



WOMEN EMPOWERMENT –ROLE OF JUDICIARY

KEYWORDS

A Raja

Assistant Professor Government Law College Coimbatore

Introduction

The leaders of the Indian judiciary and those who feel convinced of the need for women's empowerment - by law and by legal means - have assembled here today to have a free, frank and heart-to-heart discussion on women's empowerment vis-à-vis legislation and judicial decisions. It is a welcome move. I would not, even for a moment, subscribe to the view that the Indian judiciary is not sensitive to the needs of justice. It is one of the judiciaries in the world which enjoys a high reputation of being justice-sensitive.

For centuries, women in this country have been socially and economically handicapped. They have been deprived of equal participation in the socio-economic activities of the nation. The Constitution of India has taken a long leap in the direction of eradicating the lingering effects of such adverse forces so far as women are concerned. It recognises women as a class by itself and permits enactment of laws and reservations favouring them. Several articles in our Constitution make express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation. Article 51 of the Constitution obligates the State to honour international law and treaty obligations. Our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by Article 51-A.

The Supreme Court in *Vishaka v. State of Rajasthan* for the first time recognized, acknowledged and explicitly defined sexual harassment as an – unwelcome sexual gesture or behaviour aimed or having a tendency to outrage the modesty of woman directly or indirectly.

Defining sexual harassment as an act aimed towards gender based discrimination that affects women's right to life and livelihood, the Supreme Court developed broad based guidelines for employers. This mandatory guidelines known as *Vishaka* guidelines are aimed towards resolution and prevention of sexual harassment. These guidelines bring in its purview all employers in organized and unorganized sectors by holding them responsible for providing safe work environment for women.

The *Vishaka* guidelines apply to all women whether students, working part time or full time, on contract or in voluntary/honorary capacity. Expressly prohibiting sexual harassment at work place these legally binding guidelines put a lot of emphasis on appropriate preventive and curative measures. (The guidelines include the following as acts of sexual harassment: Physical contact and advances, Showing pornography, a

demand or request for sexual favours, Any other unwelcome physical, verbal/non-verbal – such as whistling, obscene jokes, comments about physical appearances, threats, innuendos, gender based derogatory remarks, etc.)

Some of the important guidelines are:

- The onus to provide a harassment free work environment has been laid down on the employers who are required to take the following steps:
- Employers must form a Complaints Committee.
- Express prohibition of sexual harassment in any form and make the employees aware of the implications through in house communication system / posters / meetings.
- Must include prohibition of sexual harassment with appropriate penalties against the offender in Conduct rules.
- Prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to be included by private employers.
- Provision of appropriate work conditions in respect of work, leisure, health, hygiene to further ensure that there is no hostile environment towards women.
- No woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- Victims of sexual harassment to be given an option to seek transfer of the perpetrator or their own transfer.

Thus the *Vishaka* guidelines stipulated that all organisations would form a complaints committee to look into any such allegation. It would be headed by a woman employee and not less than half of its members would be women. All complaints of sexual harassment by any woman employee would be directed to this committee. The committee would advise the victim on further course of action and recommend to the management the course of action against the person accused of harassment.

However in *Medha Kotwal Lele v Union of India* coordinator of Aalochana, a centre for documentation and research on women and other women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the *Vishaka* Guidelines were not being effectively implemented. In particular, the petitioners argued that, despite the guidelines, women continued to be harassed in the workplace because the *Vishaka* Guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra legal means, making them suffer and by insulting their dignity.

The Court stated that the *Vishaka* Guidelines had to be implemented in form, substance and spirit in order to help bring gen-

der parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. The Court held that a number of states were falling short in this regard. It referred back to its earlier findings on 17 January 2006, that the Vishaka Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The Court went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the Vishaka Guidelines.

Sojourn to a comprehensive piece of legislation

On 23rd April 2013, the legislature finally brought into force a comprehensive legislation dealing with the protection of women against sexual harassment at workplace by enacting "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The Act has in fact sought to widen the scope of the guidelines issued by the Supreme Court by bringing within its ambit (amongst other things) a "domestic worker" (Sec 2e) defined to mean a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer.

The Act has defined "sexual harassment" (Sec. 2n) to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: (i) physical contact and advances; (ii) a demand or request for sexual favours; (iii) making sexually coloured remarks; (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Further, the following may also amount to sexual harassment: (i) implied or explicit promise of preferential treatment; (ii) implied or explicit threat of detrimental treatment; (iii) implied or explicit threat about present or future employment status; (iv) interference with work or creating an intimidating or offensive or hostile work environment; or (v) humiliating treatment likely to affect health or safety.

