

Accessibility of Justice to the Victims of the Trafficking

Surabhi Verma¹

Abstract

Access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution of the India. And the most vital requirements for providing to the citizens access to justice is by setting up an adjudicatory mechanism whether described as a Court, Tribunal, Commission or Authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its instrumentalities. “Access to justice” as a constitutional value will be a mere illusion if justice is not speedy. Justice delayed, it is famously said, is justice denied. And therefore, access to justice without the speed shall be futile. Justice does not only mean that perpetrator be punished but also include that the victim be rehabilitated; and it’s the latter part which is mostly overlooked or never dealt with. Legal mechanisms to claim compensation exist in many countries but monetary compensation does not soothe the damaged soul. Reparations in form of counselling and rehabilitation are much needed since a remedy is an attempt to right a wrong, to correct – as far as possible – an injustice. The right to a remedy remains out of reach of most victims of trafficking, mostly because of inadequate remedies but often because victims lack information about the process and procedure for accessing them. And the way to ensure solution to this is by removing legal and procedural barriers and providing support and assistance they need to access remedies. Delivery of justice should be impartial and non-discriminatory and since the legal aid programmes are central strategies to enhance access to justice they should be framed accordingly without any stereotyping. Because victims often face procedural and financial barriers when accessing remedies, emphases be that the right to an effective remedy ‘encompasses both the substantive right to remedies and the procedural rights necessary to secure them’. The paper shall further explore the mechanisms for providing remedies to victims of trafficking and the challenges associated with doing so and the recommendations towards improving the ability of victims of trafficking to obtain effective remedies.

¹ Research Scholar, pursuing her PhD. In Law from Dr. Ram ManoharLohiya National Law University, Lucknow.

Introduction

The act of trafficking in persons is often described as ‘modern day slavery’. There is lack of legal accuracy in the phrase, the fact that trafficking is an egregious assault on the freedom and dignity of its victims cannot be ignored. Article 3(a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking in Persons Protocol), defines trafficking in persons as:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Trafficking in Persons Protocol has by defining the trafficking in person established a normative framework to combat human trafficking at the international and national levels. The complexity of the international definition has meant that States have implemented different types of Protocol in different ways. India is home to over 14 million victims of human trafficking as per the Global Slavery Index, 2014. Despite being illegal, forced and bonded labour are widespread and commercial sexual exploitation and child labour persist - often with impunity for perpetrators and limited legal recourse for victims. Victims often require legal assistance from NGOs and independent lawyers. This assistance is wide ranging, from ensuring claims are registered by the police through to briefing public prosecutors or pursuing other remedies for victims. However, legal resources and capacity are extremely limited and there is huge scope to scale up the fight against trafficking through the use of strategic legal initiatives. There is immense potential to use legal strategies to deliver justice to victims, deter potential perpetrators and put traffickers out of business. While remedies remain out of reach for trafficked victims, there is reason to be optimistic that this will change. Remedies, as a core component of response to any kind of injustice, should be an essential element of efforts to address human trafficking. They are instrumental for victims’ recovery, reinstatement of their rights, and prevention of their re-victimization. This paper examines the right to effective remedies for victims of trafficking, the scope of its application, and the challenges that arise in providing remedies to victims.

Research Methodology

The report is based on extensive qualitative research which includes analysis of legislation, recent case law and relevant literature. The research method adopted for this work is the doctrinal method of research. Paper contains the sources from where the data has been mentioned accordingly.

Objective

The report examines the legal challenges faced by victims of human trafficking in India and makes key recommendations on legal strategies to combat trafficking and improve legal outcomes for such victims.

Research Issues

The work shall explore practical different strategies apart from legal field that can be used to combat trafficking and obtain justice for victims. These include access to legal support (both direct funding initiatives for NGOs and centralised legal support initiatives at the national, state and community levels); legal knowledge and training; strategic litigation and procedural reform; the use of data, technology and the media; and increased collaboration between these actors.

