UNIT 13  VICTIMS’ RIGHTS AND WITNESS PROTECTION MECHANISM

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13.1 INTRODUCTION

 Trafficking victims are the first and the primary evidence of the exploitation perpetrated upon them. Their testimonies, and in many cases their physical examinations, are essential in securing justice for them and thus, the victims are the most important witnesses in the investigation of a trafficking case. The ordinary meaning of the word “witness” is a person present at some event and able to give information about it. According to Bentham, witnesses are the eyes and years of justice.

 But unfortunately in our country, the trend is such that the witnesses do not wish to come to the courts to give their statements and evidences because of the fact that they feel unsafe. Even if they come to the court, they tend to turn hostile, thereby opening avenues for the accused to be acquitted. In cases of trafficking, the situation is further compounded by the fact that trafficking victims are often subjected to a lot of trauma during their ordeal and exploitation. Many of these victims are in conditions of slavery and it is very difficult for them to rise above their conditions against their exploiters/traffickers during any investigation or inquiry.

 A large number of trafficking victims are also children who require more attention, both in terms of privacy as well as in the treatment of the aftermath of the trauma.

13.2 OBJECTIVES

After studying this unit, students should be able to:

1. discuss the concept of taking a human rights approach in dealing with the victims during and after the trafficking investigation;
1. describe the needs and relevance of victims/witnesses protection in trafficking in persons cases;
1. analyse the appropriate protection measures that should be in place for a victim/witness;
explain the role of various law enforcement and justice delivery agencies in ensuring the protection of a victim/witness; and
discuss the legal rights of the victims regarding their privacy, etc.

13.3 BASIC PRINCIPLES TO BE FOLLOWED

13.3.1 Victims’ Rights

Human rights approach: Trafficking in human beings is a grave violation of human rights, which requires a ‘rights based approach’ at every step to ensure that victims are assisted and perpetrators are punished. The officials who deal with the victims need to be empathetic and understand the issues from the perspective of the victim.

Decision making on and about the victim should be from the paradigm of the ‘best interest of the victim’. The victim has a right to be protected, consulted and informed of all actions being taken on her/his behalf.

Victim friendly procedures: Response to trafficking needs to be victim-centric. Any action being initiated by the law enforcement agencies should keep the victim as the focal point. This requires that:

Victim is aware that she/he is a victim of a crime and is being assisted by law enforcement.

Victim is not arrested and the exposure to police and stay at police station is minimal.

Victim is extended all help and assistance.

Multi-disciplinary approach: Response to trafficking requires simultaneous attention by various agencies mandated to carry out the diverse tasks. Therefore, law enforcement agencies such as Police, Executive Magistrates and other officials need to coordinate amongst themselves along with other stakeholders such as prosecutors, counselors, Non Governmental Organizations, Juvenile Justice Boards, Child Welfare Committees, National and State Human Rights Commission, National and State Commissions for Protection of Child Rights, local media, local government hospitals and others. However, the legal response to the offences of trafficking has to be primarily led by the Police, (Anti Human Trafficking Units if possible) and the Executive Magistrates.

13.3.2 Child Rights Issues

Though the victim could be any person, large number of victims trafficked are children. Children are more vulnerable and therefore, subject to extreme violations during and after trafficking. Improper response can aggravate the harm caused to them. Therefore, law enforcement response has to be child rights oriented. Moreover, for all children in need of care and protection, the right of privacy must be protected in accordance with Sec. 21 of the Juvenile Justice Act, 2006.

Gender Issues: Girls, particularly in prostitution and informal sectors, such as domestic labour, etc., where they are required to stay for longer hours, especially nights, need special care and protection. After their rescue, an inadequate response to the trafficked victims by various agencies further exacerbates gender discriminations and gender violations that already exist in society. Hence, gender sensitivity is an essential requirement in ensuring the victims’ rights.
**Note for Teacher**

It is most important for students to understand that the first response to the victims of trafficking will either instill confidence or fear. Thus, it is absolutely imperative that all contact with victims/witnesses is made in conformance of their rights as if the victims do not give accurate and proper statements due to any fear, the traffickers cannot be brought to justice.

### 13.3.3 Victim/Witness Protection

Witness protection is any form of physical protection that is provided for a witness or an informant or any body concerned with the supply of vital information against trafficking in a criminal justice delivery system. As in majority of cases of human trafficking, the victims are also key witnesses, thus it is imperative that their needs of safety and protection are also kept in mind in a trafficking investigation and judicial proceedings.

Human trafficking has a number of features that make it different from other crimes. This invariably means that witness protection measures in human trafficking cases may be slightly different from witness protection in other cases. The physical safety of a witness is obviously the first concern of the prosecution and will continue throughout and beyond the closure of the case within the justice system. Providing physical protection may be very challenging for various reasons, not least that you may have to provide it for victims of trafficking and those close to them in jurisdictions outside your own.

As challenging, if not more so, is the need to provide appropriate support and assistance together with physical protection, particularly in the case of victim-witnesses. There is little point in keeping someone only physically safe and not addressing the psychological consequences of trafficking.

Ensuring the best possible cooperation of witnesses requires a blend of physical measures to prevent violence and intimidation; and support as well as assistance to address psychosocial factors and other reasons that might prevent that cooperation.

Article 24 of the Convention against Transnational Organized Crime requires State Parties to take a wide range of “appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony...”; “and, as appropriate, for their relatives and other persons close to them.”