The term 'employee' (Sec. 2f) includes regular, temporary, ad hoc, daily wage employees and persons who are working on a voluntary basis i.e. without remuneration. The term also includes contract workers, probationers, and trainees. The Act defines "aggrieved woman" (Sec. 2a) to mean: (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

As per the Act workplace (Sec.2o) includes: (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service; (iii) hospitals or nursing homes; (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto; (v) any place visited by the employee arising out of or during the course of employment including

transportation provided by the employer for undertaking such journey; (vi) a dwelling place or a house.

Complaint mechanisms under the 2013 Act

The Act contemplates the constitution of Internal Complaints Committee ("ICC") (Sec. 4) at the work place and Local Complaints Committee ("LCC") at district and block levels (Sec. 6). A District Officer (District Collector or Deputy Collector) shall be responsible for facilitating and monitoring the activities under the Act Every workplace employing 10 or more employees is required to constitute an ICC. The ICC is required to consist of at least four members, and its presiding officer is required to be a woman employed at a senior level. Provisions have been made in case no senior woman employee is available, to nominate a woman presiding officer from another office, administrative unit, workplace, or organisation. Further, one half of the members must be women. LCCs are to be set up by the appropriate government which shall receive complaints in respect of establishments that do not have ICCs on account of having fewer than 10 employees and to receive complaints from domestic workers.

Steps involved in the Complaint Process—Empowerment?

Step I

A complaint is to be made in writing by an aggrieved woman within 3 months of the date of the incident. The time limit may be extended for a further period of 3 months if, on account of certain circumstances, the woman was prevented from filing the complaint. If the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs may do so.

Step II

Upon receipt of the complaint, the ICC or LCC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or in their absence, in accordance with rules framed under the Act.

Step III

The inquiry must be completed within a period of 90 days. In case of a complaint by a domestic worker, if in the opinion of the LCC a prima facie case exists, the LCC is required to forward the complaint to the police to register a case under the relevant provisions of the Indian Penal Code.

Step IV

Where the ICC finds that the allegations against the respondent are proven, it must submit a report to the employer to: (i) take action for sexual harassment as a misconduct in accordance with the provisions of the applicable service rules or where no service rules exist, in accordance with rules framed under the Act; (ii) to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.

Step V

The employer must act on these recommendations within 60 days.

Scope for Conciliation and Settlement

Before initiating an inquiry, the ICC or LCC may, at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation (Sec. 10(1)) In case the ICC or LCC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with the applicable service rules (Section – 14). However, an inquiry must be also made. Mere inability to substantiate a complaint will not attract action under this provision.

Penalties

Where the employer fails to comply with the provisions of the Act, he shall be liable to be punished with a fine which may extend to Rs. 50,000. In case of a second or subsequent conviction under this Act, the employer may be punished with twice the punishment prescribed or by cancellation of his licence or withdrawal of his registration.

Journey Ahead

It has been more than seven months since the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 received its assent from the President of India. But unfortunately there has been a failure on the part of the WCD ministry to notify the legislation. Moreover the rules specified under the legislation have not come into effect. As a result there is a lot of confusion especially among state governments, on whether the law can be implemented without the central government notifying the rules. However, looking at the rising number of reported complaints of sexual harassment it is evident that the new law has at least served to improve awareness about the obligations of employers and rights of employees in case of workplace sexual harassment. The resentment towards incidents of sexual harassment is also increasing. Perhaps this legislation will help the silenced voice of women audible by taking off the feet that coerce women's necks.

Conclusion

Judiciary is morning assembled together on the invitation of the National Commission for Women to discuss, deliberate and dwell upon issues relating to women's empowerment vis-à-vis legislation and judicial decisions. In such a meet the judges have a two-pronged role to play. Firstly, it is the judiciary which interprets and implements the laws. A judge is an eyewitness to a real-life drama—how the script written by the legislature is played by real-life characters. The parties while critically evaluating the laws may tend to have a partisan look; a judge can make a correct and realistic evaluation of the laws and find out authoritatively the difficulties in implementation of or lacunas in legislation. Today we propose to identify and catalogue such difficulties and lacunas. Secondly, and which is more important, a judge while administering the laws, if deprived of requisite sensitivity may frustrate the objectives sought to be achieved by the best of the laws.