



**PUBLIC PROVISIONING AND  
SOCIAL PROTECTION IN THE  
NATIONAL AND INTERNATIONAL  
FORUM- A STUDY ON ISSUES  
RELATED TO WOMEN**

*By Monika T*

*From Alliance School of Law, Alliance  
University, Bengaluru*

**INTRODUCTION:**

Public provisioning and Social protection are two terms not easily definable. Merriam Webster dictionary defines ‘provisioning’ as ‘an act or process of providing’. Thus, public provisioning means an act of providing support for an issue, raising voice and standing together.

When the public raises voice against an issue or a crime, immediately a change is seen (passing of legislation, amendment of existing laws, execution of ordinances, etc.) This is known as ‘Social Protection’ or ‘Social Safety’. This paper will explain about the relation between public provisioning and social protection, through issues relating to women (Example: Rape, Sexual offences and other abuses against women).

Protecting women from social, economic, political, caste and gender-biased discrimination is a great task. And, we are trying from centuries ago. “We cannot all succeed when half of us are held back”<sup>1</sup>. The society has to grow as a whole. “There

is no chance for the welfare of the world unless the condition of women is improved, it is not possible for a bird to fly on only one wing”, said Swami Vivekananda. Fear of violence is an important factor in lives of most of the women across the world. It causes women’s lack of participation in activities beyond home, as well as inside it. Sometimes the violence begins even before their birth, sometimes in their adulthood or during other phases of life. Though we talk about increase in the women’s safety and empowerment, the scenario hasn’t changed much. The reason for a few changes is due to the focus light on those issues. Thus, as a quest to know their relationship, the project focusses on two major incidents:

- 1) At national level- Nirbhaya case resulting in ‘The Criminal Amendment Act, 2013.’
- 2) At international forum- 9/11 Attack and the focus on violence against Afghan women.

**1. IMPACT OF NIRBHAYA<sup>2</sup>:**

**A. Background:**

While a 23 years old Physiotherapy intern took a bus to return home with her friend, on the night of 16<sup>th</sup> December 2012, was gang raped by six people including the driver of the bus and a juvenile. The victim and her friend were beaten up when received suspicion about the route to the destination. The women was raped brutally, she suffered serious injuries to her abdomen, intestines, genitals due to the sexual assault and a blunt object being

<sup>1</sup> Malala Yousafzai, Youth Takeover of the United Nations (July 12, 2013), New York.

<sup>2</sup> Mukesh & Anr. Vs. State for NCT of Delhi & Ors., Criminal Appeal Nos. 609-610 of 2017 (arising out of S.L.P. No. 5027- 5028 of 2017) .Case commonly known as ‘Nirbhaya case’



used for the penetration. Later, both were thrown out of the moving bus.

She was taken to a hospital in Singapore from Delhi as she required organ transplantation, but all the treatments ended up in futile. Two blood-stained metal rods were retrieved by the Police officers from the bus, despite the offenders cleaning to avoid the evidence. The medical staff confirmed the objects as being used for penetration. Within 24 hours the police arrested the accused.

**B. Public’s outrage:**

This incident led an outrage in the whole of India and even in some parts of the world. Many students started protesting and seeking justice for Nirbhaya. The protest included places like India Gate and Raisina Hills. The people who joined for the protest were forced to leave by water cannon and tear gas shells. Even a few were arrested. In order to avoid some violent eruptions curfew was imposed with Sec 144 of CrPc. Even politicians were demanding the rapists to be hanged.

**C. Justice Verma Committee and its objective:**

After six days of the incident, the Government of India appointed a three-member committee. It was headed by Justice J.S.Verma, 27<sup>th</sup> Chief Justice of India. Along with him Justice Leila Seth, first women Judge on the Delhi High Court and Gopal Subramaniam, Solicitor General during the period 2009-2011 were appointed. The main objective of the

Commission was to review for possible amendments to the criminal law. Also, the committee was proposed to suggest measures for speedy trials and harsher penalties for offences against women.

The committee on receiving 80,000 suggestions from eminent jurists, legal professionals, NGOs, women’s groups and many citizens, submitted its report after 29 days.

The changes were demanded on the following Statutes.

- (i) Indian Penal Code, 1860.
- (ii) The Code of Criminal Procedure, 1973.
- (iii) Indian Evidence Act, 1872
- (iv) Protection of Children from Sexual Offences Act, 2012.

