

## **A Study on The Importance of Policy and Legislative Impact Assessment To Achieve Gender Justice**

-S.Mano<sup>1</sup> Author

-R.Gayathri<sup>2</sup>Co-Author

### *Abstract:*

*Women are suppressed socially, educationally, politically and economically by various practices. To achieve gender justice she needs executive and legislative support. Now the question arises that ,in spite of having many policies and legislations the women are not feel safe and facing numerous problems. This paper focuses on the importance of Policy and Legislative Impact Assessment in future endeavour towards achieving gender justice in India.*

### *Key words:*

- 1. Gender stereotypes*
- 2. Legislations*
- 3. Amendments*
- 4. Policies*
- 5. Assessment*

### **1.INTRODUCTION**

India is following multi-pronged approach to address the gender based issues. Before and after independence so many laws were enacted to curtail the gender based discrimination. Some laws are gender neutral, some are gender discriminated and gender oriented. In spite of enacting so many stringent laws the crime rate is not curbed but it is increasing day by day. The nature of offences is also shocking because of their barbarity . From 2012 Nirbhaya Delhi gang rape case to 2019 Disha Hyderabad gang rape case showing the failure of our existing legal system in ensuring fundamental human right. This paper focusses on the need of pragmatic legal and policy approach in dealing with the crimes against women and about the importance of Policy and Legislative Impact Assessment in achieving gender justice.

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<sup>1</sup> Assistant Professor( Senior Scale) , Chennai Dr. Ambedkar Government Law College, Pudupakkam

<sup>2</sup>Research Scholar, VITSOL

## 2.GLOBAL AND INDIAN APPROACH TOWARDS GENDER JUSTICE:

Gender is a wider term used to define the male and female role in the society. Sex is narrow term relating with biological differences. The increasing awareness over recent days about their rights and because of their continues struggle, the transgender community right is now recognised by the judiciary by declaring the part of Section 377 of I.P.C., as unconstitutional<sup>3</sup> after seven decades of getting independence. Only the sexual right of the third gender community is recognised by this judgement and other rights like property, family, livelihood etc., yet to be recognised. Women are treated by this society as second gender with Gender stereotypes, it means the societal discrimination towards the certain qualities as being natural to him and certain qualities which are natural to her.<sup>4</sup> Gender Socialisation<sup>5</sup> also restricts women rights. These gender stereotypes, socialisation and discrimination is addressed by International Organisation like UN by enacting the International Instruments like Conventions, recommendations and protocols. Convention on Elimination of All forms of Discrimination against women (CEDAW) 1979, Convention on the Rights of the Child, 1989 and UNHRC passed Resolution On protection against violence and discrimination based on sexual orientation and gender identity, 2016. Similarly so many legislations were enacted to prevent gender based discrimination in the world countries.

Our constitutional forefathers predicted and incorporated certain Articles 14, 15, 16, 17 and 21 in the fundamental rights part. Most of the rights of the women are protected by our Constitution. Recent Sabarimala Verdict regarding the restrictions on entry of women in Sabarimala temple is declared as unconstitutional under Article 17 (Abolition of untouchability). The Constitutional Bench decision in Sabarimala case<sup>6</sup> and declaration of triple talaq as unconstitutional are some of the landmark verdicts towards the gender justice.

## 3.CRIMES AGAINST WOMEN AND CHILDREN:

One of the major problem that is been facing by our country is the increasing crime rate every day in spite of having many stringent laws.<sup>7</sup> According to National Crime Record

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<sup>3</sup>*Navtej Singh Johar Vs Union of India*

<sup>4</sup>Attitude like, Women are submissive soft by nature and male are hard, strong, aggravating and dominating in nature. e.g. Men won't cry and women alone nurture their children.

<sup>5</sup>It is the process by which individuals are taught how to socially behave in accordance with their assigned gender, and culture gender – related rules, norms and expectations.

<sup>6</sup>*Indian young lawyers association Vs State of kerala, 2018 SCC online SC 1690.*

<sup>7</sup><http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf> accessed on November 30, 2019

Bureau<sup>8</sup> data of 2017, crimes against women, children and senior citizens are increasing day by day irrespective of age and 77 % increase in cyber crimes. women, children, senior citizens, physically and mentally challenged persons are easily vulnerable and they are susceptible to crimes. Especially women are facing sexual harassment in family, workplace and public place. Numerous laws were enacted from pre independent period to till date.

