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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31.07.2019

+ W.P.(C) 8288/2019

SUNITA THAWANI

..... Petitioner

Through: Mr. Rohan Thawani, Mr. Iqram
Govind Singh & Ms. Gunjan Ahuja, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Ms. Monika Arora, CGSC with
Mr. Harsh Ahuja & Mr. Kushal Kumar, Advs. for
R-1 & R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL.34321/2019 (*Exemption*)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 8288/2019

1. This so called public interest litigation has been preferred with the following prayers:

“A) Issue a Writ of Mandamus to the Respondents, commanding them to consider making suitable amendments to The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, so as to include retaliation/victimization as a facet of sexual harassment and to

provide for measures for protection of women who have complained of sexual harassment/witnesses/those involved in the inquiry process, including those making an allegation (whether express or not) that some person has contravened the Act and/or committed an act of sexual harassment from such victimization/retaliation;

B) Issue suitable general directions as this Hon'ble Court deems fit to provide for measures for protection of women who have complained of sexual harassment/witnesses/those involved in the inquiry process, including those making an allegation (whether express or not) that some person has contravened the Act and/or committed an act of sexual harassment from such victimization/retaliation till such time as suitable amendments to The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are not made by the Respondents;

C) Pass such other further order(s) as this Hon'ble Court may deem fit in the interest of justice.”

2. Having heard the counsel for petitioner and looking into the facts and the circumstances of the present case, we see no reason to issue a writ of *mandamus* to amend ‘The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013’. There is no legal obligation on the part of the respondents much less there exists a public duty to do so. While exercising our powers under Article 226 of the Constitution of India, it is not a function of this Court to advise the legislature.

3. With regard to the prayer (B), we see no reason to amend the said Act also or make any changes thereto for the amendment of the law. It is for this petitioner to make a representation before the concerned authority. Amendment of law or the enactment of law is a legislative function. We are not here to advise the government much less to issue the writ of *mandamus* for the amendment or enactment of the law.

4. In **Mallikarjuna Rao v. State of Andhra Pradesh** (1990) 2 SCC

707 : 1990 SCC (L&S) 387 and in V.K. Sood v. Secretary, Civil Aviation 1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907, the Supreme Court held that the court Under Article 226, has no power to direct the executive to exercise its law-making power.

5. In State of Himachal Pradesh v. A Parent of a Student of Medical College, Shimla (1985) 3 SCC 169 : AIR 1985 SC 910, this Court deprecated the practice of issuing directions to the legislature to enact a law:

“4....The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging...”

6. In Asif Hameed and Ors. v. State of Jammu & Kashmir 1989 Supp (2) SCC 364: 1 SCEC 358, where this Court observed that:

“19. ...The Constitution does not permit the Court to direct or advice the Executive in matter of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive....”

7. In Union of India v. Association for Democratic Reforms (2002) 5 SCC 294 : AIR 2002 SC 2112, this Court observed that:

“19.it is not possible for this Court to give any direction for amending the Act or the statutory rules. It is for the parliament to amend the Act and the Rules.”

8. Similarly, in Supreme Court Employees' Welfare Association v. Union of India (1989) 4 SCC 187 : 1989 SCC (L&S) 569, this Court held that a court cannot direct the legislature to enact a particular law. This is because under the constitutional scheme, Parliament exercises a sovereign power to enact law and no other authority can issue directions to frame a

particular piece of legislation.

9. In V.K. Naswa v. Union of India (2012) 2 SCC 542 : (2012) 1 SCC (Cri) 914, this Court referred to a large number of decisions and held that:

“18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner.”

10. Still less, in our opinion, would it be permissible for any court to create a new offence, where the legislature, in its wisdom, has not chosen to do so.

11. The prayer, of the petitioner, effectively seeks creation of a new category of offence in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, i.e., an offence of retaliation/victimisation.

12. Apart from the fact that a court cannot create such a new category of offence, in exercise of its writ jurisdiction, even logistically, no justifiable basis, for the prayer of the petitioner, appears to be forthcoming.

13. Retaliation, or victimization, are only the provocation for an act of assault. If an act of assault amounts to sexual harassment, it would anyway be punishable under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. If it does not, it cannot be punishable under the said Act, as the act deals with only offences of a sexual nature, and an offence, which does not lead to sexual harassment, can obviously find no place therein.

14. The very premise of the petitioner, that retaliation/victimisation constitutes a distinct category of sexual assault, is, therefore, itself fundamentally misconceived.

15. With the aforesaid observations, this writ petition stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 31, 2019

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