of allegations of torture and ill-treatment (or an ex officio investigation in the absence of a complaint), fair and impartial judicial proceedings

⁶ <https://www.thehindu.com/news/cities/Kochi/rehabilitation-of-trafficking-victims-ngo-shows-the-way/article5182880.ece>

⁷ <http://www.prajwalaindia.com/index.html>

within a reasonable time and the enforcement of the decisions taken. The possibility for a victim to participate actively in the proceedings is especially important, and could in itself constitute a part of the rehabilitation process. Often, participation in judicial proceedings can contribute to the restoration of victim's dignity and a sense of justice, and testifying before the court can bring a sense of empowerment, thereby attenuating the negative effects of the human rights violation experienced.

The states should ratify all relevant international instruments and ensure that their domestic law is in full compliance with international standards. Rehabilitation services must be given full support, to enable the individuals affected to rebuild their lives and regain their place in society. The foregoing must be accompanied by anti-trafficking measures of a preventive nature, including a zero-tolerance message, awareness-raising and professional training for public officials, as well as a firm commitment to combating impunity.

Non-governmental organizations (NGOs) are progressively making "reintegration" their primary protective objective. Yet a lack of conceptual clarity prevails and is being exacerbated by models and forms of guidance which position NGOs as directly undertaking or providing for the achievement of reintegration.

Assistance & Reintegration of Victims

Trafficked victims return home without knowing that they have rights and entitlements as victims of the crime of human trafficking. They are also unaware of the services and support available to them from the Government and civil society at the various levels.

Escape or exit from trafficking is a critical moment in the lives of trafficked persons. It is, in many ways, a new beginning or a return to normal life. But "being home" is far from an easy or smooth transition. It is, often times, a complex, taxing and complicated process that involves significant challenges. The process of reintegration encompasses not only individual trafficking victims but also their family members and the family environment to which they return. Trafficked persons must recover and come to terms not only with their own exploitation, but also the reactions and responses of their family members. Moreover, the family of trafficked persons has also been negatively affected by the victim's trafficking and must also navigate and manage return and reintegration.

Reintegration assistance is often critical for trafficked persons as they recover and move on from trafficking. Well-designed reintegration and assistance programs can provide vital, even life-saving services to trafficked persons and their families facing the challenging task of rebuilding their lives. Such programs also address the pre-existing vulnerabilities that often contributed to individuals being trafficked and widen the life choices available to them.

Overall, there exists a range of programs currently in place in aimed at supporting the reintegration of trafficked persons. These include efforts and initiatives by various government ministries and departments (at the national, provincial and district levels), NGOs. These initiatives and interventions afford often-critical support and services to many trafficked persons toward their recovery and reintegration after trafficking exploitation.

Reintegration is a process that involves many steps after the individual's exit from trafficking and is able to access to a reasonable and sustainable standard of living, along with opportunities for economic empowerment.

Compensation has the potential to reduce the risk of re-trafficking by providing survivors with financial assistance to rebuild their lives. The compensation must be able to cover medical treatment, temporary accommodation, lost income and due wages, as well as 'non-material damages, resulting from moral, physical, or psychological injury, emotional distress, pain and suffering' and 'any other costs or losses incurred by the victim as a direct result of being trafficked.'

Rehabilitation and recovery can include medical and psychological care, legal and social services such as shelter, counselling, health services and linguistic support. Provision of this remedy should not be contingent on victims assisting law enforcement authorities.

The right to receive information and legal assistance Giving victims of trafficking clear and consistent information about the legal remedies available to them, as well as access to free legal advice is essential for them to assert their legal rights.

Rehabilitation is the sum total of multiple processes including psychological healing, economic empowerment and a civic identity. All this leads to the successful integration of a survivor in the society.

Conclusion

Human trafficking is a crime against the person because of the violation of the victim's rights of movement through coercion and because of their commercial exploitation. Human trafficking is the trade in people, especially women and children. It is thought to be one of the fastest-growing activities of trans-national criminal organizations. It is condemned as a violation of human rights by international conventions. The challenges facing victims often continue of course, after their experience of "rescue" or removal from coercive sexual exploitation.

There is an absence of anti-trafficking legislation in some countries. Sometimes the legislation exists, but law enforcement officials and prosecutors may not know how to use it. In some instances, victims may not cooperate with the criminal justice system because they have been threatened by a trafficker.

Suggestions

- ✓ Victims should be treated with dignity and respect.
- ✓ Provide employability training including basic literacy personality development and work place ethics.
- ✓ Provide viable and sustainable livelihood skills that is suitable in job market
- ✓ Facilitate repatriation procedures for the victim.
- ✓ Strict laws should be imposed and capital punishment should be awarded to those involved in trafficking.

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