

THE SUPREME COURT COMMITTEE AND INSTITUTIONAL BIAS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Supreme Court on Tuesday constituted a committee comprising Justice S.A. Bobde, Justice N.V. Ramana and Justice Indira Banerjee. All three judges command universal respect on account of their competence, objectivity, experience and independence. Two of them, Justices Bobde and Ramana, will become Chief Justice of India in coming years. In normal times, this would be a dream committee.

Yet, the constitution of the committee raises very serious and profound questions that need to be debated and addressed at the outset. Any delay will result in negation of the rule of law.

The Supreme Court's judgment in 1997 in *Visakha v. State of Rajasthan* is a watershed in its history. In the absence of any domestic law occupying a field providing for measures to check the evils of sexual harassment at all workplaces, the Supreme Court invoked its extraordinary powers under Article 32 to lay down a new law to fill the vacuum. In so doing, the judges laid emphasis on Fundamental Rights under Articles 14, 15, 19(1)(g) and 21 of the Constitution together with International Conventions and Article 51C and 253 of the Constitution. They emphasised guarantee of gender equality and right to work with human dignity among others. The judges relied upon the Beijing Declaration of 1995 where the Chief Justices of Asia and Pacific had *inter alia* declared that among the objectives and functions of the judiciary is "to ensure that all persons are able to live securely under the rule of law". Relying upon "Convention on Elimination of all Forms of Discrimination against Women", the judges referred to the rights of women and in particular, the right to work, as an inalienable right of all human beings and to "the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction".

Accordingly they declared, "In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose."

Among the guidelines and norms laid down are:

"1. Duty of the employer or other responsible persons in workplaces and other institutions: It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment....

7. Complaints Committee: ... The Complaints Committee should be headed by a woman and not less than half of its members should be women...." Accordingly the court finally directed, "We direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field..."

Parliament enacted the law in 2013. It is "an Act to provide protection against sexual harassment of women at workplace". Section 3 expressly declares "no woman shall be subjected to sexual

harassment at any workplace". The expression 'workplace' is defined in an inclusive manner and though it does not include court premises expressly, they are deemed to be included. Sections 4 and 7 are relevant and speak about constitution of internal complaints committee and local complaints committee categorically requiring the chairperson to be a woman employed at a senior level at the workplace or from among eminent women from the field of social work and committed to the cause of women. They also provide that "members be from among the employees, NGO espousing cause of women, etc. be women".

The Gender Sensitisation and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) Guidelines, 2013, in the Preamble, have laudatory objectives, but appear to exclude the court staff from their umbrella and protection. Constitution of the committee under Regulation 4 of at least seven members is to be done in accordance with the judgment in the Visakha case and essentially requires only women to be appointed including as the chairperson from the Bench, the Bar, Registry or the non-governmental organisations involved with the cause of women. This is the safe guide to constitute a committee. The Supreme Court has failed to implement Visakha judgment in its own precincts, and Parliament has failed to apply the Act of 2013 to court premises across the country. Clearly, the judges have kept themselves out of the ambit of the Act and the regulations, at least in the Supreme Court. This raises very serious questions as to the rationale and justification of so doing.

Fairness to complainant

Be that as it may, with binding Visakha judgment, the court could not have appointed the committee as it did to examine the allegations of sexual harassment against one of their own, the Chief Justice. The constitution of the committee is contrary to the letter and spirit of the Act and the guidelines. The very rationale for ensuring that the investigating committee for sexual harassment is headed by a woman and should comprise essentially women was to ensure fairness and comfort to the complainant. It would be taking away the dignity of the woman if she were to appear before a committee comprised of men even to describe in detail the sexual harassment suffered by her. The sensitivity required will be lost.

Troubling statements

To add to the woes of the complainant are extremely troubling statements issued by the Secretary-General of the Court and by the office-bearers of the Union of the Employees of the Court, both terming her allegations to be false and expressing solidarity with the Chief Justice.

Add to these the newspaper reports to the effect that the judges in a meeting held on Monday morning expressed support to the Chief Justice. Where then is the possibility for her to get fairness in the inquiry? The only witnesses who could possibly support her version are the employees of the Court. It is inconceivable that they can give independent evidence with this background and that too before a committee comprising three judges, two of whom are going to be Chief Justices in the future. The fate of the complainant stands sealed.

Natural Justice or Divine Justice is a great humanising principle intended to empower law with fairness to secure justice and prevent miscarriage of justice. Good administration would naturally require fair play in action.

As has been well said, "the history of liberty has largely been the history of the observants of procedural safeguards". The first principle of natural justice is the rule against bias and is based on two salutary principles, "Justice should not only be done, but manifestly and undoubtedly be seen to be done" and "Judges, like Caesar's wife, should be above suspicion". Institutional bias is against natural justice. The Supreme Court itself in the case of Institute of Chartered

Accountants in 1986 declared that the removal of a member of the institute on a ground of misconduct was vitiated on account of bias as Chairman and Vice-Chairman of the Disciplinary Committee were Ex-Officio President and Vice-President of the Council and so were other members of the committee drawn from the Council. The report will have to be placed before the Full Court, which appears to have unanimously constituted this committee and in that, the three members of the committee will also sit.

As early as 1957, the Supreme Court in Manak Lal's Case has held "in such cases the test is not whether the bias has effected the judgment: the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal, it is in this sense that it is often said that justice must not only be done but must also appear to be done."

Justices must redeem themselves. Events starting from Saturday (including those that have emerged for period prior thereto) have left citizens bewildered. Unless humane corrective measures are taken the court may lose people's trust.

(The author is a senior advocate and former president of the Supreme Court Bar Association)

Join our online subscriber community

Experience an advertisement-free site with article recommendations tailored for you

Already a user? [Sign In](#)

To know more about Ad free news reading experience and subscription [Click Here](#)

or Please whitelist our website on your Adblocker

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

Crack