

ARE CJI AND RESEMBLING PERSONALITIES IMMUNE FROM SEXUAL HARRASSMENT CASES?

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Abstract:

Once quoted by the famous Martin Luther King Jr., “Injustice anywhere is a threat to justice everywhere”, this may have been restricted to the tenets of struggle for freedom but we see its importance and relevance even now. With the level and facets of injustice sprouting every day, one is left to wonder if at all justice is serving its purpose at the present times. Most importantly whether the protectors of justice are adhering to the fundamental principles and if at all they remember their duty as the flag bearers of justice. One such incident which shook the very core of the legal fraternity was the accusation made on the Chief Justice of India, Ranjan Gogoi of sexual harassment by his former employee. Now at a first glance, one may contemplate over how the CJI could be involved in such an infamy given the fact that he is the supreme protector of Justice and most of us would even jump into blaming the complainant for coming up with frivolous complaints to damage the reputation of the officer of law. Present Article shall overlook the entire episode of sexual harassment case against CJI and will also discuss the remedies available in such cases.

Keywords: CJI Ranjan Gogoi, Sexual harassment, frivolous complaint, remedies

Introduction:

We first have to understand that sexual harassment has nothing to do with the designation of the person. At first glance, one may contemplate over how the CJI could be involved in such an infamy given the fact that he is the supreme protector of Justice and most of us would even jump into blaming the complainant for coming up with frivolous complaints to damage the reputation of the officer of law. Present Article shall overlook the entire episode of sexual harassment case against CJI and will also discuss the remedies available in such cases.

However, if we delve into the case, we may come across some deviations which may make us question our very belief in the justice system of our country. Before we plunge into the details of the case and how it created a wave, let us first understand what exactly the law says about sexual harassment in India.

Harassment in a workplace, professional or social situation, involving the making of unwanted sexual advances, favours¹ or obscene remarks is considered as sexual harassment. According to Vishaka Guidelines² laid down by the Supreme Court of India, sexual harassment includes any unwanted sexual behaviour whether directly or impliedly involving physical contact and initiatives, sexual demands and favours, showing pornography forcibly, sexual remarks and unusual and sexual behaviour. We have various laws dealing with this subject matter namely

1. Section 209 of IPC which provides for Obscene acts and songs, to the annoyance of others
2. Section 509: Uttering any word or making any gesture intended to insult the modesty of a woman punishable Imprisonment for 1 year, or fine, or both. (Cognisable and bailable offense)
3. However, the most important of all is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) that envisages the setting up of a grievance redressal forum, Internal Committee. The POSH Act requires an employer to set up an ‘internal complaint committee’ (“ICC”) at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.

The appropriate authority to file complaints of sexual harassment:

1. Internal Complaints Committee (ICC)³

As mentioned above, the POSH Act provides for the establishment of ICC in every organization to hear sexual harassment complaints. Not less than half of the ICC Members shall be women

2. Local Complaint Committee (LCC)⁴

At the district level, the Government is required to set up a ‘local committee’ (LCC) to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.

3. Court

Any person not satisfied by the recommendations of the committees can file an appeal in the court or Tribunal within 90 days in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

¹ What is Sexual Harassment?, Sexual Assault Prevention and awareness Center, University of Michigan, (accessed on May 28th, 2019, 2:00 pm), <https://sapac.umich.edu/article/63>,

² Kaunain Sheriff M, Explained : When a Women is harassed at work, The Indian Express, (May 28th 2:30 pm), <https://indianexpress.com/article/explained/sexual-harassment-at-workplace-vishaka-guidelines-metoo-5394486/>

³ Handbook On Sexual Harassment of Women at Workplace, (Prevention, Prohibition and Redressal) Act, 2013, Government of India Ministry of Women and Child Development

⁴ Ibid

4. *She –Box*⁵

Another initiative taken by Ministry of Women and Child Development (hereinafter referred to as the "WCD Ministry") on November 6, 2017, launched an online complaint management system for women working in both public as well as private sector organizations to lodge complaints of Sexual Harassment at workplace to ensure the effective implementation of the Act.

While the law stood beside the victim of sexual harassment, did the Apex court do the same? Let's have a look at the case to find out what deviations took place which raises multiple questions on the manner in which the Supreme Court handled the case against the CJI.

