



Sexual Harassment at the Workplace

- A Guide



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(New Delhi, India)

Sexual Harassment at the Workplace

- a guide to the sexual harassment law in India



Introduction

The need for a chapter on Sexual Harassment at the Workplace in a reference guide on women workers rights became evident when we noticed two disturbing trends in workplaces. First, was that a number of women have faced this form of abuse and feel ill equipped to deal with it. Second, that a plethora of myths and misinformation about sexual harassment exist.¹ In August 1997, the Supreme Court of India delivered a judgement creating mandatory sexual harassment guidelines for the workplace and other contexts. With the new sexual harassment law in India, the possibility of freedom from adverse sexual conduct at work is now an emerging reality.

DID YOU KNOW THAT IF:

- In the absence of sexual favours, a contractor denies you payment of wages?
- Pornographic pictures are left on your desk or displayed at the workplace?
- Remarks are made about your personal appearance and dress?
- An office colleague continues to tell off-coloured jokes in the office which make you feel uncomfortable?

THEN THIS IS SEXUAL HARASSMENT!

This chapter is an attempt to fuse the workplace reality with practical information about sexual harassment, its genesis in India, the emergence and impact of the sexual harassment guidelines and their application to the Indian workplace. The scope and application of the new law is still not adequately applied and tested. For the purposes of this chapter therefore, we have provided illustrative examples and suggestions that may help initiate and develop the application of these guidelines in creative ways to a variety of workplace contexts.

Q : Why learn about Sexual Harassment?

A : Because it's unprofessional and illegal



Background

While comprehensive data on sexual harassment in India is scarce, what research and studies do exist reveal that sexual harassment does not occur in a vacuum.² It is the relatively low status of women in work sectors that makes the problem so widespread and persistent. And if harassment stems from women's inferior position on the job, it also functions as a peg that holds women there.

From 1977 to 1989, in India, there was approximately a 24% increase in the number of women working in the rural and urban sectors in India.³ Even under the existing narrow provisions of law, between 1983 and 1993, the number of reported molestations increased from 75 in 1983 to 20,194 cases in 1990.⁴ The latter figure comprised 50% of the total number of crimes against women reported at the all India level in 1990.

While the number of convictions is not separately categorize



Statistics indicate an increase in sexual violations

d under such crimes, general statistics reveal a high incidence of sexually offensive behavior towards women coupled with a low level of convictions.

In rural areas, the problem of sexual harassment is of particular concern in the non-traditional sector where the role of women has acquired increasing significance.

While information in this area is



"It is not a western phenomenon".

scant, surveys that exist indicate a high incidence of sexual harassment of women workers in villages.⁵ The range of women affected by such harassment has included women working as Family Planning workers in villages, gram sevika's, nurses, mid-wives and other change agents working with women social/rural development programmes. That is not to say that sexual harassment is limited to rural areas.

Rather, it dispels one recurring myth about sexual harassment: that it is a western phenomenon.

Limited data from urban areas has shown a similar large scale prevalence of sexual harassment. In a 1997 spot survey conducted by Sakshi (see Annexure 'A'), 54% of 67 women interviewed from a cross-section of industry had experienced some form of sexual harassment. In most cases the harasser was a senior or a colleague. The fear of job loss, hostility and social stigma prevented most women from complaining. Of the handful of cases reported, only two resulted in some response: in one, termination of the abuser's services (who continued to harass the subject even subsequent to his departure) and in the other, an apology. The initial stages of a recent and more in depth study by Sakshi of a cross-section of sectors from five metropolitan cities reveals a startling 98% prevalence of sexual harassment at the workplace.⁶

Experience has also shown that the notion of women being empowered as workers or otherwise working towards any form of social change is still met with suspicion and doubt making women more vulnerable to adverse reactions or remarks.⁷ This is especially true where women are working towards the eradication of retrograde practices such as child marriage, female infanticide, alcoholism, violence etc. The acceptance of women as change agents largely depends upon existing attitudes and the social organisation of a community. The over-all nature of change agents is that of an innovator. A role which seeks to initiate and assist the community in a process of modernisation and change but which is

often perceived as a threat to 'traditional and cultural' practices and norms.

