

Female Victims of Trafficking-Developing a Victim Centered Approach



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Introduction

Ironically and strangely, the criminal justice system for long had not been much concerned about the victims of any crime. The entire focus seems to be on the accused or the offender and later on after being sentenced to the conditions of his custody. Efforts are made to reform him, understand the psychology, study the conditions in which the crime was committed, monitor the conditions of his imprisonment, make efforts to rehabilitate him after his release with the entire focus of the system being on him while the victim of the crime remains forgotten. Perhaps, it best illustrated in the address of President Gerald R. Ford:

For too long, law has centered its attention more on the rights of the criminal defendant than on the victim of crime. It is time for law to concern itself more with the rights of the people it exists to protect. In thinking about this problem, I do not seek vindictive punishment of the criminal, but protection of the innocent victim. The victims are my primary concern. That is why I do not talk about law and order and why I turn to the Constitutional guarantee of domestic tranquility. The emphasis in our efforts must be providing protection for the victims of crime.

The United Nations General Assembly in 1985 had adopted a Declaration, “Basic Principles of Justice for Victims of Crime and Abuse of Power” which had for the first time outlined the areas of focus and concern such as Victims of Crime, their Access to Justice and Fair treatment, Restitution and Compensation and Victims of the abuse of power.

The Palermo Trafficking Protocol of 2000, in its Article 2 states that one of the purposes of this protocol are (a) To prevent and combat trafficking in person,, paying particular attention to women and children.

The central idea which has emanated worldwide is that the Victims be given better dealing without any prejudice or effects on the rights of the offenders. Various measures of assistance

such as emergency help and immediate assistance,

medical and psychological help, information about their rights, and assistance during the criminal trial process have been slowly gaining acceptance and recognition in the legal systems.

Trafficking Victims as Invisible Victims

As the exact figures of trafficking victims is hard to come by, a large number may eventually remain unidentified or invisible, so accordingly would never be referred to any victim support or assistance programs initiated by governments. The majority of the trafficking victims continue to be remain as undocumented people, clandestine workers or unwanted foreign people working in a variety of occupations, as they live and work at the margin of any society, they themselves also generally try to remain Invisible being fully aware that if their presence is discovered, they would be not only punished but would also be sent back to their native countries without being provided any assistances whatsoever in their country of discovery or any protections in their native countries.

Thus, identification remains the key as with practically no identification no counter trafficking measures can be initiated, nor anti-trafficking legislations can be strengthened thus, the general impression which is generated amongst the governments and the various stake holders is that the menace of trafficking does not either occur in their jurisdiction at all or is too negligible to generate policy initiatives in their respective jurisdictions.

The CoE Trafficking Convention 2005 states that if there are reasons to believe that the person is a victim, she or he must not be removed from the country until his identification has been completed and has been provided assistance as envisaged under (Art.12) of the Convention (Art.10). This significant provision fulfills two important points namely it helps the victims to be

correctly identified and the types of protections and assistances required, in the country of where the victim has been rescued, in the first place and if sent back to his country of origin the types of assistance required which may even include change of identity at times and secondly, with more time at the disposal of the law enforcement agencies with the victim still in their supervision and watch, the traffickers syndicates can be more effectively challenged resulting in not only rescuing of more victims, but also effectively dismantling the trafficking syndicates operations prevailing in their own country.

Identification of Victim

Evidentiary Standards: In ensuring the early identification of victims, a low threshold vis-à-vis the evidentiary standard used for their identification is crucial. As soon as evidence exists to suggest a person has been trafficked, they should be identified as potential victims and should receive immediate assistance. Confirmation of their victim status should occur at a later stage. In order to support the application of a low evidentiary standard, it is crucial that competent authorities employ indicators during the identification process and that they receive appropriate training in the fields of gender equality and equal treatment. One possible way can be to place Girl Child, and Single Mothers in this threshold whereby in all cases where they are reasons to suspect that they have been a victim they should be provided immediate assistance and support, any decision on their status of trafficking can be undertaken at a later stage. Accordingly, the identification process is not to be influenced by factors such as nationality, ethnicity so identification remains and protection becomes the key and not their immigration status. Victims here should also be provided preferably with female interviewers and interpreters so that they are in a more comfortable level, which ultimately would also lead to more information being gathered.