The position of women is degraded socially irrespective of religion, race, caste and community throughout the country. During medieval period basic human rights are denied ,even the right to life is denied to women by the act of sati<sup>9</sup> and jauhar<sup>10</sup> collectively. In these crimes they were participating victims and forced to die by their community people. These crimes are strictly curtailed by enacting Bengal Sati Regulation Act, 1829by the Britishers along with the remarkable efforttaken by Indian leader Raja Ram Mohan Roy.Women were Socially, physically, psychologically suppressed by thousand years of practice. Hindu widow re- remarriage Act, 1856, Hindu women's right to property Act, 1937, Dissolution of Muslim Marriages Act, 1939,Immoral trafficking ( prevention ) Act, 1956,Maternity Benefit Act, 1961,Dowry prohibition Act 1961, Medical termination of pregnancy Act, 1971, Family Courts Act 1984, Commission of Sati (Prevention) Act,1987, Indecent Representation of Women ( prohibition) Act, 1987, Muslim women (Protection of Rights on Divorce) Act, 1986, Pre-conception and pre-natal Diagnostic Techniques (prohibition of sex selection) Act, 1994 , National Commission for women Act, 1990 etc.,apart from the above said bunches of laws relating to women, our Legislature has also made series of amendments in our criminal law after every heartbreaking incidents like, after Nirbhaya caseit made amendment to Juvenile justice care and protection act as if the offender is aged between 16- 18 but the offence committed by him is heinous, then he won't be considered as minor. In IPC, Cr.P.C , Indian Evidence Act and POCSO in the year of 2018 it made Amendment<sup>11</sup>especially for the sexual crimes against the children and women. It enhanced the punishment to death penalty in case of a rape of a minor child below the age of 12 is death,for gang rape the

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<sup>8</sup>*NCRB RECORD DECODED*,THE HINDU,October 26,2019, available at <https://www.thehindu.com/news/national/watch-ncrb-report-decoded/article29805942.ece>, accessed on December 1,2019

<sup>9</sup> Historical practice among certain Hindu communities insisting the widow sacrifice herself by sitting atop her deceased husbands funeral pyre.

<sup>10</sup> Act of self immolation by women in parts of Indian subcontinent to avoid capture, enslavement and rape by any foreign invaders when facing defeat.

<sup>11</sup>Ministry of Law and Justice,The Criminal Law (Amendment) Act, 2018,11<sup>th</sup> August 2018, [https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct\\_14082018\\_0.pdf](https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf) , accessed on December 1,2019.

punishment is life imprisonment to death penalty, if the victim age is between 12 and 16 for rape 20 years of punishment to life imprisonment, for gang rape the minimum punishment is life imprisonment, if the victim is aged between 16 and 18 then the minimum punishment is 10 years to life imprisonment. For repeated offender the punishment is life or death sentence. If the victim is child the investigation must be completed within two months, trial has to be completed within six months.

In spite of having these stringent laws everyday in the newspaper we are finding sexual assault, rape and related cases. It is the time to analyse the root cause of this problem.

### 3.1. DISHA ACT:<sup>12</sup>

The A.P government passed a new law to address the sexual offences against women because of the incident of brutal gang rape and murder of a Veterinary doctor in Hyderabad. This incident made the Andhra Pradesh legislative assembly to pass a law with provisions to complete the investigation within 7 days, trial in 14 working days where there is adequate conclusive evidence and reduced the total days can be taken to deliver judgement from four months to 21 days. Special Courts, Special Police team and Special public prosecutors are created to specifically deal the crimes against women and children. Apart from this, the Andhra Pradesh State planned to establish, operate and maintain in the electronic form a women and children offenders registry. It will be made public and will be available to law enforcement agencies.

### 4. IMPORTANCE OF POLICY AND LEGISLATIVE IMPACT ASSESSMENT:

Our Vice President Naidu on October 22, 2019 while addressing 151 Newly appointed officials in Rajya Sabha Secretariat said: "Informed legislation will help in realising the stated objects of various laws and this requires a detailed impact assessment of legislation at the stages of both pre-legislation and post-legislation. An account of pre-legislative impact assessment could be included either in the Bill or as an Annexure to the Bill."<sup>13</sup>

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<sup>12</sup>PISHARODY RAHUL. V., DISHA BILL: what are the highlights of A.P. new law?, December 14, 2019, THE INDIAN EXPRESS, available at, <https://indianexpress.com/article/explained/andhra-pradesh-assembly-passes-disha-bill-hyderabad-doctor-rape-murder-6165636/> accessed on December 14, 2019.

<sup>13</sup>THE HINDU, October 22, 2019 available at, <https://www.thehindu.com/news/national/venkaiah-naidu-moots-impact-assessment-of-laws/article29770372.ece>, accessed December 3, 2019

In an Article in The Hindu, “ The imperative of impact Assessment “<sup>14</sup>the authors described that “Legislation and policies in the country are often passed with inadequate scrutiny and assessment. Increasingly, the ‘rush towards law’ results in policies and legal frameworks that are mostly reactive and seek to offer quick-fix solutions to complex problems. As a result, both law-makers and citizens are frequently blindsided by the unanticipated impact of these moves and the laws often run aground on issues of implementation.