**D. The changes the act demanded<sup>3</sup>:**

**(i) Punishment for Rape:**

The commission recommended Rigorous Imprisonment for life or seven years depending on the case. Also, it recommended RI for not less than 20 years when the accused’s actions has led victim to the “persistent vegetative state”, sometimes RI for life also. Gang –rape shall also be punished with rigorous imprisonment for not less than 20 years, and may extend to life. In case of gang-rape leading to death of the victim, he shall be punished with life imprisonment.

<sup>3</sup> Report of the Committee on Amendments to Criminal Law, <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>



An armed personnel would be imprisoned for 7 to 10 years if they knew that his subordinate is indulging in sexual offences.

Note: The committee did not recommend for the death sentence.

**(ii) Punishment for sexual assault:**

The committee recommended to include even non-penetrative forms of sexual contact also under sexual assault. The offence should be punishable with 5 years of imprisonment, or fine, or both and when force is used, then punishable with 3 to 7 years of imprisonment. Repeal of Sec 509 of IPC and to treat ‘use of words, acts or gestures that create an unwelcome threat to sexual nature’ also under sexual assault punishable with 1 year of imprisonment. Even demanding of sexual favour is punishable with 1 year of imprisonment.

**(iii) Age of consent:**

Age of consent has to be reduced from 18 to 16 years.

**(iv) Punishment for sexual offences:**

The commission recommended for the removal of the clubbing of this offence with the grievous hurt and to make a separate provision. And the punishment it demanded was rigorous imprisonment not less than 5 years and may extend to 7 years, additionally the accused has to pay the medical expenses incurred by the victim as compensation.

Inclusion of certain acts as crimes under separate heads, such as ‘Voyeurism’

(watching a woman when she is engaging in private act including sexual acts, use of lavatory, or when private parts are exposed), ‘Stalking’ (following a woman, attempting to foster personal interaction despite indication of victim’s disinterest, spying, monitoring electronic communications). These both offences shall be punishable with imprisonment for 1 to 3 years and shall also be liable for fine.

**(v) Medico-Legal Examination of the victim:**

The victim has to be taken to the nearest hospital and then, medical examination report has to be prepared, immediately after the examination or on the same date as of the examination. And if a public servant fails to record information to any sexual offence shall also be penalised.

**(vi) Police Reforms:**

The committee recommended to form a National Security Commission headed by Union Home Minister and State Security Commission headed by Chief Minister or Home Minister as a chairman. The main aim of the State Security Commission is to control the unwanted pressure the State government is imposing on the State police. The Director General of Police (DGP) and Inspector General of Police (IG) shall have two years of tenure. The committee also recommended for separation between investigating police and law and order police.

Also, there shall be a Police Establishment Board for deciding all matters relating to



transfers, postings and promotion of officers and Police Complaints Authority to look into complaints against Police authorities.

**(vii) Electoral Reforms:**

The committee’s opinion was to disqualify a candidate from voting, if a charge sheet is filed against him/her and on cognizance by the Court. Thus, recommended to amend the Representation of People Act, 1951. Also, the committee recommends amendment to the provisions of the Comptroller and Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971 to permit deeper investigation of assets/liabilities declared at the time of filing a nomination paper for election or, as soon as possible practically.

**(viii) Educational and Perception Reforms:**

The first recommendation put forth by the committee was to prevent stereotyping, and also to prevent from imputing false morality to children. Secondly, it suggests to make the children recognise discrimination and to control the asymmetrical powers held by the school. Thirdly, the committee pointed out the loopholes in the Indian Educational system and suggested to include life skills development at the school level itself. Lastly but strongly the committee has recommended to introduce sex education in a clinical manner, which is necessary during the transition into adulthood.

**E. The Criminal Law (Amendment) Act, 2013<sup>4</sup>**

The Criminal Law (Amendment) Bill, 2013, was passed in the Parliament (Lok Sabha and Rajya Sabha respectively on 19<sup>th</sup> and 21<sup>st</sup> March 2013) but officially on 2<sup>nd</sup> April 2013. The Criminal Law (Amendment) Act, 2013 is the replacement of The Criminal (Amendment) Ordinance, 2013. Some sections are modified and new sections are inserted.

**I. Indian Penal Code, 1860 - Amendments**

**1. Duty of Public servant and hospitals**

- (i) Sec 116A- Punishes a public servant who disobeys directions under law with imprisonment for 6 months extending up to 2 years and fine.
- (ii) Sec 116B- If a hospital refuses to treat a victim, it shall be punishable by 1 year of imprisonment or fine or both.