Designated Authority: In the context of the identification of a victim it remains the key as to and with whom the first point of contact is established, generally it is lower-level police personnel, immigration authorities and the Labor inspectors which are the first in the line who

interact with the victim. Here the role and utility of support organizations especially independent women rights non-governmental organizations, human rights organizations cannot be negated together with the fact that gender specific trainings for public officials, other law enforcement and judicial officers is already part of the Recommendation 19 (CEDAW) 1979. Additionally, medical professionals, civil society organizations, ethnic community leaders, relief organization workers can also be made part of the broader authority framework for interacting with the victims.

Interview Components: It has to be underlined that a long history of abuse and neglect leads the victims to a higher degree of general distrust towards everyone and the interaction with the governmental authorities in a particular country generates more fears than before. Consequently, it becomes very difficult exercise to elicit any information from the victim as the victim is also aware of the fact that his disclosures can go against him and accordingly becomes hesitant and non-cooperative because of the fear quotient. The best way to make it happen is to develop strategy considering the socio/economic background of the victim or a manner which is more intelligible to the victim's understanding and comfortableness. The victim should also be provided with an opportunity to choose the gender of the Interviewer together with the location of the interview be made as comfortable as possible for the victim especially the surroundings. Spot assistances such as medical advice and particular language interpreter choice can go a long way in making the interview process smoother and comfortable.

Assistance and Support Mechanisms

Equal Treatment: Victims of trafficking not only come from different backgrounds but are also trafficked for different purposes. Thus it is of utmost importance that the victims are not discriminated on the grounds of sex, race, color, language, religion, political opinion or other opinions. They are all to be judged on the principle of equal treatment by the relevant state authorities. The problem becomes more acute in cases where victims may be pregnant, where they may face added fears resulting in serious risks for

the health and wellbeing of the unborn child also. Moreover, in cases sexual exploitation and child marriage, the traumatic outcomes of the females are quite different and the role of the health community workers becomes more important.

Medical and Psychological Help: The victims endure serious degrees of mental and physical trauma which they are forced to undergo which creates long lasting psychological and physical effects on their personality so much so that at times even after being rescued and rehabilitated also they continue to behave erratically and remain prone to depression, stress disorders, and suicidal tendencies. They continue to have flashbacks of the events and develop the tendencies of not trusting people. Here the role of social care professional comes into picture as they have a critical and crucial role to play. They can help in developing of survivor informed practices from these people i.e. to make them understand that their inputs, experiences, and feedbacks are the most crucial and important to counter further trafficking and can persuade them to come forward and work as Survivor Leaders in their society, this role of the victims will not only help them in overcoming the serious mental conditions they may be in but would also lead to their more active engagements in the system itself. They would be of invaluable support especially in evaluating anti-trafficking measures and can also be paid for their time and efforts.

Duration of Assistance: It is of utmost importance that the victims receive continued support and assistance during or after the trial proceedings may have commenced. It is well known that people with severe psychological and physical harms may not only require a significant amount of time but the nature of assistance may also require expertise and significant investments in the support services. Any measure which generally may have a negative impact on the victims has to be avoided at all costs and it may make them more vulnerable to pressures and lead them to involve themselves in the illegal activities or works they were earlier involved in. The Trafficking protocol in Art.7 Palermo protocol has a very general provision which

permits the victims to remain in the territory of the state they were rescued. Art.13 of the CoE Convention 2005, asks the states to provide for a reflection and recovery period of about thirty days where there are reasonable grounds to believe that the person may be a victim of trafficking. This type of period helps the victim to not only think about the consequences as a whole, in a more calm frame of mind, one is able to judge better about the merits of cooperating with the state authorities in an action against traffickers.

