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Survivor: An Analysis of the Term from India

Abstract

This article discusses the need for greater conceptual clarity of the term *survivor*. It raises questions about the propriety of the term to refer to the *victims* of sex trafficking. It points out that in the Indian context, the term *victim* is legally and operationally defined. It cautions against the hasty incorporation of the term *survivor* into public policies addressing the trafficked victims' problems. Different social platforms use the term *survivor* differently, and the difference is not nominal. The use of the term *survivor* is both casual as well as intentional. The term *survivor* trivializes the exploitation and makes invisible the violence inherent to prostitution and sex trafficking. It cautions that the replacement of the term *victim* with the term *survivor* in public policies and programs aimed at providing assistance, compensation, and justice to traffic victims could result in such benefits getting hijacked by the exploiters; and the voices of the *victims* will get further muffled.

Keywords

India, survivor, victim, definition, sex trafficking, commercial sexual exploitation, prostitution

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**SURVIVOR:
AN ANALYSIS OF THE TERM FROM INDIA**

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ABSTRACT

This article discusses the need for greater conceptual clarity of the term *survivor*. It raises questions about the propriety of the term to refer to the *victims* of sex trafficking. It points out that in the Indian context, the term *victim* is legally and operationally defined. It cautions against the hasty incorporation of the term *survivor* into public policies addressing the trafficked victims' problems. Different social platforms use the term *survivor* differently, and the difference is not nominal. The use of the term *survivor* is both casual as well as intentional. The term *survivor* trivializes the exploitation and makes invisible the violence inherent to prostitution and sex trafficking. It cautions that the replacement of the term *victim* with the term *survivor* in public policies and programs aimed at providing assistance, compensation, and justice to traffic victims could result in such benefits getting hijacked by the exploiters; and the voices of the *victims* will get further muffled.

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OVER THE PAST DECADE, in India, we have come across an increased use of the term *survivors* to refer to victims of trafficking. Various platforms, organizations, institutions, and individuals use the term *survivor* differently, and there has been little effort to put these usages in a comparative and analytical perspective for better understanding. We have not come across any analytical essays on the use of the term, which implies a possibility that the use may be more a product of being fashionable than conceptually accurate. To date, no United Nations (UN) agency has defined the term conceptually or operationally. Neither has the US government's global anti-trafficking program or any other international non-governmental organization defined the term *survivor*. While the term *survivor* has no official definition, the term *victim* has been defined in the Indian and international contexts.

Legal Definitions of *Victim*

In Indian's Code of Criminal Procedure (CrPC) -1973, Section 2(wa), the term *victim* is defined as:

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.

The term *victim* is defined in the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)* as follows:

A. Victims of crime

1. *Victims* means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a *victim*, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim. The term *victim* also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

Growing Preference for the Term *Survivor*

Some groups champion the term *survivor* in place of the term *victim*, saying that the term *victim* implies that the person subjected to the incident (loss, injury or harm of crime or unfair treatment) is permanently weak and incapable of overcoming the debilitating consequences of the incident. However, there is no evidence in support of this presumption. Although there are no analytical essays or reports of empirical research studies on the use of the term *survivor* is sometimes used quite loosely in guidelines and other documents issued by both the government and voluntary organizations. One example is the *Guidelines and Protocols: Medico-Legal Care For Survivors/Victims of Sexual Violence* (2014) released by the Ministry of Health and Family Welfare, Government of India.

The document does not provide the needed conceptual clarity or theorization of the term *survivor*. The use of the term is only incidental and carries no significance in the text of the guidelines. The terms are not defined anywhere in the document. The terms are described in the Glossary section of the booklet as follows:

Survivor: The guidelines and proforma use the term survivor. The term survivor recognizes that the person has agency and she is capable of taking decisions despite being victimized, humiliated, and traumatized due to the assault. Use of the term survivor by all those providing services recognizes these efforts and encourages them to believe the person and not pity her; whereas the term *victim* is understood as a person who doesn't possess agency and is not fully capable of comprehending the situation at hand because of the victimhood faced.

