**Looking back: Two decade after Vishakha judgment and Sexual Harassment at Workplace**

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*“You can tell the condition of a nation by looking at the status of its women.”* - Jawaharlal Nehru

*“Our lives begin to end the day; we become silent about things that matter.”*

**ABSTRACT**Sexual harassment and rape are two sides of the same coin. Both showcase the power of man to dominate that of women. Both have one victim- ‘women’. Both are barbaric in nature; but many people extenuate sexual harassment to rape, just because the victims are not physically harmed. Whereas in rape - the victim is ravished like an animal for the fulfillment of desire and lust of another man. Both have the same object- to undermine the integrity of the victim, physically as well as mentally. As observed by Justice ArjitPasayat:

“While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.”

Sexual harassment is nothing less than the showcasing of male dominance. Given an opportunity, such men would try fulfilling their desire. However, it also not true that all cases of sexual harassment are such- where the accused is guilty of conceiving the intention of a sexual intercourse. But it also depends on each individual case and circumstances, because it may well be the case that the woman may also be at fault.

The question is not whether women have the right to bodily integrity, as this right is already adumbrated under Article 21 of the Constitution of India. Article 21, which guarantees the right to life and liberty to men and women both alike But whether it is really imperative to take a decisive step towards extirpating this evil and making the contemporary and future society a safe haven for women.

Sexual harassment is a human rights violation. It is also a serious cause for concern in health care institutions that train students, employ women in various capacities and also cater to health needs of men and women. It affects the attitudes, behaviours, and learning capabilities of medical students. It results in a hostile atmosphere at work, interferes with work performance and can affect patient care.

Available studies on harassment of medical professionals have focused on developed country experiences.  These indicate that a significant proportion experience bullying in some form. Minority groups, women and people lower down in the workplace hierarchy are more likely to be victims.

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**Introduction**

***Sexual harassment at work undercuts women’- potential for social equality in two ways: by using her employment position to coerce her sexually, while using her sexual position to coerce her economically. Besides, sexual harassment often has adverse effects on the victim’s performance, therefore, it can cause employer’s losses in productivity….***

Women have been greatly praised and honoured in the literature and religion of our society. They have been called Devi and Shakti yet their actual position is made clear at the time they go out of the house alone. Until now, women have silently endured from sexual harassment at workplace, considering it to be a normal occupational hazard. But with the increasing liberation in women’s outlook and the society in general the facts regarding sexual harassment are coming out in open.

 Sexual harassment of working women has been one of the most pervasive but carefully ignored features of our society. In Indian criminal law, sexual harassment of women has not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, the object ‘sexual harassment of working women’ (SHW) was named and defined in **Vishakha v. State of Rajasthan**[[2]](#footnote-2) wherein the term ‘sexual harassment’ was defined as: sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

1. Physical contact and advances;
2. A demand or request for sexual favours;
3. Sexually coloured remarks;
4. Showing pornography
5. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safey problem.

**What is the meaning of ‘working women’?**

It is applicable to all working women whether drawing salary or honorarium or doing voluntary work, whether in government or public private enterprise.

In *Vishaka v. State of Rajasthan*[[3]](#footnote-3) the judgment of the Supreme Court was delivered by Justice J.S. Verma on behalf of Justice Sujata V. Manohar and Justice B.N. Kirpal on a writ petition filed by Vishaka, a non-governmental Organisation working for “Gender equality” by way of public interest litigation, seeking enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India.

 The Supreme Court upheld gender equality and right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.

 The legal provision for judicial intervention are (a) Article 14, which says ‘equality before law’; (b) Article 19(1)(g) right to practice any profession or to carry on any occupation or business; ( c) Article 15 Prohibition of discrimination on grounds of religion, race , caste, sex, place of birth; (d) Article 21 Right to life and personal liberty; and (e) Article 51(e) to promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce the practices derogatory to the dignity of women.

The Supreme Court, in absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment laid down the following guidelines.