Case Brief:

On April 19, 2019. An affidavit⁶ was sent to twenty two sitting Judges of the Supreme Court by the complainant alleging the inappropriate sexual advances made by the CJI towards the complainant and a detail account of her and her family's victimization ever since the incident. She writes⁷: *"I am requesting the Hon'ble Judges of the Supreme Court to constitute a special enquiry committee of senior retired judges of the Hon'ble Supreme Court to enquire into these charges of sexual harassment and consequent victimisation,"*

Upon receiving the affidavit⁸, a special in house bench was set up to look into the allegations against the CJI. The initial committee consisted of the CJI himself, Justice Bobde, and Justice Indu Malhotra. This was challenged as it violated one of the very basic principle which states that no man can be a judge in his own case. It is unfortunate that the justice providers are themselves overlooking the most important rule of law. One may ask how can there be an honest proceeding if the accused is judging his own case? Later the CJI was replaced by Justice Ramana who again was a very close friend of the CJI. Given his relation with him, he recused himself and was then replaced by Justice Banerjee. This shows the first divergence from the Vishaka guidelines which provides that the committee should consist of 50% women and an external member which was clearly overlooked in this case.

Secondly, the victim was not allowed the presence of her counsel or any supporter and was also not given a copy of her depositions and procedure followed by the committee. Given the difference in the positions of the victim and the accused, it is likely that the victim would be intimidated by the presence of senior most judges of the highest court in India. Thus providing her with some assistance becomes all the more important.

Not only that, if we read the detailed affidavit submitted by the victim where she explains all the victimization she and her family was put through, none of the member in the committee showed any interest in enquiring the said victimization. In fact, it seemed as if they already had a preconceived notion

⁵Government of India Ministry of Women and Child Development, (May 30th, 2019, 9 am) <http://www.shebox.nic.in/>

⁶ Sruthisagar Yamunan & Supriya Sharma, Chief Justice of India sexually harassed me, says former SC staffer in affidavit to 22 judges, Scroll.in, (May 30th, 11.30, 2018), <https://scroll.in/article/920678/chief-justice-of-india-sexually-harassed-me-says-former-sc-staffer-in-affidavit-to-22-judges>

⁷ Ibid, note 6

⁸ Ibid, Note 6

that the victim was making a false complainant. As such the enquiry was fashioned in such a way so as to prove the complainant wrong instead of searching for the truth.

With so many violations of the Vishaka guidelines, it is natural for any victim to feel that the procedural flaws led to prejudice. To expect a fair inquiry it is important that the procedure was strictly followed according to the POSH Act. This is not the first time such allegation has been made against Judges of the Supreme Court. In 2012, an intern had complained against Justice Ganguly⁹, a former judge of the Supreme Court of sexual harassment. The same procedure was followed and it had the same outcome. So we see how the Judges of the Supreme Court have made themselves immune to such claims by using the procedural excuse especially under the cloak of *Indira Jaisingh vs Union of India*¹⁰, where it was held that the report of a Committee constituted as a part of the In-House Procedure is not liable to be made public.

The Supreme Court has established its own ICC known as the Gender Sensitization Internal Complaints Committee (GSICC), as constituted under the Gender Sensitization and Sexual Harassment at Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013¹¹ under the Vishaka Guidelines. The GSICC looks into the matter of any complaints pertaining to sexual harassment of employees of Supreme Court. It consists of minimum 7 member and maximum of 13 member most of whom are nominated by the CJI. Just as mentioned under the Vishaka guidelines, the GSICC also conducts its inquiry with the help of internal sub-committee, who then make a detail report of the investigation. However, if the accused is found guilty, it is the CJI who ultimately passes the order. However, in the present scenario, the CJI himself was accused of sexual harassment so taking help of GSICC by the victim would not yield the desired outcome. This clearly shows that there is no authority as such to watch over the conduct of the CJI. With the GSICC established under him and all the Supreme Court judges being his juniors and colleagues, expecting a fair and unbiased decision seems impossible. As a result the Justices would get a clean chit every time.

So what can be done?

As the victim in this case suggested, a sexual harassment complaint could be addressed by the retired Judges of the Supreme Court. A committee consisting of the retired judges and an external member from an NGO could be set up to enquire allegations against the CJI himself.

After a careful study of the affidavit filed by the victim, it can be noticed that there are many allegations which are overlooked by the panel or rather not taken into consideration. It is alleged that the panel had already made up their mind regarding the victim's guilt. It is clear that here is an immediate necessity of

⁹ These former Supreme Court judges faced sexual harassment allegations too, India Today Web Desk, (June 1st , 2019,), <https://www.indiatoday.in/india/story/former-supreme-court-judges-sexual-harassment-allegations-1506238-2019-04-20>

¹⁰ Ibid

¹¹The Gender Sensitisation & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013

legislation to deal with the harassment complaints against CJI, President or Prime Minister etc. who hold a privileged position. There has to be law which deals with such people who have been being given certain privileges under any of the existing legislations. As sexual harassment has nothing to do with the designation of the person accused for such act there has to be law which should be applicable to all irrespective of the designation of the accused.

The procedure should be transparent from entire angle i.e. from the view point of victim, accused or the society. As it is rightly said, "Justice should not only be done but also seen to have be done".