**2. Acid attacks**

- (iii) Sec 326A- A person shall be punishable with imprisonment not less than 10 years and may extend for life and fine to be paid for the treatment, in case of voluntarily causing grievous hurt by use of acid.
- (iv) Sec 326B- A person who voluntarily throws or attempts to throw acid shall be imprisoned for 5 years and extended up to 7 years and with fine.

**3. Sexual offences**

- (v) Sec 354A- A person who indulges in

<sup>4</sup><http://indiacode.nic.in/acts-in-pdf/132013.pdf>



- Physical conduct and advances involving unwelcome and explicit sexual overtures; or
  - A demand or request for sexual favours; or
  - Forcibly showing pornography shall be punishable with imprisonment which may extend to 3 years or with fine or with both.
  - In case of making sexual coloured marks shall be punishable with imprisonment extending to 1 year or with fine or with both.
- (vi) Sec 354B- A person is punishable with 3 years of Imprisonment which may extend to 7 years and with fine for assaulting a woman with intent to disrobe.
- (vii) Sec 354C- Voyeurism
- In case of first conviction, the accused shall be punishable not less than 1 year which may extend to 3 years and with fine
  - In case of second conviction, the accused shall be punishable not less than 3 years which may extend to 7 years and with fine (In case of second conviction)
- (viii) Sec 354D- Stalking
- In case of first conviction, the accused shall be punishable up to 3 years and with fine.
  - In case of second conviction, the accused shall be punishable up to 5 years and with fine
- 4. Rape**
- (ix) Sec 376A- Rape injuries resulting in a woman's death or persistent vegetative state.  
Punishment: Rigorous imprisonment not less than 20 years and may extend to imprisonment for life.
- (x) Sec 376B- Sexual intercourse between wife and husband during their separation
- (xi) Sec 376C- Sexual intercourse by persons in authority.  
Punishment: Imprisonment not less than 2 years but may extend to 7 years with fine.
- (xii) Sec 376D- Gang Rape  
Punishment: Rigorous imprisonment for not less than 5 years but may extend to 10 years and with fine.  
Punishment: Similar punishment under Sec 376A, but with fine to be paid to the victim.
- (xiii) Sec 376E- Repeat offenders  
Punishment: Imprisonment for life.

**II. Amendments made in other Criminal law statutes:**

**1. The Code of Criminal Procedure, 1973**

- Amendments of sections include Sec 54A, Sec 154, Sec 160, Sec 161, Sec 164, Sec 173, Sec 197, Sec 273, Sec 309 and Sec 327.
- Insertion of Sec 198B, Sec 357B and Sec 357C.

**2. The Indian Evidence Act, 1872.**

- Insertion of **Sec 53A** which states that evidence of character or previous sexual experience not relevant in certain cases.
- Substitution of new section for **Sec 114A** which states that in case sexual intercourse has been proved and if a woman confesses that she did not give consent, it is presumed that she did not.
- Substitution of new section for **Sec 119-** if a witness is unable to communicate verbally, the court can also permit any mode of communication which he is comfortable with or take help of an



interpreter or a special educator, which shall be video graphed also.

### 3. **The Protection of Children from Sexual offences Act, 2012.**

- Substitution of new section for Sec 42 which states that any person who has committed an offence under the Sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or Sec 509 of The Indian Penal Code, 1860, shall be punishable either under this Act or IPC, which ever provides greater decree of punishment. And, In case of any inconsistency with other Acts, this Act will have overriding effect.

## 2. **IMPACT OF 9/11 ATTACK**

### A. **The focus on Taliban:**

On September 11, 2001 people of the United States woke up to the attacks by the terrorist group 'Al-Qaeda' on the 'twin towers' of US. The hijackers took control over two aircrafts which were flown into the towers and a third aircraft hitting the Pentagon in Virginia. The suspicion on Al-Qaeda was proved and US said that "it was at war with a new and different kind of enemy". The relation between this attack and the shift of focus on Taliban is believed to be due to the refusal of Taliban to turn Bin Laden over to US authorities and non-acceptance of the Taliban to create friendly relationship with United States and create government of "National Unity"<sup>5</sup>.

### B. **Background:**

The Soviet attacks Afghanistan on December 27, 1979. Before the war, Afghans have requested Soviet to help them stabilize their economy. Soviet were ready for it, and planned to spread communism. A group called Guerrillas (mujahidin) was formed in order to fight communism, who were helped by USA, Saudi Arabia and Pakistan.