In a given lifetime therefore, the risk of women at work being exposed to sexual harassment from superiors and colleagues in the workplace, contractors in the non-traditional sector, or by a faceless voice over the telephone, is seemingly endless, offensive and controlling. It is only natural to assume then that women have good reason to be concerned about sexual conduct at work.

Even though sexual harassment at work is not new to women, serious concern about the issue in India only arose with the advent of *Vishaka vs. State of Rajasthan & Ors.*⁸ Even so, few working women can say that they have not experienced one form or another of sexual harassment. The invisibility of sexual harassment as a woman's reality has eclipsed its understanding within the language of rights.

This chapter may be adapted by:
Universities
Trade unions
Public sectors
Private sectors
NGOs
Any other institutions

This chapter aims to provide information and assistance on sexual harassment to employers and employees within different work environments in India, in the hope that some level of much needed awareness is available to guide the formulation of policies and attitudes within an organisation. At the same time, the information provided here might easily be adapted for the benefit of university campuses and

other institutions. Much of the information is targeted at helping trade unions, public and private sector concerns and NGOs develop safe and healthy work environments by eliminating sexual harassment at the workplace.

The chapter aims at assisting a transition of attitudes as well as assuring greater respect for women as workers in the community, students in the university and employees in public/private sector industry.

Sexual Harassment as a Human Rights Issue

'By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self respect of the victim both as an employee and as a human being'⁹

In September 1979, the Government of India signed the Convention for Elimination of Discrimination Against Women (CEDAW), but ratified¹⁰ the same thirteen years later on 9th July 1993¹¹. From the time of signing to the time of ratification, several laws were passed and amendments made, incorporating changes, which would impact on the rights of women.¹² In terms of sexual violence, the most far-

The unnamed should not be assumed as non-existent

reaching changes took place from 1983-85¹³. These included, prohibiting the disclosure of a victim of rape without previous permission of the court;¹⁴ the introduction of a law punishing rape in police custody¹⁵ as well as creating a presumption in favour of a woman who complains of rape;¹⁶ punishment for cruelty to a woman by her husband or relatives of that

husband;¹⁷ and making the giving and taking of dowry a more serious offence.¹⁸

As for sexual harassment, in November 1993, the Government of India had begun to acknowledge the existence of sexual harassment as an existing impediment to women's equality and opportunity:

"... while the existence of this form of discrimination against women has been acknowledged, there has been little concerted effort to evolve an approach or a policy and a law on the subject..."¹⁹

In contrast, many parts of the world including the Asian Region²⁰ had begun to document sexual harassment as a human rights issue and described such conduct in the following terms²¹:

- violation of human rights and an affront to the dignity of the person harassed



- manifestation of violence against women;
- having a link with the inequality of women in social and economic spheres
- unacceptable conditions of work which have detrimental effects for both the employees and the enterprise

In its Recommendation on Violence²², CEDAW presented the possibility of perceiving and

understanding violence as women experience it. According to a critical recommendation under CEDAW: **“Gender Based Violence is a form of discrimination which seriously inhibits women’s ability to enjoy rights and freedoms on the basis of equality with men.”**²³ The recommendation found “sexual harassment” as one such expression of sex discrimination and went on to define the same:

Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual

harassment in the workplace.

Q. WHAT IS SEXUAL HARASSMENT ?

A. IT'S ANY UNWELCOME WORDS OR ACTIONS OF A SEXUAL NATURE

Sexual harassment includes such unwelcome sexually determined behaviour as, physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute health and safety problems; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaint procedures and remedies, including compensation, should be provided.”²⁴

Despite that India signed CEDAW nearly twenty years ago, existing laws in India failed to recognise the

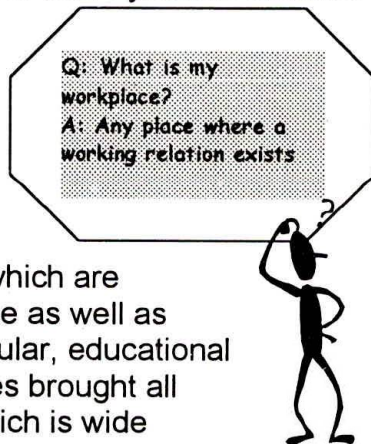
existence of sexual harassment, or for that matter, that violence against women was a form of gender discrimination against women. An added problem with a strictly penal law approach to sexual harassment, is that it seeks to punish an individual wrong rather than alter the discriminatory conduct which is characteristic of such offences. Similarly, labour laws in India adopt a protective stance towards women at work rather than deal with the elimination of sexual harassment as discriminatory behaviour. With the ratification of CEDAW by India, dramatic changes followed in recognising sexual harassment at work as a form of sex discrimination.

