



The case of M. J. Akbar v Priya Ramani has brought the two issues of lack of due process and rule of law in sharp focus. The judgement in the defamation case by Ravindra Kumar Pandey, the AC Metropolitan Magistrate 01, Rouse Avenue District Courts, Delhi, has highlighted the circumstances under which those who are sexually harassed by persons in power cannot access justice by putting the due process in motion. It can be due to lack of appropriate legislation that provides victims easy access to justice, or it can be due to social factors such as the stigmatization of those who come forward to complain.

Therefore, although the case was one of defamation, the judgement is full of legal provisions that require of the State to recognize genderbased violence and the rights provisions in the Constitution that are the bedrock on which a woman can be protected from sexual harassment at the workplace. In that sense, the Judgement provokes one to think seriously about the rule of law and due process that we so want, and yet are apathetic about for good reason. Women know that anarchy as opposed to rule of law is not a solution for them. But rule of law in the manner in which it plays out today is also not exactly working in their favour.

For years now, women have been referred to me to take up their cases of domestic violence. But that is not all they seek. There is something that some women are looking for that is sorely lacking in the justice system. They have been through hell, and, in frustration, what they want is some kind of an out from that hell. This is how they begin to entertain thoughts of eliminaton of the oppressor or his immobilization. See if you can arrange for someone to break his legs, they would say. After explaining that I do not take such contracts, I would go further to explain to them that there is no end if they go down that road, because violence will beget violence, and finally, muscle and money will win, as it so apparently does in other spheres of life. If they get the point, they persist with me, and, if not, they turn to someone else who can deliver on their expectations.

One cannot blame them. Oftentimes I have been witness as a lawyer, and consequently an officer of the Court, to what those who go through due process suffer and fail to achieve, which those who do not go through due process achieve. Courts tend to give preference to commercial disputes and cases in which corporates are involved, rather than the poor (wo)man's cases. This is also because these cases get styled as 'direction matters' precisely because the corporate or rich litigant has been able to go to the High Court and get a direction to the lower court before which the case is taking place to dispose of the case within a stipulated time period which often seems to be three months. So even cases that involve maintenance or non-payment of maintenance which is the woman's lifeline, get low priority.

At another level is the issue of lack of innovation by the State and by and large in the Courts within the scope of what is possible. During COVID-19 women did not get paid maintenance by some parties and the excuse ostensibly was loss of full income. Neither did the State come up with a stop gap arrangement, nor did the Courts pull the necessary stops to not let the Respondent get away completely.

The delays in Courts occur for many reasons. One of them is the non appointment of judges on a timely basis, resulting in Courts having no presiding officers for months together. The other factor is the lack of initiative to quickly do a temporary reorganization if a judge goes on long leave or maternity leave. Yet another factor is the non programming of cases that have specifications as to who can try them. For example, cases under Protection of Women from Domestic Violence Act, 2005, are to be tried by female judges. Hence, if the female judge is transferred and a male judge comes in her place, it is some time before the file is transferred to a court where a lady judge is posted. Issues such as these result in delay in the dispensation of justice. It does not seem as if technological advancements are harnessed in the interests of women by the judicial and quasi-judicial (that is Mamlatdar, Executive Magistrate, Deputy Collector) Courts.

Women litigants are particularly affected by such situations as they do not have the staying power that rich parties and corporates have. In such cases, they simply resign themselves to their fate or wait for an opportune moment to strike. This is what has been the scenario with cases of sexual harassment. #MeToo proved to be that moment. Priya Ramani wrote of an incident that occurred at a time when neither the Sexual Harassment of Women at the Workplace Act was enacted, nor the Vishakha Judgement had been passed which provided a seemingly accessible redressal mechanism. However, even now, the mechanism of Internal Complaints Committee does not seem to be very effective, because Internal Complaints Committees often comprise of members who are otherwise burdened with several responsibilities and also because the managements do not take sexual harassment of women at the workplace seriously enough to sensitise and orient and equip the Internal Complaints Committee to effectively redress grievances of sexual harassment of women at the workplace. Many do not organise orientation, still others have not constituted the Committees, or do not have the required external member on their Committee.

Thus, while due process and rule of law is desirable, it does not follow that it can work in such disabling circumstances. For a well-rounded and developed society, it is critical that due process and rule of law is enabled and accessible in the very real and actual sense of accessibility.

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Due Process and the Rule of Law is not Enough