

IMPLEMENTATION OF POSITIVE DISCRIMINATION LAWS IN ADVANTAGE OF WOMEN AND CHILDREN

N. AMARESWARI, C. LATHA

Abstract: The term victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person is charged and victim includes his or her guardian or legal heir. Neglecting women and children is unjust and an economic blunder. Women and children are more vulnerable to the victimization, victimology is the Cinderella of criminology and from the point of view of legal literature and sociological research little attention has been paid to this branch of knowledge. After 70 years of FREEDOM & DEMOCRACY the Indian women and Children Still fail to enjoy full and equal citizenship that is the complete enjoyment of all basic rights. Equality liberty has not been realized and women continue to face discrimination, disadvantages and violence in the public and private lives.

Introduction: India is a party to the International convention on the political rights of women 1954, and on convention on rights of child 1989, convention on elimination of all forms of racial discrimination 1965, international convention on economic social and cultural rights 1966, international convention on civil and political rights 1966 and also signatory to the CEDAW 1979 and signatory to the number of conventions of the UNO. Equality of rights for women and girl child and children is a basic principle of UN and respect for human rights is one of the guiding principles of the UN. India in addition to the adaptation to all the above, also made number of legislations and special initiatives for women and children. But today we are witnessing number of crimes against children women and also enormous increase in the crime rate. From an editor to a politician to a retired judge, Every pillar of our democracy seems to have flaws when it comes to ensuring women and children rights and safety. The Tehalka episode, Nirbhaya case and the allegations against retired judge for sexual assaults, corruptions abuse of power and for all these ultimate effect in one way or the other falls on the women and children by the breakdown of their families and its effects on them. Response of institutions and individuals to the victim in the form of intrusive and inappropriate conduct by police of other criminal justice personnel is Secondary victimization. It is most important to minimize the post crime trauma during the investigation and trial procedures by way of delay in deciding cases, number of adjournments, mental trauma during cross examination questioning in the public court and the like.

Sexual assaults are peculiar as the sufferer victimized by society and also faced to go through mental trauma when he turns to justice. They are re-living by the assault mentally with greater pain during questioning at the police stations and also during court proceedings. For fear of going through this humiliation many victims hesitate to go public place and get the

culprit punished. This fear of social ostracism has been taken advantage by the culprits. Even in camera proceedings the victim has to give her statement before a judge, in many cases a male and the advocates and other officers may also be male. Thus the sexually assaulted victim is constrained from coming out with the whole truth about the gravity of the crime and this results in lighter punishments for the guilty and less conviction rate and sometimes acquittal of the accused as the trial procedure should be proved in strict compliance towards all beyond reasonable doubt. So ultimately the purpose of the preventive theory which is for preventing the criminal from more and more offences is not fulfilling. So the end of the law JUSTICE i.e. Social justice Economic Justice and Political justice is not availing to the victim even by the victim compensation law. There is an urgent need for framing the victim compensation laws to provide complete security to the victims.

No society calling itself as a civilized welfare society and has justification for ignoring the victims of criminal offence. Though code of criminal procedure sec.357 and sec. 5 of probation of offenders act providing compensation to the victims, as the relief is providing in very few cases, there is strong need for the enactment of a separate victims' Rights Act as it was in NEW SOUTH WALES VICTIMS COMPENSATION ACT 1996 Act no. 114. As the compensation helps the victims from a feeling of the agony and injustice. Women and children enjoyed their natural liberties during the Stone Age but failure on behalf of the government to implement the existing laws and the codes like MANU SMRUTHI, male dominated customs, and practices and male chauvinistic and egoistic rules resulted the deteriorated conditions of the women and innocent girl child and children. The following are

The Hypothesis of the study: As many women and children do not aware of their rights, they are violated mostly at homes at schools at working places and everywhere and every walk of

their life, especially women and girl child at natal home and also at conjugal home.