Sexual Harassment as Discrimination: *Vishaka vs. State of Rajasthan & Ors*²⁵.

Hema²⁶, a Saathin working for the Women's Development Programme (WDP), a state run programme in Rajasthan, was gang raped by five upper caste men in 1992. The rape was carried out as an act of revenge against the Saathin for her campaign against child marriage. What followed was an appalling display of negligence and deliberate inaction on the part of the police, the medical personnel, and the magistrate, all of who went out of their way to prevent the Saathin from registering her case and providing evidence. One question, which arose from the case, was whether, apart from gang rape, the state could camouflage its own prior accountability in the matter? Before the actual rape, the Saathin had complained of sexual harassment by the accused, complaints, which went unheeded by the local authorities leaving the Saathin to fend for herself. The state's failure to have any functional policy on sexual harassment for its village department workers appeared to cast some degree of liability on the state. This amongst other issues became the basis of a public interest litigation filed by women's organisations in the Supreme Court of India.

The case of *Vishaka* (see Annexure 'B') was the first time the law recognised sexual harassment as a human rights violation and it did so keeping India's obligations under CEDAW and other International Instruments. Given the social context of Hema, the case was all the more unique as it presented a realistic working context of a woman where "workplace" has no definitive meaning. Hema was a district level worker and her ability to carry out her work was dependent on her ability to be freely mobile from district to district. The case was a classic test of India's international obligations coupled with equality and right to life provisions under the Indian Constitution. It helped the Supreme Court of India reaffirm that the law was of *"sufficient amplitude to encompass all the acts of gender equality including prevention of sexual harassment or abuse... ."*

The most inspiring outcome of *Vishaka* (above) is that for the first time, the need to alter systemic violence against women at work received judicial recognition by an implied focus on the need to change attitudes. That approach led the Court to develop broad-based guidelines, which are applicable at the workplace as well as other institutions (in particular, educational institutions). The guidelines brought all "responsible persons" (which is wide enough to bring within its ambit all institutions / organisations as well as workplaces) responsible for ensuring a safe and healthy work environment for women.



The Supreme Court guidelines, drawn up in consultation with NGOs, are an important victory for the women's movement. Apart from institutional neglect of sexual harassment due to entrenched myths and stereotypes, women's ability to recognise, let alone define, an experience of sexual harassment have been limited. Behaviour such

as a physical touch, suggestive language and subtle advances has often been viewed



as 'normal' in the present social context and conditioning. Yet, globally, the nature of such violations, as with all other sexual crimes, is now viewed in terms of power dynamics that operate in different work contexts. A victim of sexual harassment has much more than her bodily integrity to protect: the reality of losing a job, of a career being stifled, of one's livelihood in ruins, is frighteningly stark as was the case with Hema.

To meet this endemic violation, the Court created legally binding guidelines²⁷, directing employers (amongst others) to implement preventive and remedial measures in the workplace. For the first time, the law brought sexual harassment at the workplace within the purview of human rights law. The judgement is a first in judicial recognition of women's reality as one where, by virtue of their sex, women are more vulnerable to sexually offensive behaviour. It extends the scope of human rights law beyond a 'traditional,' and thereby limited, interpretation of human rights abuses in terms of prisoners of war, victims of political torture, restrictions on free speech and movement and the like. Sexual harassment is

gender-specific discrimination, and an exercise of economic and sexual power.

How then have Vishaka and the new sexual harassment guidelines changed the way we understand sexual harassment at the workplace?

"Discrimination in this context means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or groups' right to the opportunities generally available because of attributed rather than actual characteristics. What is impeding the full development of the potential is not the individual's capacity but an external barrier that artificially inhibits growth...."²⁸

Before.....

