

ILFAT's position paper on new law on combatting human trafficking

About Indian Leadership Forum Against Trafficking (ILFAT)

A group of survivor leaders from West Bengal and Andhra Pradesh took the initiative in July 2019 to form a national forum and get connected with survivors of human trafficking in other parts of India. When this idea was shared with other survivor leaders from Bihar, Chhattisgarh, Odisha, Jharkhand, Uttar Pradesh and Tamil Nadu, they enthusiastically agreed to come together, and there we formed the Indian Leadership Forum Against Trafficking (ILFAT). Today, it is our pride to be able to launch ILFAT to you, the important stakeholder with whom we would like to act together to combat human trafficking crimes. ILFAT is a national forum of leaders who survived the inhumane human trafficking crimes. Currently 11 survivor collectives across 8 states are the members of ILFAT, which means that more than 2,500 survivors of human trafficking who are our peers and colleagues are a part of ILFAT at this moment.

ILFAT is a forum by the trafficked survivors for the trafficked survivors. The forum acts as a catalyst and convener for sharing expertise, insights and evidences relevant to human trafficking in India, which are indicating systemic failure to combat these organized crimes. We ILFAT engage in policy and law consultation processes as well as with media to share our findings and experiences in the system in order to strengthen the system together.

Why Indian Leadership Forum Against Trafficking (IFAT) stands for a comprehensive law against all forms of trafficking?

As individual survivors of trafficking, before we came together to form ILFAT, we had demanded and advocated for the passing of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. The bill was passed in Lok Sabha but to our great disappointment, it was never tabled in Rajya Sabha. Hence our primary demand once again, as a forum of survivor leaders is that the comprehensive law like ToP bill 2018 to come back, be passed and made into a law.

ILFAT believes that a comprehensive law against trafficking must be inclusive of all forms of trafficking right from forced and bonded labor, sex trafficking to begging and servitude. Currently there is a multiplicity of laws, which deals with different forms of trafficking under the different laws in silos. Some laws define and penalize only one part of human trafficking, punishment of our traffickers is weakened by fragmented prosecution of this organized crimes under different laws, and we observed that multiplicity of laws is indeed weakening the implementation of these laws on the ground.

It was for this reason that we unequivocally want that an anti-trafficking legislation passed, which is comprehensive and includes all forms of trafficking

What do we want in the bill?

1. Community based rehabilitation over Shelter Homes

Many of us in ILFAT were put in shelter homes post our rescue. Shelter homes, which are meant for our rehabilitation and relief, are far from equipped to do that. They are not good enough to even give us the basic needs. In the shelter homes, the survivors are not even extended the basic courtesies leave alone create an environment where the survivor may feel safe. We were consistently given bad food, which was hardly consumable and at irregular intervals. It was like the food was some sort of special privilege for us and not the basic human right. There have been more scandals in shelter homes, including suicides by women forcibly held in shelter homes, sexual exploitation of children and women, violence and torture on shelter home inmates. There is every indication that shelters run with no transparency and accountability. The shelter homes do not have adequate counseling to help the survivors deal with the trauma and emotionally recuperate. On top of that we are forced to be there against our wishes. Overall it is not an environment fit for physical and emotional healing.

We want the bill to give greater emphasis on the agency and consent of the adult survivors. No survivor should be forced to stay in a shelter home against his or her wishes. The bill must lay down minimum standards of care for the shelter homes and must have a robust mechanism for continuous monitoring and evaluation by the government.

As survivors we face a lot of stigma upon our re-integration in the community. Women survivors face more stigma than the male survivors. Akin to the comprehensive rehabilitation and re-integration provisions laid down in the Juvenile Justice (Care and Protection) Act, the Prevention of Trafficking bill must lay down provisions to ensure the re-integration of survivors in the community though ensuring opportunities for social, personal and economic development. There are a few such existing models of community-based rehabilitation in Nepal, Bangladesh and India. The rehabilitation of a survivor won't happen in isolated spaces but in an open society. This is a gap that ILFAT believes needs to be fixed

2. Greater focus on the mental health of the survivors

We as survivors underwent immense mental trauma as we spent our days being trafficked. We were made to undergo tremendous hardships and had to struggle to fulfill our basic needs like hunger, contact with family and decent living conditions. We were physically and sexually assaulted. As mentioned above the provisions made to look after the mental health of the survivors are woefully inadequate. We need better counselling from dedicated individuals who are there to ensure the wellness of the survivors and treat us with dignity and care. The bill must lay greater emphasis on the mental health of the survivors in their rehabilitation period.

3. Trainings and Skill development

For a survivor to get fully rehabilitated, self-independence is important. For that to happen, it is necessary that we be trained and skilled in vocations and areas which will allow us to seek respectable livelihoods. We the survivors must be given the freedom to choose the vocation we want to be skilled or trained in and not just be forced to undergo a limited set of skills trainings which are mandated by the State. There should also be provisions for institutionalized/district education and housing facility for children of survivors.