The victims nevertheless remain entitled to the various protection and support programs as under CoE 2005, Article 12(1) and (2), so it is to be understood that this period of entitlement is not conditional on victims willingness to cooperate for investigation and prosecution with the state's law enforcement agencies.

Access to Justice

Mandatory Legal Assistance: The victim's ability and the conditions after his rescue where he or she is in a position to now claim legal assistance, pursue a case against the traffickers and preferably get some compensation also can be said to be the main components of the aspect of access to justice. However, it has to be understood in the background that the human trafficking area generally chances of conviction are not very high because of reasons such as that the victim in himself may back out at an early or later stage itself because of the intimidation, harassment or general lack of stereotyping which prevails in the minds of Law enforcement agencies especially with regard to female criminals. This makes the job although difficult in the first place but not impossible in all.

This access to legal services is a crucial component for all stakeholders as it is only the victim who can provide them with full details of the case so as to successfully prosecute Traffickers. Victims generally have to be made aware of the scope of their legal rights, and certain special measures during the trial process and importantly, the language barriers which may come up for the victims.

The legal intervention has to be at a very early stage immediately on being discovered by the authorities, the person interacting from now on

with the victim has to have appropriate training and expertise especially gender expertise. So accordingly, the Legal help should be divided immediately into giving information about the legal rights so available, advice and counselling as to how to avail and use those rights, and full encouragement and support for making the representation in the court.

Non-Criminal Resolutions: Criminal investigations and trials are time and resource intensive with no guarantee of a conviction or financial restitution for the victim later on. Lengthy judicial proceedings can cause frustration to the victim and the ones who are already terribly traumatized may simply stop participating in the trial processes if it drags for too long. Moreover, victims are unable both economically and emotionally to continue participating. These realities which make an individual vulnerable to trafficking continue to persist even when he or she has been rescued. The development of support systems and access to legal work authorization can help the victim to continue participating in long trials in the alien land. At times, victims because of their vulnerable position because of poverty may even take the back wages or damages through an out of court settlement rather than waiting and taking the risk of exposure and uncertainty of the criminal trial, which even if successful would not compensate the victim financially.

Compensation: As victims of trafficking had already suffered from lack of education and employment opportunities which ultimately led them to the clutches of the traffickers in the first place. Effectively, his socioeconomic background remains such which will not allow him to support himself but would certainly need support to stop falling back in the cycle of exploitation as the result of this continued economic duress. The right to be compensated stems from the legal instruments such as the Trafficking Protocol (Art.6(6)) and the Article 25(2) of the Convention Against Transnational Crime. However, this access to compensation remains problematic for the victim as firstly the information or the knowledge about this provision may not have been shared with him or on the other the state's criminal law systems may not provide for the

same. However, domestic laws can be specifically framed by countries so as to recover the same by confiscating the assets of traffickers, monetary payments can also be made out from the wages the traffickers may earn during his prison term as generally all people are assigned some sort of work during their prison sentence. However, compensation schemes are placed generally in two opposite directions while one relates to the part of the normal criminal proceeding as envisaged as under the Indian Code of Criminal Procedure, 1973 especially Sections 357-A and B, while S.357 -C provides for medical help to the female victims free of cost. Similarly, provisions can be incorporated for human trafficking victims also. Secondly, it is for the States themselves pursuant to the measures in their regional or bilateral arrangements to encourage certain non-criminal resolutions as mentioned above for providing compensation to the victims.

Conclusion

Unconditional assistance, integrated approach, and protections to the victims of the trafficking remains the need of the hour. Until and unless the support and rehabilitation mechanisms together with change in the attitude of the law enforcement agencies is not forthcoming not much would be achieved. Still, the work continues, and the last 20 years have been phenomenal in the way that this issue is now at the centre stage of the policy considerations on human trafficking. Protection of victims together with developing sustainable partnerships at the local and regional level remain the key.

References

1. Geralt R Ford was the 38th President of USA 1974-77, The Special Message sent on June 19th 1975 to the US Congress on Crime.
2. G.A. Resolution 40/34, 29th November 1985.