Before August 1997, the closest Indian law has come to proscribing sexual harassment is in two outdated criminal laws:

Options : Weigh Them Carefully

- silence or quitting your place of work may not be the best solution
- It lets the harasser "Get Away with it" and gives him the opportunity to harass others

♦ outraging the modesty of a woman²⁹ or

♦ insulting the modesty of a woman³⁰

The limitation of viewing sexual harassment strictly through the eyes of criminal law is that:

Such provisions stereotype women in moral terms.

Given the stark emphasis on "proof" in physical terms, existing criminal law provisions are rarely applied in any situation falling short of attempted rape.

The crime becomes a case of individual personal injury and does not address sexual harassment as an issue of systemic discrimination against women

In practice, criminal law procedures compound a woman's experience of humiliation, embarrassment and public exposure and further isolates her. That was the net impact of criminal law applied in Hema's case (above). The trial court acquitted the rapists based on the following reasoning:

"...it is beyond comprehension that those who live in rural culture... would in this manner commit a rape. Particularly in collusion with someone who is forty years of age and another who is seventy years of age and that too during broad day-light in the jungle in the presence of another men. The court is of the opinion that Indian culture has not fallen to such low depths, that someone who is brought up in it, an innocent, rustic man, will turn into a man of evil conduct who disregards caste and age differences and becomes animal enough to assault a woman...."³¹

The net possible outcome of a criminal complaint is to sentence an offender, which is rare and ineffective in addressing the larger issue of discrimination.

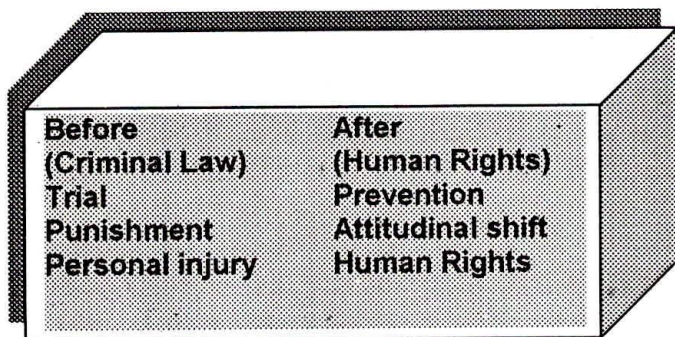
After....

The impact of projecting sexual harassment at work as human rights violation are that it:

- i. articulates gender equality based on "harm" as understood and experienced by women.
- ii. recognises two clear social realities for women which till now remained invisible including:
The nature of sexual harassment
Gender based violence is discrimination and violates a woman's basic human rights.
- iii. places women's experience and understanding of sexual harassment within the language of human rights consistent with India's obligations under the Convention on the Elimination of Discrimination Against Women.
- iv. shifts the focus of violence from a criminal wrong to systemic discriminatory conduct, which needs to be eliminated.
- v. Extends the responsibility to eliminate discriminatory sexual conduct to a larger civil society.
- vi. no longer limits accountability to an individual perpetrator but to institutions and their obligation to ensure a safe and healthy environment for women.
- vii. will provide a more efficient, far-reaching impact in eliminating the effects of harmful discrimination through a legal approach that strengthens attitudinal change and creates community collaborations.
- viii. challenges traditional myths and stereotypes about women at work by beginning to understand women's lives as women experience it rather than as others perceive it to

be. This is especially true in light of CEDAW which clearly states:

"Traditional attitudes under which women are regarded as subordinate or as having stereotyped roles perpetuate widespread practices involving violence or coercion such as family violence and abuse, forced marriage, dowry deaths, acid attacks, female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence to the physical and mental integrity of women



Before	After
(Criminal Law)	(Human Rights)
Trial	Prevention
Punishment	Attitudinal shift
Personal injury	Human Rights

deprives them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence, the underlying structural consequences of these forms of gender based violence help to maintain women in subordinate roles, contribute to the low level of political participation, and to their lower level of education, skills and work opportunities. The full implementation of the Convention requires that effective measures be taken to overcome these attitudes and practices. State should introduce education and public information programmes to help

eliminate prejudices which hinder women's equality...."

