Chapter 40

Sexual Harassment of Women in Workplace in India: An Assessment of Implementation of Preventive Laws and Practicing of Therapeutic Jurisprudence in New Delhi

Amit Gopal Thakre
Raksha Shakti University, India

ABSTRACT

Therapeutic Jurisprudence is legal conscience seeking for a fully-functional system that involves collaboration of sensitized judiciary, academicians and practitioners, working in a congenial environment which collectively facilitates in healing process of the victim. Similar to the principles of Therapeutic Jurisprudence, preventive laws too aims for more humane approach with regard to legal matters. In fact, preventive laws may also be viewed as ‘pro-therapeutic jurisprudence’. In a more comprehensive and treatment oriented legal service system, prevention has to have prominence over healing goals. Laying emphasis on preventive law does not negate the importance of healing objectives set forth by Therapeutic Jurisprudence rather preventive laws supplements to the overall aim of enabling ‘healing power of law’. An ideal system would be wherein preventive laws are implemented effectively and therapeutic jurisprudence works efficiently. This chapter aims to assess the implementation of preventive laws and practicing of therapeutic justice for victims of sexual harassment in New Delhi, India.

INTRODUCTION

Therapeutic Jurisprudence is legal conscience seeking for a fully-functional system that involves collaboration of sensitized judiciary, academicians and practitioners, working to create congenial environment which collectively facilitates in healing process of the victim. Therapeutic jurisprudence is personification of law towards attaining more humane approach. It has emancipated from Wexler and Winick’s (1991) article stating therapeutic jurisprudence as ‘a study of the law’s healing potential’. Healing has more to
do with fixing inner being, mind and spirit (Zion, 2002). Behind the study of therapeutic jurisprudence various social sciences are at play in reinforcing knowledge resource to its growth that has happened over the past few years. In subsequent years, various researches viewed ‘Therapeutic jurisprudence in Practice’ from various perspectives. For example, Anleu and Mack (2006) in their study assessed qualities of Magistrates in practicing of therapeutic jurisprudence in their respective courts. In their study, the well being of victims was positively linked with job satisfaction of Magistrates. Erez et. al. (2011) elaborated from victim’s angle. They are of the view that therapeutic jurisprudence will only be meaningful if victims participate actively. Similarly, Bain (2013) in her thesis elaborated on practicing therapeutic jurisprudence with mentally ill offenders.

The practicing of therapeutic jurisprudence has been a matter of lively discussions in various International Conferences and academic gatherings alike. Recently, in such similar gathering, Wexler (2014) metaphorically compared therapeutic jurisprudence with ‘wine and bottles’, wherein he stated that legal framework (bottle) shapes the demeanor of legal actors; police, advocates, therapists and judiciary (which he compared to wine). He further went on to weave pedagogy of therapeutic jurisprudence by describing contributions of various social sciences in evolution of therapeutic jurisprudence, exploring various types of legal framework and finally elaborating on interaction between therapeutic jurisprudence and legal framework. In practice, therapeutic jurisprudence has been acknowledged and suitably adopted across various Criminal Justice Systems of the world. Globally, therapeutic jurisprudence has not been mainstreamed yet in conventional courts but it has been employed by few countries in specialized treatment courts. For example, 102 Mental Health Courts in North America roped in physicians and social service providers along with legal actors for dealing with mentally ill accused persons (Schneider, et. al., 2007). These Mental Health Courts are inspired from 2, 600 Drug Treatment Courts working across US which placed more emphasis on rehabilitation than punishment. In these drug courts, treatment committees are established with judge as its member. The follow up empirical researches showed that recidivism rates of drug cases in US dropped significantly (Goldkamp, 1994). Similarly, the domestic violence courts are also working in tandem with the principle of therapeutic jurisprudence to restore family bonds in more humane way (Fritzler & Simon, 2000).

Similar to the principles of Therapeutic Jurisprudence, preventive laws too aims for more humane approach with regard to legal matters. In fact, preventive laws may also be viewed as ‘pro-therapeutic jurisprudence’. In a more comprehensive and treatment oriented legal service system, prevention has to have prominence over healing goals. Laying emphasis on preventive law does not negate the importance of healing objectives set forth by Therapeutic Jurisprudence rather preventive laws supplements to the overall aim of enabling ‘healing power of law’. An ideal criminal justice system would be wherein preventive laws are implemented effectively and therapeutic jurisprudence practiced optimally. The objective of the chapter is to assess the implementation of preventive laws and practicing of therapeutic justice for victims of sexual harassment in New Delhi, India.

**BACKGROUND: INDIAN SCENARIO**

In India, criminal procedure initiates with First Information Report followed by investigation, arrest and trial in court. This whole criminal procedure is synergy of efforts between police (investigation), advocates