1. All employers or persons in charge of work place whether in the public or private sector, should take appropriate steps to prevent sexual harassment of women employees.
2. The rule or regulation of Government and Public Sector bodies relating to conduct a discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
3. As regards private employers, steps should be taken to include the aforesaid provisions in the Standing Orders under the Industrial Employment Act, 1946.
4. Appropriate work conditions should be provided in respect of work leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
5. Where such conduct amounts to specific offences under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.
6. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

Hence working women who face sexual harassment today shall seek protection under Article 21 and other supporting Articles mentioned above, in Indian Constitution to live with human dignity.

Indelicacy or indecency; a regard for propriety in dress, speech or conduct, “scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure coarse suggestions.”

 This should be noted that, for the first time in 1994, Crimes in India Report categorized section 509 of IPC, as sexual harassment. It is significant that this category was footnoted to explicitly say: ‘referred in the past as eve teasing’. Thus the social contestation are read into the Legal categories making eve teasing a matter of past. Further, Rule 3C of the Civil Services (Conduct) Rules provides that, no Government Servant shall indulge in any act of sexual harassment of any woman at her workplace and they shall also take appropriate steps to prevent SHW at work place. Ironically, the violation of this rule comes under the heading of ‘misconduct’ only. However, the Apex Court in *State of Rajasthan v. Vidhyawati*,[[4]](#footnote-4) held that, the Government will be vicariously liable for the tortuous act of its employees.

 The SHW in workplace has been regarded very serious offence. The Supreme Court in various decisions including Vishakha case[[5]](#footnote-5)*Chairman, Railway Board v. Chandrima Das*,[[6]](#footnote-6)*Apparel Export Promotion Council v. A.K. Chopra*[[7]](#footnote-7)*,* held that each incident of sexual harassment of women at the workplace is violation of the right to life under Article 21, which implies right to dignity. In the Articles of Vishaka guidelines, the Apex Court directed that, it shall be the duty of the employer in work places to prevent or deter the commission of acts of sexual harassment. Where such conduct amounts to a specific offence under the Indian Penal Code or under any law, the employer shall initiate appropriate action in accordance with law, and, where such conduct amounts to misconduct in employment, appropriate disciplinary action should be intiated by the employer. An appropriate complaint mechanism should be created and this should ensure time bound treatment of complaints.

 This is really sad that the Government has been oblivious in eliminating this kind of heinous crime and the same can be proved with these examples. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), had been ratified by the Government of India, which deals with the sexual harassment at workplaces. After having ratified an international convention, both Parliament and the Central Government came under a duty under Article 73 and Article 253 of the Constitution to implement it domestically and in absence of legislation or executive action, the Supreme Court has power to formulate rules in this regard. ***Thanks to the judiciary that, in Vishakha guidelines, the Supreme Court applied CEDAW in view of the ratification of this convention by the Government of India as the Government failed to formulate rules in this regard. Again, National Commission for Women recommended, the sexual Harassment of Women at their workplace (Prevention) Bill, 2000 which was supposed to be enacted by the Parliament. Still the fate of this bill is hanging in balance.***

Unlike India the position of SHW in the developed states is bit different. The Supreme Court of the United States began hearing sexual harassment cases in mid-1980’s. It’s first rulings described what behaviors constitute unlawful sexual harassment under the federal laws prohitbing sex discrimination. In the UK investigation required as to whether the employer would have acted in the same manner if the same circumstances had been in existence in respect of a “comparator group” i.e. a class of persons of a different gender to the complainant. However, in Australia and New Zealand sexual harassment at the workplace is a distinct wrong in itself and there is no need to define in terms of discrimination.

 Sexual harassment singles out a gender defined group, women, for special treatment in way, which adversely affects and burdens their status as employees. It deprives them of opportunities that are available to male employees. Work is critical to women’s survival and independence. Sexual harassment exemplifies and promotes employment practices, which are disadvantageous to women in work and sexual practices, which intimately degrade and objectify women. In this perspective, sexual harassment at work undercuts women’s potential for social equality in tow ways: by using her employment position to coerce her sexually, while using her sexual position to coerce her economically.