- ix. emphasises prevention of sexual harassment through education of both employees and employers.³²

It is the impact of viewing sexual violence in human rights terms, as opposed to criminal law, that gives the clearest example of how we can begin to appreciate sexual harassment at work as a case of discrimination. Globally, sexual harassment of working women is no longer an invisible whim, or fancy. *Vishaka* is yet another instance of demanding the promise of equality through the removal of barriers rather than the persecution of women who complain of such harassment. The former perception understands that women are sexually harassed by men because they are women i.e. sexual harassment is discrimination based on sex. As awareness increases on the issue and on women's rights overall, much can be done at the workplace itself by employers and trade unions, with the assistance of governmental and non-governmental organisations, to alter the historical disadvantage women have continued to face in the workplace. Viewing sexual harassment as sex-based discrimination acknowledges that working women, whether in the rural or urban areas, private or public sectors, while wanting to be equal-are different too.

Impact and Consequences of Sexual Harassment

Once sexual harassment is understood as sex-based discrimination, we can look beyond "proofs" of

individual injury to the larger impact and consequences of sexual harassment. Sexual harassment at the workplace can have cumulative effects on the whole organisation; its impact on individual women are multiple and all add up to losses for the organisation as a whole.

Where sexual harassment has become so unpleasant as to make a workers' life miserable, she will most often seek alternative employment. The employer will on its part incur significant costs in recruiting and replacing such workers. Generally therefore it is in the interest of employers that the working environment ensures that workers are treated with dignity. For society as a whole sexual harassment impedes the achievement of equality; it condones sexual violence and hinders both productivity and development.

Effects on women complainants³³

Consequences of sexual harassment recorded by the International Labor Organization reveal not only the adverse impact on women's health, but the same can result in emotional and physical stress as well as stress-related illnesses (see Annexure 'C'). This includes "feelings of revulsion, violation, disgust, anger and powerlessness." In addition, emotional trauma, anxiety, nervousness, depression and low self-esteem may also become apparent. Physical disability such as sleeplessness, headaches, nausea and ulcers also been recorded.³⁴ Other irreparable harm can result from the strain of controversies that emerge from a case of sexual harassment. Accompanying problems - such as relocation, search for a new job and moving difficulties; anxiety caused

'I left my job. Two years later I met Sunita who used to work with me at the factory. I told her about the harassment. She was shocked. Why hadn't I told her, she asked. I replied that I was ashamed and that I didn't want my family to know about it. The shame cut me off from those I needed most at the time.'

by lack of information, uncertainty, and resultant planning difficulty, career, education, family, social disruption and adjustment problems.³⁵, do emerge when a women is sexually harassed.

The following is a summary of the range of effects sexual harassment can have on a complainant. Emotionally, such effects may include:

- revulsion
- anger
- disgust
- fear
- shame
- guilt
- confusion
- powerlessness

'I just felt sad all of the time. I was carrying out field research but didn't care what I looked like when I went out. When I think about it now, it's all a blur.'




There are a number of psychological reactions to stress due to sexual harassment at the workplace such as:

- anxiety and nervousness
- depression
- feelings of low self-esteem

Some physical manifestations of this stress are:

- sleeplessness
- headaches
- nausea
- high blood pressure
- ulcers



"I was so afraid to go for duty in the department, it made me sick. I couldn't wake up in the morning and constantly felt tired. Then I would call in sick. It reflected so badly on my record."

Those who become ill, or who

avoid work because of sexual harassment at work take time off, reducing efficiency and imposing costs on the employer through sick pay and medical insurance payments. While at work, victims are likely to be less productive and less motivated because they simply do not enjoy being at work. Therefore the quality and quantity of their work decreases, having a cumulative effect on the organisation.

Given that most forms of sexual harassment are the outcome of repeated occurrences over a period of time, studies abroad have also documented the progress of women's response to such harassment. Where the harassment is ongoing and persistent, a woman's sense of her self as well as in relation to her co-workers diminishes over a period of time. Four particular stages of responses identified are reproduced below³⁶.