Victims: The term *victim* literally means a person suffering harm, including those who are subjected to non-consensual sexual acts, which could be sexual assault, rape, or sexual violence. It also means a person is in need of compassion, care, validation, and support (p. 2).

As one can see, the description of a *survivor* is less about what the term means or implies and more about why it should be used in place of the term *victim*, a justification rather than a definition.

While defining the term *victims*, it fails to take cognizance that the term *victim* has been formally and clearly defined in the Code of Criminal Procedure long ago. Its meaning is well established, and the Government of India has to follow that definition

rather than go by a loose and different description/definition provided in the above Guidelines.

Redundant Dichotomy

The distinction between the two terms, namely *victim* and *survivor*, given in the glossary does not lead to differential treatment of the two categories. It raises a question as to "Why has the distinction been made in the first place?" The further chapters of the Guidelines are not serious about maintaining the distinction between the two terms or offering different guidelines using the terms. The "Introduction" chapter mentions the two terms *survivors/victims*, but subsequent chapters drop the term *victim* altogether. Further on, the chapters drop both of the terms and instead use the term *person*.

As one looks at the description/definition of the term *victim*, one can see that it is a classic case of the logical flaw of first defining a term arbitrarily and conveniently so that it can then be criticized. The term *victim* is unnecessarily described as derogatory. The presumption is not substantiated. It presumes that there are two types of persons subjected to an offense, some with agency (called the *survivors*) and the others without agency (called the *victims*). It unreasonably believes that people pity a person when they call her a *victim*.

The common usage of the term *victim* shows that a person can be a *victim* of crime, mismanagement, vagaries of nature, inconvenience of using a public facility like a toilet, or of political protest disrupting public life. It is used to refer to the person who has been subjected to these above situations. None of these usages imply deficiency and lifetime disability on the part of the person to overcome the adverse impact of the incident on her. These usages refer to the relationship between an external phenomenon on a person which unfairly causes damage, loss, or injury to that person. Besides being legally defined, the term *victim* has been deliberated upon by various social groups and movements. It is used in victimology, the scientific study of victimization.

In contrast to the above, the use of the term *survivor* is fraught with confusion, essentially because of the multiple ways in which different groups have used it disparately. For some individuals and institutions, *survivor* is just an appropriate and honorable substitute for the term *victim* as they assume the latter to be a derogatory or undermining term. The term *victim* highlights the crime, harm, and injustice, which are the facts of the sex trade. However, those who want to promote the sex trade trivialize human/sex trafficking offense by using the term *survivor*.

In some situations, the term *survivor* is used to indicate that the victimhood and its negative consequences are over, and the person is now free from the disabilities and dysfunctionalities created by the offense. Once again, this too is considered an attempt to trivialize and make invisible the crime, violence, and the need to bring the culprit to justice. An increasing number of people engaged in healing and psychological recovery and those involved in social rehabilitation and reintegration believe that the negative consequences of offense and violence are not just a long term effect but are sometimes also for a lifetime.

Some groups like to use the term *victim* to refer to only those who continue to be under captivity and exploitation and reserve the term *survivor* to refer to those who have been removed through a process of physical rescue and are no more in captivity or in the said exploitative state. In a world where rescue operation is a sham, re-

trafficking is a rule, especially where a rescue is not followed by comprehensive post-rescue operations, victim assistance, rehabilitation, social reintegration measures. If these types of assistance are missing, physical rescue in itself is of little significance. Hence a person physically rescued from a place of captivity or exploitation may continue to be and often is under the state of exploitation and virtual captivity. Under such circumstances, does a *survivor* mean a person technically rescued regardless of whether the harm is reduced or not, the damage is not healed or compensated or not, the person has been given justice or not, or care has been taken against the person's vulnerability to getting re-trafficked or not?

In our experience, *victims* are either rescued by the police present themselves before the police or relevant authorities to seek protection. Can both of these be referred to as *survivors*? What about *victims* who are rescued but re-trafficked into the sex trade at some point in time? When would they be referred to as *survivors*?