Article 25 of the Convention requires State Parties to “take appropriate measures within its means to provide assistance and protection to victims” of trafficking in persons, “in particular in cases of threat of retaliation or intimidation”.

The Govt. of India is also a signatory of this Convention.

Hence, the Convention extends witness protection in appropriate cases to witnesses’ relatives or others close to them. It also includes all witnesses, not just to victim-witnesses. The Convention also recognizes the fact that victims need assistance and protection beyond their role as witnesses. In other words, the requirement to provide support and protection to victims is regardless of whether or not they are witnesses in a case. Providing support to victims who do not initially wish to be witnesses may assist in encouraging them to become witnesses at some point during the process.

Article 6 of the Trafficking in Persons Protocol enjoins State parties to, protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making...
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legal proceedings relating to such trafficking confidential. It goes further to provide a wide range of support, in appropriate cases, such as:

a) Information on relevant court and administrative proceedings;
b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

The Trafficking in Persons Protocol also recognizes that measures are needed to provide for the physical, psychological and social recovery of victims of trafficking. In providing such assistance, cooperation with non-governmental organizations, other relevant organizations and other elements of civil society is recommended.

The measures include, in appropriate cases, the provision of:

a) Appropriate housing;
b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
c) Medical, psychological and material assistance; and
d) Employment, educational and training opportunities.

Issues that may affect cooperation

These fall into three major categories:

1) Physical threat;
2) Victim/witness beliefs;
3) Victim/witness concerns.

Physical threat

There may be a threat of physical attack to the person of the victim/witness or those close to him or her. The witness may or may not be aware of these threats.

Beliefs

A variety of possible beliefs may affect a victim-witness’s willingness or ability to cooperate with the investigation. A significant effect of victims’ beliefs is that you are likely to be mistrusted at the outset by most victims of trafficking in persons cases. Building that trust by providing protection and assistance among other things is a key element in successful human trafficking investigations.

Concerns

Victim-witnesses in trafficking in persons cases may have many concerns. Five consistent areas of concern that have been identified are:

1) Fear for their own safety or that of their family or loved ones;
2) How they will be treated because they have committed offences;
3) Immigration status (if the crime is transnational);
4) Fear of stigmatization;
5) Fear of being in the presence of traffickers.
Self Assessment Question

1) What are the principles that have to be followed as far as victim/witness protection is concerned?
   a) What are the legal rights-based considerations that must be kept in mind regarding protecting the identity of a trafficking victims?
   b) What factors necessitate witness protection measures?
   c) Who requires protection in trafficking cases?
   d) What are the benefits of witness protection measures?

IMPORTANT for Law enforcement or other Care givers

1) Always consider your own personal safety when making decisions such as these and act in accordance with your legislation and policies.
2) Do not make promises you cannot keep. This applies in particular to immigration status. You are unlikely to be able offer a person a period of reflection at this stage.
3) You can help by not expressing signs of disgust, shock, revulsion or contempt at the revelation to you of what suspected victims have been forced to do, how they live or their appearances.
4) Family communications - The issue of communication with family members at home is a difficult one. It is entirely natural for victim-witnesses to wish to speak with their loved ones if they wish and their ability to do so may form an important part of the recovery process. However, family communications may also pose security risks, especially if a family member has been involved in trafficking.
5) Do not just talk to one person in a group and then act against the rest of the group, for example by arresting them. It will be obvious where the information came from;
6) Observe who appears to be in control of the group and speaking for others;
7) Note if things are said between the members of the group that you don’t hear or understand. Pass the information on to investigators to clarify in interviews etc.;
8) If it can possibly be avoided, don’t use a person from a group or other volunteer to interpret. If you cannot avoid this don’t ask direct questions, ask everyone in the group the same questions and note the reaction of individuals to the interpreter.
9) Talk to individuals separately.

Some victims of trafficking have committed offences. The assumption will still be that the trafficking victim is a victim who may have been compelled to commit an offence (the defence of duress) or the offence is directly connected or related to trafficking. Non-liability of victims should be the starting point where the victim has been compelled to commit an offence or where the offence is directly connected or related to trafficking such as breach of immigration laws.
13.7 SUMMARY

Trafficking in human beings is a gross violation of human right. Care has to be taken to ensure that the victims are given protection as well as assistance. At the same time, strict mechanism need to be followed for the protection of the witnesses. Response to human trafficking ought to be victim-centric as well as victim-friendly. Law enforcement agencies should work in co-ordination with stakeholders in responding to human trafficking. The Government of India which is signatory to the Convention Against Transnational Organised Crime requires State parties to take wide range of measures for effective protection of witnesses from retaliation and intimidation. For achieving victims rights and protection of witness, State machinery should work in cooperation with non-State actors as well as civil society.

13.8 TERMINAL QUESTIONS

1) What are the principles that have to be followed as far as victim/witness protection is concerned?

13.9 ANSWERS AND HINTS

Self Assessment Questions

1)  a) Refer to Section 13.3
    b) Refer to Sub-section 13.3.3
    c) Refer to Sub-section 13.3.3
    d) Refer to Sub-section 13.3.3

Terminal Questions

1) Refer to Sub-section 13.3.3

13.10 REFERENCES AND SUGGESTED READINGS

3) <http://www.indiatogether.org/combatlaw/vol4/issue1/witness.htm>