1. **Confusion/Self-Blame.** The sexual harassment was a series of events. After each incident, the victim believed that the harassment was going to level off or eventually stop. When the harasser's behaviour escalated, which it did in virtually all of the cases studied, the victim felt out of control and helpless.

2. **Fear/Anxiety.** Subsequent to the harasser's continuing behaviour, the victim felt trapped and became "paranoid." She feared potential retaliation at work, the future of her career and potential financial ruin. Outside of work, she feared being called on the phone in the early morning, having her home watched or being followed in a car. Concentration, motivation, work performance and attendance were adversely affected and self-esteem declined.
3. **Depression/Anger.** Once the woman recognised that she was a legitimate victim who was not to blame for her harassment, anxiety often shifted to anger. Often this shift occurred when she decided to leave her job or was fired. This anger about being treated unfairly was a prime motive to file charges. While filing charges may have represented a positive step by the victim to take control of her destiny, it often led to a decided deterioration in the work situation.
4. **Disillusionment.** The organisational response to sexual harassment was often hurtful and disappointing. By speaking up, the woman encountered a whole new set of institutional abuses. Often, the woman eventually realised that she had been naïve about getting help in the system. She then questioned her expectations about fairness, loyalty, and justice. These ingenious beliefs gradually become replaced by the insight that justice doesn't always prevail.³⁷

Consequences for the Employer

For an employer, in addition to sick pay and medical insurance, consequences also include reduced efficiency and increased costs. Less productivity and low motivation of affected women will result in poorer work performance. Costs of recruiting and training new people may also emerge as additional costs especially where an employer has failed to undertake any effective intervention. According to the Commission of European Communities therefore, in pure economic terms "preventing sexual harassment will save more money than the cost of permitting sexual harassment to continue" ³⁸

In sum, for employers, sexual harassment can result in:

- lower productivity and employee morale
- increased costs for hiring and training of new employees
- high legal costs and fines
- poor public image

The Guidelines

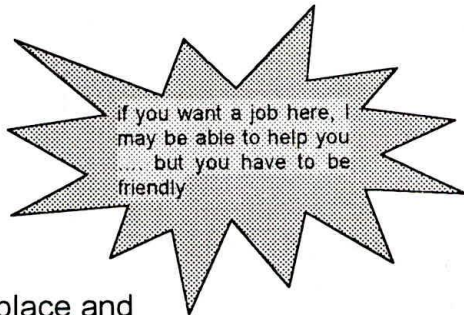
Hema's case was a test case for the Supreme Court of India to arrive at a law which was practical and effective. For this reason, the emphasis on attitudinal change was a remarkable shift from traditional approaches to law which stress procedural remedies. Instead, the sexual harassment guidelines approached the issue at three equally critical levels by:

- ◆ defining sexual harassment
- ◆ emphasising preventive measures
- ◆ compelling, the establishment of in-house complaints committee and redress

A complaints' committee is perhaps the last resort for addressing sexual harassment cases and clearly arises if the preventive measures have failed.

WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE? (see Annexure 'D')

A popular misconception about **sexual harassment** is that it inevitably includes physical sexual



contact at any time, place and in any context. Socially and legally we still have an unstated expectation that any kind of sexual violation should involve visible 'proof'. An expectation that has inhibited most women from reporting day-to-day forms of sexual harassment in the form of sexual innuendo, advances, verbal and visual forms of sexual degradation. For this reason, international law and countries more familiar with sexual harassment issues have evolved two clear absolutes about sexual harassment, which accurately reflect the nature of such violation:

- It is **unwanted sexual conduct** in a workplace, the forms of which are diverse and numerous.

- It is **discrimination against women**, for it denies them the right to work in a healthy and rewarding atmosphere.

Such standards have created a message that it is the "discriminatory" impact of sexual behaviour, which determines the nature and experience of sexual harassment.

•Sexual harassment at work is a se discrimination issue since a person is targeted for harassment because o his or her sex. By requiring a person to exchange sexual favours for economic survival, sexual harassment denigrates the victim, most frequently women, and relegates employment opportunities and promotions that are available to others without sexua considerations. Sexual harassment emphasises the sexuality of victims over their role as workers and thereby imposes less favourable working conditions upon them.'