However, law-making in India is still largely conducted in silos which ensures that there is little consciousness of how these might potentially impact, either directly or indirectly, aspects of the economy, ecology, development and society in ways that might be wholly unintended by their framers..”

Laws are very important to protect and ensure our rights but that should be enacted in prudent and practical manner. And it’s implementation is the matter of concern and the problem in the existing legislation should be amended . Multiple laws will not render fair and equitable justice,it is by proper implementation it can be achieved.

By enacting a legislation like Disha Act of Andhra Pradesh ,people can be attracted easily and appreciate the ruling government. The problem is not about the emotional instigation or appreciation of the people , it is on the practicality in implementation to curb the crimes and to obtain justice. The investigation is highly impossible in rape cases because of the time taken to collect the forensic evidence usually the FSLR( Forensic Lab Reports) will be given after one week in most of the cases. The evidentiary value of forensic report is very important in rape cases, without receiving forensic reports by theinvestigating authority, how it is possible to have fair investigation. The proper investigation needs four to six months time to have all the records to substantiate. Now the pending cases before all the courts show the lack of infrastructure in judicial proceedings including vacancy in the judicial appointments. All these Collectively make the objective and purpose of the enactments as ineffective.So it added as one of the additional laws with the existing and will fail to achieve the purpose for which it is actually enacted.

Post Legislative Scrutiny (PLS)or Legislative Impact Assessment( LIA) will help in identifying the flaws in the laws enacted and giving opportunity for the legislators to make it

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<sup>14</sup>Iyengar Shalini, Pasupathi Balakrishnan, Anirudh Chakradhar, *The imperative of impact of Assessment*, THE HINDU,on 15 October 2018 available at <https://www.thehindu.com/opinion/op-ed/the-imperative-of-impact-assessment/article25221657.ece> accessed on December 2 , 2019.

to the need of the society. Post legislative evaluation is needed in finding the fulfilment of the objectives of the enactments and the effects of rules, regulations, bye laws, directions etc., sidelined with the enactments. For this separate body has to be created, to analyse the iterative aspect of the enacted legislations. This will help our parliamentarians in identifying the problem in implementation and gives clear picture of positive and negative impacts of the policies and intended legislations in the society. It also aid them not to enact futile laws in the future.

#### 4.1.CASES PENDING BEFORE THE COURTS:

Total criminal cases pending before the court <sup>15</sup> 2, 26,65,717 and particularly cases filed by the women pending are 14,48,769 according to the data revealed by the National Judicial Data Grid. Totally 3 crore above cases including civil and criminal cases are pending before the Indian judiciary. It is the major problem facing by Indian judiciary. Because of the lack of infrastructure and vacancy in the lower courts the mounting of cases is increasing. With these poor infrastructure any problem of the civil society cannot be addressed and it end up in the shatter of fundamental hope on the Indian Judiciary by the people. Special criminal benches has to be constituted to address these crimes against women in the higher courts.

#### 4.2 POLICIES TOWARDS GENDER JUSTICE:

Apart from the protective legislation Schemes like Gender Budgeting, Nirbhaya fund, Support to Training cum Employment (STEP), Swayamsidha, SwaShakthi, Rashtriya Manikosh , Swadhar are created to uplift the women.

Recent issues of not spending The Nirbhaya fund by various state governments shows the carelessness of Government towards the women safety. Totally 1649 crore rupees was allocated to spend for the women safety to all states. From that the State Governments like Karnataka has spent 13.62 crore from allocated 191 crore, Tamilnadu has spent 6 crores from 190.68 crores, Maharashtra, Manipur, Meghalaya, Sikkim, Tripura, Diu and Daman have not spent any single rupee from that fund. This shows that negligence of State Governments in the safety concern and lack of political will in executing the policies framed for the welfare of the people and especially for the safety and empowerment of women.

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<sup>15</sup>[https://njdg.ecourts.gov.in/njdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard) accessed on December 1,2019

This can be removed only by policy and legislative impact assessment(PLIA)and the legislature should analyse the impact of legislative pieces enacted by them and they should try to amend them with the need of the society in a possible manner.

## **5.CONCLUSION:**

To achieve the gender justice we do not need new law instead implementing the existing laws in an effective manner by developing infrastructural changes to existing courts and criminal justice system. Expedient Justice doesn't mean the proper justice, the victim should be given Fair justice. Prudential policies and laws success is not lies in the creation ,it is purely lies in the implementation and their successful intended functionality. So, the holistic approach is needed in assessing policies and legislations to achieve justice especially gender justice.