Taliban emerged as a powerful movement in 1994 and its main supporters being Pakistan who provided weapons, military training, and financial support. Most of the Taliban's leaders were educated in refugee camps in Pakistan, who had escaped the Soviet invasion. In Afghan there were several ethnicities and tribes, Pashtuns being the majority, they considered duty of the men is to uphold the respectability of their women. *Purdah*, however a key element of family's honour was not compulsory in all the tribes. When Kabul imposed restrictions and reforms, it was opposed by these tribes. The period 1920's to 1950's was considered to be glorified period of women, as they were allowed to vote, seclusion was abolished, and got much independence. But, in 1950's to 1960's there was the emergence of violence between those who opposed the reforms and the representatives of Kabul who were to implement them. That's when the Soviet interfered in 1979. After the destruction of Soviet and the violence still prevalent, the talib *Mujahedeen*, regrouped to form the Taliban movement and they called themselves to be the cleansers of the Afghan society. By 1996, even Kabul was in the hands of Taliban. The impacts of

<sup>5</sup> David Ray Griffin, Did 9/11 justify the war in Afghanistan? <http://www.globalresearch.ca/did-9-11-justify-the-war-in-afghanistan/19891>.



which were, the schools were closed for girls. Strict interpretation of Shariat law and *chadari* (a head to toe cover) was made mandatory. Mahram (a male family member) was to accompany a woman in all aspects which was not seen before. Women were banned from working, from showing their skin in public, banned from accessing healthcare services delivered by men, and being involved in speaking publicly and in politics. The main aim of invasion was to make Afghanistan an Islamic state. Taliban rule in Afghanistan from 1996 to 2001, changed the whole scenario.

**C. The eternal mark of Taliban:**

The mark of Taliban in Afghanistan can be divided into two periods 1996 to 2001 and from 2001 to the present. In 1989, 1 million Afghans had died and 7 million had been dispatched<sup>6</sup>. 1996 was when the Taliban made their foot firm in the country. As already stated Mujahedeen were considered to be the purifiers of the broken Afghan society, in 1990's regrouped to form Taliban movement. The solutions for the violence and the war were felt to be these strict rules. In 1996, they seized Kabul after which women faced the consequences as to removal from government jobs and to stay only inside their houses. As, some people believed that their strict rules protected and helped them as solution against the violence and war. The growth of Taliban was enormous. The main reason for their emergence was the state failure and the civil war. The Taliban rule was deeply

ingrained in Pashtun society. The main vision of Taliban was to create an Islamic state. There was no emphasis nor the international community concentrated on this issue until 1990s. But, after the 9/11 attack in 2001, there was so much focus on the Taliban's.

**D. Changes in the lives of Afghan women:**

Until September 11, 2001, there was no focus on this issue, neither Clinton nor Bush concentrated on the violence against women by the Taliban. There were so many resistance from the part of Taliban, however they ended in futile. The importance of social protection will be dealt herein under. Until this attack on September 2001, there was no recognition by international communities, but after this there was the defeat of Taliban and the regime of empowerment.

- A provision for gender equality was made under the Constitution in 2004, “ The citizens of Afghanistan- whether woman or man – have equal rights and duties before the law<sup>7</sup>”
- 25 percent and 17 percent seats reserved in the lower house and upper house, respectively.
- The right to vote in elections
- Creation of MOWA, Ministry of Women's Affairs and gender units and focal points in other ministries; and of Afghan Independent Human Rights Commission and its women's rights unit.
- Adoption of National Action plan for women of Afghanistan.

<sup>6</sup> David Cortright and Kristen Wall, “Afghan women Speak (Enhancing Security and Human Rights in Afghanistan)”, August 2012.

<sup>7</sup>Article 22, The Constitution of Afghanistan, 2004. <http://www.afghanembassy.com/pl/afg/images/pliki/TheConstitution.pdf>



- Signing the convention on the Elimination of All forms of Discrimination against women.
- In 2009, EVAW, Elimination of Violence against women law was passed. It was drawn up by UNIFEM (UN Development Fund for Women) and MOWA, the law provides greater punishment for violence against women.
- National Solidarity program sort to improve women's economic and social rights providing funds and their involvement in decision making.
- There has been some increase in enrolment of students in the school, training of teachers, young women joining the military and the rehabilitation and construction of school buildings.