And that impact can be the outcome of behaviour, which is varied. The problem arises when, what is discriminatory is confused with what has long been considered normal i.e. 'a natural biological attraction between men and women'. Behavior, which therefore seems amusing or harmless to some, may be offensive to others. To many, particularly men, this appears as yet another unnecessary restraint on behavior, which is otherwise perceived as 'normal'. A reason why women's complaints have often been dismissed as vindictive fantasies or wishful thinking (see Annexure 'E').

For this reason, one perspective on sexual harassment views it as relatively benign and overrated. Take the following example:

Anita returned home after her first day at a leading national advertising agency; she was tired, unhappy and angry. Her father, seeing how defeated she looked was immediately concerned. Gentle inquiries yielded nothing, but after some prodding from both parents, Anita broke down and spoke about her day. Her colleague, a young, ambitious favourite of the boss passed a number of tinged remarks about her dress, her figure and her hair in the presence of a number of young trainees. Despite her obvious embarrassment and humiliation Anita's other colleagues were undeterred from enjoying a good lecherous laugh at her expense.

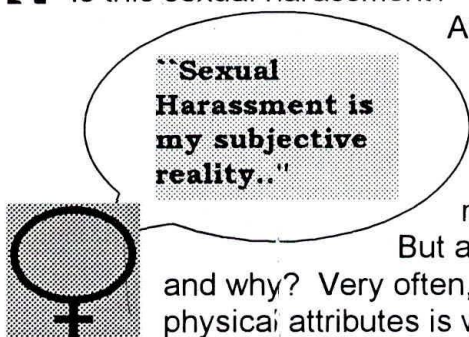
Anita's parents reacted very differently to her story . Said Anita's mother: "...don't be so oversensitive. You should be pleased that so many people like you just after one day...you must have created a very good impression....maybe you'll be promoted fast, or get a big raise.."

Anita's father was able to see how hurtful and unjustified such behavior was: "...how dare they treat you like an object...these chaps sound like uncouth and crass men who have no respect for a woman....you must speak to your boss about this and find out if other girls in the office feel the same way....this is definitely not a compliment to you..."

- ❓ What are the two predominant attitudes here?
- ❓ Does Anita make a fuss over 'nothing'?
- ❓ Why?
- ❓ Is this sexual harassment?

Anita's mother expresses a common point of view. Popularity and acceptance are much sought after. But acceptable to whom, and why? Very often, attention about physical attributes is welcome but sometimes, the impact if any, is equally important to understand in terms of individual comfort levels within a work environment.

"Sexual Harassment is my subjective reality.."



- ❓ Does the 'compliment' as understood by Anita's mother enhance Anita's performance in the office?
- ❓ What is the discrimination inherent in Anita's situation?
- ❓ Is her identity as a professional employee with skills, intelligence and expertise being compromised?
- ❓ Is it a question of sexual relations and human nature or should we also question whether as men or women, the manner in which we look at one another is also socially conditioned?

Unlike any other issue, sexual harassment raises serious questions about the way men and women 'naturally' relate to one another in work situations. What have been presumed as free, non-threatening and natural expressions by one gender may not be so

perceived or felt by another who have been less entitled to an equal expression of freedom to reject such behaviour.

Keeping this reality in mind, we can begin to appreciate how the new guidelines understand sexual harassment.

Defining sexual harassment

Sexual harassment has traditionally been divided into two well-known forms:

- Quid pro quo and
- Hostile work environment

- i. **'Quid pro quo'** literally translated means 'this for that'. Applying this to sexual harassment, it means seeking sexual favours or advances in exchange for work benefits such as promises of promotion, higher pay, academic



advancements etc. *'He seemed to imply that if I went along with his advances, I would get better opportunities to report stories'*³⁹. This

type of sexual harassment holds the woman to ransom as her refusal to comply with a 'request' can be met with retaliatory action such as dismissal, demotion, memos, tarnished work record and difficult work conditions. *"Not long after I refused to sleep with my supervisor, negative remarks began to appear on an otherwise exceptional work record."*⁴⁰

- ii. **'Hostile work environment'** is a less clear yet more pervasive form of sexual harassment. It commonly involves conditions of work or behaviour towards a woman worker which make it unbearable for her to be there. While the woman worker is never promised or denied anything in this context, unwelcome sexual harassment occurs simply because she is a woman. This can be illustrated through the following example:

'I was a management trainee at the hotel and very excited about my job. I wanted to make a good impression. I was required to do everything, from peeling potatoes to front deskwork. Over time, I began to find my supervisor would look for opportunities to convert sexual gestures into his movements around me like leaning close to me at the desk, assisting me in the kitchen, shaking his pockets and looking at me as if he were stimulating himself. It became intolerable....'