Mechanisms for accessing justice

A new Indian law - the amended section 370 of the Indian Penal Code under the Criminal Amendment Act, 2013 — has expanded the definition of trafficking, basing it on the United Nations Palermo Protocol, which India ratified in May 2011. The law holds significant potential to increase prosecutions and act as a strong deterrent by:

1. Criminalising a wide range of trafficking related crimes, including trafficking for the purpose of “exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
2. Criminalising persons involved at each and every stage of the trafficking chain by defining the trafficking offence as anyone who recruits, transports, harbours, transfers, or receives a person or persons for the purposes of exploitation.
3. Providing increased punishments for offences (e.g. a minimum of ten years for trafficking a minor for purposes of sexual exploitation).
4. Making all offences non-bailable.
5. Making consent of the victim immaterial to establishing the offence of trafficking (note that this is particularly important for trafficking cases involving child or forced

marriage where the girl may “willingly” enter into an arrangement under duress or due to false promises).

The amended Section 370A of Indian Penal Code,1860 criminalises the engagement of a trafficked person (adult/ minor) for the purpose of sexual exploitation, targeting customers and those organising the sexual exploitation of trafficked women and girls.

The law seems to be on its edges to save the needy so there is need for various other actors to work and make the legal remedy available to those in the need. NGOs are having much more success ensuring that section 370 is used in situations traditionally viewed as “trafficking” and “exploitation” in India, such as sex trafficking cases or those involving minors, particularly when there is movement across state borders. NGOs have come a long way in ensuring that remedies are available to the needy and therefore, their role seems to be of greater importance as they work on the grass root level and which shall be the target to eradicate such evil.

Role of other actors in enabling the access of Justice

NGOs

Throughout the criminal justice process, NGOs provide support to victims by undertaking a range of measures which include:

1. Providing legal assistance: Hiring lawyers to pursue legal cases on behalf of victims.
2. Filing a complaint: Ensuring that if the victim wants to pursue legal action, an official complaint is filed and registered with the police, referencing the relevant legislative provisions.
3. Pursuing claims: Liaising with senior police and government officials or courts if a FIR is not registered and working with lawyers to get all applicable charges included at trial stage.
4. Opposing bail: Opposing the granting of bail to the accused to ensure the new presumption against bail in trafficking cases, pursuant to s370, is implemented.
5. Preparing the victim: Supporting the victim to provide statements to the police and testify in court.
6. Witness protection: Protecting victims and other witnesses who are often “revictimized” by further threats and intimidation by traffickers.
7. Assisting public prosecutors: Gathering evidence, preparing submissions and briefing public prosecutors on cases.

8. Obtaining compensation: Applying for compensation for victims who are eligible under the relevant legislation.

There are many NGOs across India that work on combating trafficking but only a small portion pursues legal cases on behalf of victims. And those that do provide legal support have limited capacity and are able to cater only a small percentage of cases through to the trial stage.

Some NGOs have headed legal change through strategic or public interest litigation (PIL) cases. A few legally-savvy NGOs have used PIL to obtain landmark judgements in the higher courts that have led to significant legislative changes (such as the signing of the Palermo Protocol and the introduction of Section 370 and 370A) and critical directions on the treatment of missing children by police.² However, utilising this jurisprudence in the lower courts and ensuring the directives and orders are followed in practice remains challenging task. PIL is incredibly resource intensive and requires extensive research and access to experienced and credible lawyers who can run cases in the higher courts. As a result, very few NGOs have the resources and expertise to run PIL cases, and those that are starting to consider pursuing them could greatly benefit from legal mentoring but the financial aid hinders this. There are very few NGOs who are being aided by state to combat such wickedness.

Additionally, there are huge challenges involved in ensuring that court orders and directives can and will be followed – whether by law enforcement and other public officials or other courts. There is an opportunity for NGOs to take more action to ensure that orders and directions of the court are implemented. To support implementation there is a need for NGOs to collaborate with government agencies during a case to agree on appropriate and realistic suggested outcomes that can be recommended to the court. Collaboration between NGOs that have acquired legal experience, skill and know-how in pursuing cases would help increase prosecution rates and improve legal outcomes for victims. Apart from legal aid NGOs can be helpful in providing rehabilitation services to the victims as well and the counselling required after such horrific incident in their life.