Before the intervention of the westerners and the international community, the Afghan women were under turmoil, only after the recognition there is a shift in their lives. The public provisioning plays an important role in social protection. If not noticed, the women of Afghan would have been under the constant fear even now and even a few percentage of improvement in their lives would not have taken place.

Before the intervention of the westerners and the international community, the Afghan women were under turmoil, only after the recognition there is a shift in their lives. This is a perfect example of public provisioning playing an important role in social protection. If not noticed, the women of Afghan would have been under the constant fear even without these improvements in their lives.

But, the question of impact is still debatable. The Social protection has been attained but the implementation part is lacking. Even in

this case, ironically the president Karzai signed the Shiite Personal Status Law, on the same day he signed the Elimination of Violence against Women. Even after the resistance only a few amendments were made, also the women who protested were called to "anti-Islamic, Western agents and prostitutes". MOWA, has faced a lots of criticism, and it was considered to be an alien western discourse. DOWA, is the MOWA's Department of Women's Affairs in rural areas, but there in underfunded and provides only limited assistance. As we already seen in the above context, there is an uprising in the violence by 2005, the women's participation has reduced especially in elections be it in voting and also in candidate's nomination from 44 percent in previous elections to 38 percent<sup>8</sup>. In 2010, parliamentary elections mainly targeted women. The Free and Fair Election Foundation of Afghanistan found that Taliban secretly sent letters to the women candidates as a warning.

In 2002, Afghanistan's health system was described by public health experts as in a state of "near total despair". The abduction and killing of the health workers leads to closure of the health facilities. There is raising violence and civilian injuries despite the surge of US troops<sup>9</sup>. The women have reported that they faced violence by the foreign forces, insurgents, police chiefs, and criminal gangs.

### **CONCLUSION:**

<sup>8</sup> David Cortright and Kristen Wall, "Afghan women Speak (Enhancing Security and Human Rights in Afghanistan)", August 2012.

<sup>9</sup> UNAMA (UN Assistance Mission in Afghanistan) report, 2011.



From both these cases, it is evident that public provisioning and social protection are intertwined. Even before the case of Nirbhaya, there were many cases which demanded change in the age old Criminal law. But, due to Public's outrage, necessity for speedy justice, and for the protection of the women in the society, the Criminal Law Amendment Act was passed without delay.

In the second case, the Afghan women have undergone turmoil due to the Taliban's intervention. In fact, some of the women were passive supporters of Taliban and they checked if the other Afghan women are following the rules of the Taliban. All these were known to other countries of the world, but nobody reacted to it. The incident of 9/11, brought the focus and thereafter helped in women empowerment in the country.

But, the fact that these social protections have to be obtained only through public's outrage and provisioning is saddening. Even, then the implementation part is a debatable issue. The changes the public provisioning has brought is commendable. Not just these two issues, there are so many issues around the world, which due to public provisioning has achieved social protection. Some examples could be- The case

- Vishaka and Ors. vs. State of Rajasthan<sup>10</sup>
- Jallikattu issue<sup>11</sup>; etc.

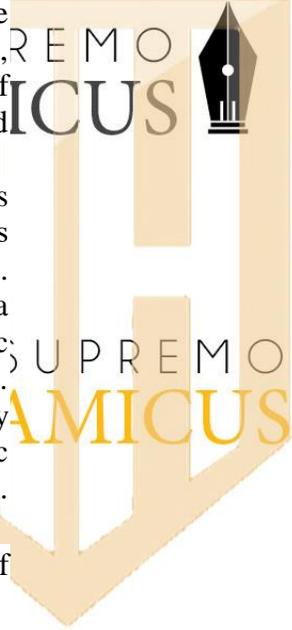
In all these cases, we can see the role of public in some or the other way.

Thus,

1. It is a three stage process- a) Happening of an event which

becomes a social issue; b) Public provisioning; c) Social Protection.

2. Recognition leads to focus. Focus on an issue brings in lots of suggestions, policies, legislations and ending up giving a solution.
3. Public provisioning has an important effect in bringing up social protection. Only, when the public recognizes it, there is a focus on that issue and it leads to the concept of social protection. When the former fails, the latter also does. Thus, they are co-related.



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<sup>10</sup> AIR 1997 SC 3011

<sup>11</sup> Animal Welfare Board of India vs. A. Nagaraja & Ors., SLP (Civil) No. 11686 of 2007)