4. Make the enforcers of the law accountable

Almost all of us have faced discrimination, stigma and plain refusal of services from duty-bearers who are responsible to provide us with services for justice and rehabilitation. The present laws don't give us any avenues of holding them accountable – if we try to lodge complaints, we are often subjected to their anger and wrath. Many survivors are often silenced from this fear of backlash. The bill needs to have guidelines and policies in place across administrative levels that can help us hold duty-bearers accountable, while maintaining our safety. It is a common occurrence that the police, especially in case of adults, would just file a missing complaint to help them brush the matter aside after a while. The police investigations are often opaque with no real clarity offered on the status and way forward in the investigations. Most of the times the police do not unleash the full extent of law. To ensure a strong case the police must use all the provisions of the Indian Penal Code namely 370,372,373 to ensure that the trafficker and the buyer get indicted.

The quality of investigations and the rate of convictions in cases of human trafficking too is a testimony to the fact that the law enforcement needs to be sensitized, trained and also be held accountable by the survivors if they fail to discharge their basic duties honestly. The bill needs to fix accountability of informing the victims that they are entitled to seek compensation and failure to do so must lead to penal provision

5. Stringent punishment to the traffickers

We believe that trafficking should be a non-bailable offence and the perpetrators must be sentenced to a minimum of life sentence. With better conviction rates and harsher punishments, we believe it would at least have some deterrence effect.

6. Institute fast track courts for trafficking cases

We believe that it is very important that fast track courts be instituted for the trafficking cases. Many of us have gone through and are still currently undergoing the long and exhausting process of law to get justice. Survivors have poor financial resources and almost no institutional backing. The long wait to get justice is draining for the survivors and hence we demand that special fast track courts be instituted for the cases of human trafficking

7. Streamline the implementation of victim compensation laws

Victim compensation for trafficked survivors should not be conditional upon rescue. Lack of awareness, and a cumbersome process fraught with legal hurdles have contributed to the glaring gap between the number of people trafficked and the number of those who have received compensation.

The process of getting the victim compensation is in itself a punishment. The elaborate paperwork needed for the compensation adds to our humiliation and trauma and we are often made to recount our experiences multiple times. Currently, facilitating meaningful access to compensation often falls to non-governmental actors. We usually have little knowledge of the legal system and struggle to navigate the complex and often bureaucratic government processes necessary to receive the compensation to which we are entitled. Often, we come to know about the compensation schemes years after our



rehabilitations. Since compensation is age specific (children below 14 years can claim more), age proof becomes imperative. However, most of us do not have any documents with us. We do not even have photocopies. When trafficking happens inter-state, coordination between different state authorities becomes another problem. Since compensation is given only through bank account, the process of opening bank account needs to be hassle-free as well.

Victim Compensation is included in the Section 357 of the Code of Criminal Procedure, 1973 (Cr. P.C.), which provides for compensation subject to conviction, and does not take into consideration cases where the accused may be unknown or absconding. Also, the compensation was to be paid from the fines recovered from the trafficker.

We must be given the interim relief compensation within 15 days. Post that we should be given the stipulated compensation, irrespective of conviction, in full and not in tranches, to enable us to make essential investments. ILFAT demands that the government and all stakeholders work together to define and construct a robust victim-centric system for compensation. We also believe that the government should make provisions for the survivors getting government jobs.

8. Institute a dedicated rehabilitation fund

ILFAT is of the position that there should be a dedicated rehabilitation fund with a need based sizable corpus to ensure victim compensation is paid in a timely and a swift manner. The ToP bill 2018 had a provision for a rehabilitation fund but its primary aim is to set up protection and rehabilitation homes. The fund should be made available for a complete and holistic rehabilitation of the survivor through community-based rehabilitation to enable them to re-integrate in the society.

9. Effective implementation of schemes like MNREGA

Effective implementation of employment guarantee schemes like MNREGA and timely disbursement of money wages would prove to be instrumental to act as a preventive measure when it comes to forced labor, domestic servitude etc. In almost all cases, when we were unable to find jobs, often we get deceived and lured by the trafficker for the want of employment. It is therefore necessary that the states ensure that the people get a minimum of 200 days of employment a year and that the wages for the same are given immediately. We have many members with us who have had to wait for more than six months for their MNREGA wages.

10. Regulate and license placement agencies

Large number of placement agencies are operating in the country without registration or license from the government. These agents often lure people with false promises of employment. They work in cahoots with the traffickers. There are no regulations against these placement agencies. The government should immediately ensure that all the placement agencies are registered and licensed. People being trafficked from such agencies are also difficult to trace as there is no paperwork involved.

11. Defining terms like Sexual Exploitation, Protection homes and Rehabilitation Homes

There is repeated concern over the absence of definition of sexual exploitation in the draft bill. The bill must include the definition of sexual exploitation in its statute on the lines of the World Health Organization recommended definition. The WHO defines sexual exploitation as “*any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, threatening or profiting monetarily, socially or politically from the sexual exploitation of another*” Inclusion of this definition is imperative to ensure the perpetrators are not let go.

Similarly, to ensure legal clarity, accountability and removing ambiguity, the bill must also define Short Stay Protection homes and Institutional homes with the maximum tenure, facilities to be included and equipped medical facilities as per the needs of the survivors.