**Law on Sexual Harassment**

The basic problem in dealing with the problem of sexual harassment is that Indian Penal Code (IPC) has no specific provision covering the subject in its entirety. However, the related laws are framed as offences that either amount to obscenity in public or acts that are seen to violate the “modesty”[[8]](#footnote-8) of women. This should be noted that for the first time in 1994, Crimes in India Report categorized section 509 of the IPC[[9]](#footnote-9) as sexual harassment. It is significant that this category was footnoted to explicitly say; ‘referred in the past as eve teasing’. Thus the social contestations are read into the legal categories making eve teasing a matter of the past. Sexual harassment at workplace can also be incorporated in section 209,[[10]](#footnote-10) 294 and 354[[11]](#footnote-11) of the IPC.

 A civil suit can also be filed for damages under tort laws, on the grounds of mental anguish, physical harassment, loss of income and employment caused by the sexual harassment. The Apex Court in the *State of Rajasthan v. Vidhyawati*[[12]](#footnote-12) held that, the Government will be **vicariously liable for the tortuous act of its employees**. Besides, a victim can seek remedy under the Indecent Representation of Women (Prohibition) Act (1987) which lays down that if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing “indecent representation of women”; he is liable for a minimum sentence of 2 years. Further, section 7 (offences by Companies) holds companies guilty where there has been “indecent representation of women” and the minimum punishment is sentence of 2 years.

 Further, Rule 3C of the Civil services (Conduct) Rules provides that, no Government servant shall indulge in any act of sexual harassment of any woman at her work place and they shall also take appropriate steps to prevent SHW at work place. However the violations of this rule comes under ‘misconduct’ only.

**Sexual Harassment at Workplace Bill, 2010[[13]](#footnote-13)**

Salient features of the Bill are as follows:

1) The Bill proposes a definition of sexual harassment, which is as laid down by the Honourable Supreme Court in *Vishakavs State of Rajasthan (*1997). Additionally it recognises the promise or threat to a woman's employment prospects or creation of hostile work environment as 'sexual harassment' at workplace and expressly seeks to prohibit such acts.

2) The Bill provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, and daily wageworker or in ad-hoc capacity. Students, research scholars in colleges/university and patients in hospitals have also been covered. Further, the Bill seeks to cover workplaces in the unorganised sectors.

3) The Bill provides for an effective complaints and redressal mechanism. Under the proposed Bill, every employer is required to constitute an Internal Complaints Committee. Since a large number of the establishments (41.2 million out of 41.83 million as per Economic Census, 2005) in our country have less than 10 workers for whom it may not be feasible to set up an Internal Complaints Committee (ICC), the Bill provides for setting up of Local Complaints Committee (LCC) to be constituted by the designated District Officer at the district or sub-district levels, depending upon the need. This twin mechanism would ensure that women in any workplace, irrespective of its size or nature, have access to a redressal mechanism. The LCCs will enquire into the complaints of sexual harassment and recommend action to the employer or District Officer.

4) Employers who fail to comply with the provisions of the proposed Bill will be punishable with a fine which may extend to Rs 50,000.

5) Since there is a possibility that during the pendency of the enquiry the woman may be subject to threat and aggression, she has been given the option to seek interim relief in the form of transfer either of her own or the respondent or seek leave from work.

6) The Complaint Committees are required to complete the enquiry within 90 days and a period of 60 days has been given to the employer/District Officer for implementation of the recommendations of the Committee.

7) The Bill provides for safeguards in case of false or malicious complaint of sexual harassment. However, mere inability to substantiate the complaint or provide adequate proof would not make the complainant liable for punishment.

 **Conclusion**

Since law is an effective weapon for bringing about socio-economic justice and Constitution has been so devised so as to archive this objective, Parliament must enact a comprehensive law to prevent sexual harassment of women at workplaces. Most women hesitate to complain about sexual harassment from employers because of the fear of losing their jobs. So the new legislation must incorporate provisions to protect their jobs when complaints are made. A termination or resignation after a complaint should also be considered as sexual harassment.

 The best way to prevent sexual harassment is that employers need to set up a redressal mechanism/complaints committees. The aim is to ensure that sexual harassment does not occur and, where it occurs, to ensure that adequate procedures are readily available to deal with the problem and prevent its recurrence.