The mental, emotional, and physical damage caused to *victims* of commercial sexual exploitation is intense. While overcoming the trauma and injuries, when would a *victim* assume the status of a *survivor*? Would the status of becoming a *survivor* vary for different *victims* since their experience with the trauma and subsequent healing might not be the same? Do the dysfunctionalities caused by the continued state of trauma disqualify a person from being called a *survivor*; and is that person better described by the term *victim*?

Established Usage

Survivor is a term historically most commonly used to refer to a person who has survived (literally survived to mean "not died" after an incident which usually leads to the death of others in a similar situation), despite having been hit by a terminal disease (e.g., cancer), or despite having gone through a situation or calamity or disaster (like an earthquake, flood, building collapse, tsunami, etc.) that ordinarily takes away life. In the field of disaster management and relief, a *survivor* is a person who has gone through a disaster (like an earthquake, flood, building collapse, tsunami, etc.) and has come out alive or has been rescued alive by the rescue team, and who is now on one's own, needing no external assistance to manage their day-to-day life functionality. The kind of harm suffered by the persons who go through such a situation may vary very widely from death to severe permanent disability to nominal injury that only needs first aid, to no apparent physical harm at all. The psychological harm suffered by them also varies widely. Would the term *survivor* apply to all of them evenly?

In our experience of working with the state on providing assistance services to sex trafficking victims, we have come across victims who are rescued before they were inducted into the life of sexual exploitation. At the same time, some of them, having spent a majority of their life in the sex trade, become brothel keepers, pimps, or brothel managers. Would all these individuals be referred to as *survivors* as well?

Need to Define Key Terms

Under the criminal justice system, victims of sex trafficking are victims of a heinous crime. Such crimes are not just crimes against the individuals but, by logical extension, crimes against the state and the society. When it comes to the State policies determining the distribution of benefits and burdens, these are key terms. State policies on victim-witness protection and compensation can get misused in the absence

of precise operational definitions and uniformity in the understanding and application of such key terms.

Take, for example, the term *women in prostitution*. Going by the Indian legal position (ITPA Sec 2), prostitution is defined as an act of exploitation involving more than one person; one who is exploited, the other who exploits. In the sex trade, these refer to two visible categories of persons, one the *exploited*, i.e., deserving the state's protection, rehabilitation benefits, and justice. The other category, the *exploiter*, is subjected to prosecution and punishment, including the prime liability to pay the damages. Over the last two decades, there is literature that uses the term *women in prostitution* as a common term to refer to both the exploited woman and the exploiter woman (trafficker woman, pimp, brothel-keeper/ manager woman). Those who promote the sex trade use the common term *women in prostitution* to trivialize or make invisible the exploited-exploiter relationship. Others, especially belonging to the anti-trafficking camp who use this term, do so uncritically, thereby supporting the goal of the sex traders.

Implications of Vagueness

The state and civil society are expected to evolve and implement social protection and welfare policies for the benefit of the exploited person, including the payment of criminal injuries compensation. However, what would happen if such a policy is drafted using the vague term *women in prostitution*? The exploiters, like the women traffickers, pimps, brothel keepers/brothel managers, will put their claims on such benefits by presenting themselves as the *women in prostitution*.

First and foremost, scientific research should be based on clear concepts and well-defined and well-operationalized terms. Since eventually, the increased usage of such terms leads to generalizations, which shape important laws, public policies, welfare programs, and budgets, and finally, also affect the intervention programs and their outcomes. Thus, it is essential to have complete clarity on the use of these core terms. Confusion and lack of clarity over the precise meaning and definition of the term *survivor* are bound to lead to wrong or undeserving persons bagging the benefits meant for the genuine *victims*.

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Pravin Patkar, Ph.D., is a professional social worker, sociologist, and the Co-Founder and Director of a civil society organization Prerana, which has been working on 24X7 basis since 1986 in Mumbai's red-light areas to end the sex trafficking of children of the red-light area based trafficked and prostituted women. Prerana is internationally known for its groundbreaking interventions for child protection and against gender-based violence in the anti-trafficking and allied domains. As a Fulbright Nehru Academic and Professional Excellence Fellow, Dr. Patkar was in residence at the University of Rhode Island USA in 2015-16.

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