Media

The media is a powerful tool in influencing public opinion and raising awareness. With that power, comes the responsibility of providing accurate information to the public while

²People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235; BandhuaMuktiMorcha v. Union of India and others,AIR 1984 Supreme Court 802; Public Union for Civil Liberties v. State of Tamil Nadu & Others, Writ Petition Civil No. 3922 of1985; BachpanBachaoAndolan v. Union of India,2011 SCC (5) 1.

ensuring the protection of individual sources from harm resulting from information disclosure. Following themes should be kept in mind by media actors while broadcasting such issue:

1. Uncovering human trafficking stories without any stereotyping.
2. Balanced and fair representation of the issue avoiding clichés.
3. Sensitivity and responsibility when interviewing victims.

The role of media in combating trafficking cannot be undermined. As it is because of the awareness that such aim can be achieved and the media is the best way to aware people at the macro and micro level about the incidents of trafficking and the tools to fight such evil. Media helps in increasing the public pressure when the higher authorities are unresponsive, encourage initiation of petition and to increase awareness of the incidence and effects of trafficking and slavery in India. Timely media articles have helped to obtain strong orders from judges in many cases.

The use of media is particularly useful if the victim is up against a perpetrator who is either influential themselves or has strong political or criminal linkages. India has witnessed many incidents where the counter pressure during trial had been effective. Also, the reporting of a conviction sends a strong deterrent message to potential perpetrators. Continued reporting on the progress of a trial can be an important factor in obtaining successful prosecutions. The reporting of the court orders in trafficking cases and cultivating good relationships with court journalists is useful for this purpose. Therefore, apart from the legal authority access to justice can be paved through other actors in the society and it is by their partnership such evils can be fought against.

Conclusion

For governments to properly assist victims, they must broadly and effectively implement a strong, modern, comprehensive anti-trafficking law. Such a law should include such provisions where it treats human trafficking as a serious offense with commensurately serious kind of punishment for offenders and, and most importantly should also embrace victim protection measures that addresses the need for restitution, and immunity for offenses they were forced to commit during the course of the victimization.

Another seemingly obvious step is finding the victims and getting them out of harm's way. If the victim remains trapped in exploitation strongest then any victim protection scheme is useless. Governments cannot sit back and wait for victims to self-identify; rather, they must proactively seek victims out by investigating high-risk sectors, screening vulnerable

populations, and training relevant government officials to recognize trafficking when they see it. Another thing which should be kept in mind is that the victims should not be further victimised and they shall be given a safe haven where they can mend their lost confidence and soul.

The partnership with NGOs will flourish the action against the trafficking. For example, when police conduct raids of brothels, collaboration with NGOs can help police identify potential trafficking victims and refer them for protective services. And further the NGOs can assist in giving them immediate assistance that is needed and additionally can arrange for their shelter.

Should that day arrive when human trafficking disappears, one fact will remain certain: what has happened to the victims of modern slavery can never be undone. For those who have endured the exploitation of modern slavery, even the most effective justice system and the most innovative efforts to prevent future trafficking will not reverse the abuse and trauma that millions of trafficking victims have endured. Those working with victims must respect their choices and freedom, including the right to refuse services. This respect must guide all efforts to provide support. If victims want to walk away as soon as they have escaped modern slavery, that decision should be in their control. What governments can control, however, is the range of services and support available to victims so that they have a menu of options from which to choose.

All that is requires is the right support and services so that victims can move beyond their suffering and forward with their lives. And with the right legal structures and policies, they can see justice done. Providing them with the right opportunities, so that they can make choices about the lives they want and even use their experiences to help guide and strengthen efforts to fight this crime. This process is unique for each victim, and each must take steps based on his or her own strength, agency, and determination. Government institution cannot reverse what has happened to someone abused in a situation of modern slavery but they can act as a support system in the process of individual's recovery by providing support to each victim on his or her journey toward becoming a survivor.