 The central and the state governments and also the public at large should take the Apex Court’s judgment seriously and initiate measures to end the menace of mounting sexual harassment. A deterrent punishment to the culprits appears to be the only solution to the serious problem of sexual harassment whether at the workplace or outside. The ultimate solution to this social problem lies in massive awareness determined community action.

 Law alone is not enough to root out this social evil. Society has to change its attitude so that women can come out and participate in public life without feeling threatened. What needs to be inculcated is a sense of mutual respect between men and women. There is a divinity in each of us. The recognition of this divinity will automatically bring forth mutual self-respect and that alone will be source of liberation and empowerment of women.

**Bibliography**

(1) Austin, Granville, **Indian Constitution: Cornerstone of a Nation**, Oxford University Press, New

Delhi, 2007.

(2) Bakshi, P.M., **The Constitution of India**, Universal Law Publishing, Delhi, 2006.

(3) Baruah, Aparajita, **Preamble of the Constitution of India**, Deep and Deep Publications, New

Delhi, 2007.

(4) Basu, Durga Das, **Introduction to the Constitution of India,** Wadhwa and Company Law

Publishers, Agra, 2006.

(5) Basu, Durga Das, **Shorter Constitution of India**, Prentice Hall of India, New Delhi, 2006.

(6) Gautam, D.N., **Fifty Years of Indian Constitution**, Manak Publishers, New Delhi, 2002.

(7) Jain, M.P., **Indian Constitutional Law**, Wadhwa and Company, Nagpur, 2006.

(8) Kashyap, S.C., **Constitution of India**, Universal Law Publishing, Delhi, 2006.

(9) Phillips, O. Hood, **Constitutional and Administrative Law**, Sweet and Maxwell, London, 2001.

(10) Pylee, M.V., **Constitution of the World**, Universal Law Publishing, New Delhi, 2006.

(11) Alison Diduck and Felicity Kaganas, **Family Law, Gender and the State - Text, Cases andMaterials,** Second Edition, Hart Publishing, Oxford, 2006.

(12) Bromley’s, P.M., **Family Law**, Fifth Edition, Butterworths, London, 1976.

1. Indore Institute of Law [↑](#footnote-ref-1)
2. AIR 1997 SC 3011. [↑](#footnote-ref-2)
3. 1997 (6) SCC 241 [↑](#footnote-ref-3)
4. AIR 1962 SC 933 [↑](#footnote-ref-4)
5. 1997 (6) SCC 241 [↑](#footnote-ref-5)
6. (2000) 2 SCC 465. [↑](#footnote-ref-6)
7. AIR 1999 SC 625 [↑](#footnote-ref-7)
8. In interpreting “modesty” the Supreme Court in Mrs. R.D. Bajaj v. K.P.S Gill, AIR 1996 SC 309, adopted the following dictionary meaning of this word: “womanly propriety of behavior; scrupulous chastity of thought, speech and conduct,” “decorous in manner and conduct not forward and lewd, ‘ “freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct” scrupulous chastity of thought, speech and conduct (in man and woman); reserve or sense of shame proceeding from instinctive aversion to impure coarse suggestions. [↑](#footnote-ref-8)
9. Section 509, IPC deals with word, gesture or act intended to insult the modesty of a woman and lays down that:

Whoever intending to insult the modesty of any women utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or intrudes upon the privacy of such woman shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or both. (Cognizable and bailable offence). [↑](#footnote-ref-9)
10. Section 209, IPC deals with obscene and songs and lays down:

Whoever, to the annoyance of others:

Does any obscene act in any public place or

Sings, recites or utters any obscene song ballad or words in or near any public place, shall be punished with imprisonment of either description for a term, which may extend to 3 months or with fine or both. (Cognizable, bailable and triable offence). [↑](#footnote-ref-10)
11. Section 354, IPC deals with assault or criminal force to a woman with the intent to outrage her modesty and lays down that:

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both. [↑](#footnote-ref-11)
12. AIR 1962 SC 933 [↑](#footnote-ref-12)
13. <http://ncw.nic.in/PDFFiles/sexualharassmentatworkplacebill2005_Revised.pdf>, visited 26-2-2010 [↑](#footnote-ref-13)