1. As the implementation authorities biased in favour of males and male employees by pecuniary bias as they are the sole earners of the family resulting serious injustice to the women, girl child and children. Though women entering into the public walk of life, men disinterested to enter into domestic or private life. The excess burden on women and girl child led to social injustice.
2. Loopholes in existing legal provisions resulting in insufficient safeguards... delay in deciding cases, frequent adjournments, violation of principles of natural justice, nepotism and the like.
3. Established superstitious believes, male dominated customs and practices resulting in blunder violation of all basic rights of women including right to life which is treated as the heart of the whole fundamental rights.
4. For the sustainable development of the women, girl child and children and to the country to become prosperous, the following are

The objectives of the study

- To prevent enormous increase in crime rate against women and children at Least to control the crime rate to some extent and to take all effective preventive measures than the curative measures.
- To make awareness among women and children about their basic rights and duties and about special initiatives for them.
- To help the victims by providing victim compensations, through counseling's, through job opportunities, and the like as the true remedy for wrong is the removal of the damage suffered by the victim.
- To lay down emphasis on the i.e. Is to give primary importance to the victims' rights compared to the accused or convicted rights, to provide victim assistance programmes reducing number of adjournments and the like. To establish all women courts as they make convenient atmosphere to the women victims.
- To send all child labors child victims and delinquents to schools and care homes to provide free and compulsory value based education.
- To abolish male dominated customs, practices and beliefs and to make utilization of HRD services to all administrative authorities.

Judiciary played important role in awarding damages in number of cases. The principle of payment of compensation to the victim of crime was evolved by Hon'ble Supreme Court on the ground that it is the duty of the welfare state to protect the fundamental rights of the citizens not only against the actions of its agencies but

is also responsible for hardship on the victims on the ground of humanitarianism and obligation of social welfare duty to protect its subjects equitable justice etc.

In Rudal Sah (vs) State of Bihar AIR1983 SCC 141, Supreme Court made it clear that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction and evolved the principle of compensatory justice, in the annals of Human Rights Jurisprudence.

In Oraon (vs) State of Bihar AIR1997BLR, Supreme Court directed to state of Bihar to pay the sum of 15,000 as compensation to Bhama oran who was illegally detained for 6 years and kept in mental hospital when he was not insane.

In SebastainM.Hongray (vs) Union of India1984 SC1826 it was directed that on account of failure of government of produce in Habeas Corpus petition filed by wives, apex court awarded Rs. 1 lakh to be given to the wife of each detainee.

In Harikishan and State of Haryana(vs) Sukbir SinghAIR1998 2127 it is the second most important case after Sarwan Singh where court repeated its firm understanding once again i.e. payment of compensation must however be reasonable, may depend upon facts and circumstances of the each case. The quantum of compensation may be determined by taking into account the rapture of crime and justness of claim by victim and ability of accused to pay, reasonable period for payment of compensation if necessary by installments may also be given. The court may enforce the order by importing sentences in default.

In D.K. Basu(vs)State of West Bengal, the landmark judgment in which S.C. laid down number of guidelines to prevent custodial violence, including rape and recognized that custodial rape could be compensated as the same violated right to life and personal liberty guaranteed under article 21 of the Indian constitution, and emphasized that public law proceedings serve a different purpose than the private law proceedings. The purpose of the former is not only to utilize public power but also to assure the citizens that they live under a legal system where their rights and interests are protected and preserved. Recently the awarding huge compensations to the victims, in Chairman Railway Board (vs) Chandrima Das,AIR 2002 and in other cases. For ensuring proper security to the Women and Girl Children the enforcing agencies should strive for the

- Establishment of all women courts, all women police stations, Women universities and 50% reservations in all governmental and non-

governmental organizations to ensure equality liberty and fraternity ie the basic principles of democracy.

- Equal Property Rights Educational Rights i.e. Ensuring all Natural political social and legal rights particularly stringent implementation of all special legislations meant for the women and children.
- Enactment of Victim compensation laws. Proper implantation of special schemes and special incentives meant for women and children.
- Fair transparent and accountable administration i.e. speedy and fair trail regard to the offences against women and children.
- Awareness about all rights and Training of self protective courses at all levels of their education.

- Stringent punishments for the offences against women and children

Fair and proper implementation of existing laws especially Positive Discriminatory laws in favour of women and children and obeying principles of Natural Justice or fundamental rules of procedure for administrative action is an urgent need even in the Democratic Socialistic Secular Republic and Welfare States. As the decent demands every walk of the life The Services of the HRD are absolutely necessary. The progress of any nation can depend upon the status of women, and in providing value based education to all children & by building up the Right and Strong foundation at the childhood age. So women and children should be protected and secured completely for the pleasant peaceful progressive societies and countries.

References:

1. Indian Constitution- M.P.Jain.
2. The Constitution of India- P.M. Bakshi.
3. Women and Law- Dr. S.R. Myneni.

N. Amareswari. R.S.(Law), Spmvv, Tirupathi.
C.Latha R.S., Dept Of Education, Spmvv, Tirupathi.