The new sexual harassment guidelines attempt to capture both these forms of sexual harassment

through an exhaustive definition, which includes **unwelcome**:

- i. physical contact and advances
- ii. a demand or request for sexual favors
- iii. sexually colored remarks
- iv. showing pornography
- v. any other unwelcome physical, verbal or non-verbal conduct of a sexual nature

Clearly the definition captures the more common form of sexual harassment which affects conditions of work (i, iii, iv, v) while still incorporating more direct forms of sexual harassment or 'quid pro quo' harassment .

Whatever the form, there are two basic elements to understanding what sexual harassment is:

**It is any conduct, which is sexual in nature
it is unwelcome.**

Sexual Conduct

Sexual harassment encompasses conduct of a sexual nature. Illustrations of such behaviour are provided below though these in no way exemplify the full range of sexual harassment as experienced by women:

a) Physical contact and advances

Forms of physical sexual harassment include a broad range of touching and physical contact, such as:

- ♦ intentional touching, pinching, grabbing, brushing against another's body,

- ◆ sexual assault, coercing sexual intercourse;
- ◆ cornering, trapping, or blocking a person's pathway;
- ◆ excessively lengthy handshakes.
- ◆ Any physical conduct which is unwelcome

Example A.

Sheila, a senior IAS officer is attending an office party. In the course of the evening, a senior IPS officer, requested that she sit next to him. She refused. He then walked past her and slapped her on her backside. Sheila's protest is simply brushed aside. The gesture would amount to physical sexual harassment.⁴¹

Example B.

Rita's supervisor purposely blocks the door every time she tries to go out. He has even tried to bodily pin her against the doorway asking her why she is in such a hurry and to make some time for him too.

Other forms of unwelcome physical contact such as unnecessary touching, patting, pinching, stroking the other's body, coercive sexual contact, masturbation in front of or against the other, exhibitionism, sexual assault and rape have also been identified as physical sexual harassment.

b) Demand or request for sexual favours

In the work context, this is behaviour in which a victim is made to submit herself to sexual favours or advances over promises related to her employment such as work conditions, promotion, higher pay,

otherwise described above as 'quid pro quo' sexual harassment.

Example A

A marketing manager of a hotel invites a junior marketing executive for lunch and over lunch suggests that they spend a quiet evening after office at his apartment. He also states that they can use the time also to discuss performance report and salary recommendation. Implied in the managers suggestion is that if the junior refuses to go to his apartment, it will affect her records. This is probably non-verbal sexual harassment.



Have you ever felt compromised by such an offer from your boss or senior?

Example B

A senior doctor informs Rita, a junior intern, that he can ensure her easy passage through the exams if she is "real friendly" with him. Rita is a junior intern and the competition to succeed is both real and stressful. The senior doctor most probably knows this. His remarks would probably amount to sexual harassment.

Example C

Purnima is an under-secretary in the Department of Railways. She is asked by the Joint Secretary, Ravi, to accompany him on a training program in Alwar, Rajasthan. When they arrive at the venue, Ravi implies that Purnima's job record depends on her "sharing a room" with him. It is not necessary for the harassment to occur in the actual place of work.⁴² Sexual harassment has to do with power as well as gender relations.



Have you ever felt uncomfortable because of suggestions made by a colleague or a supervisor which have made you worried or concerned about the job repercussions?

c) 'Sexually coloured remarks'

Of all forms of sexual harassment, this is probably the most common experienced by women but also the most controversial. Some common examples include:

- making sexually suggestive or off-color comments; threats; slurs; sexual propositions;
- sexual jokes or teasing, misogynist⁴³ humor; sexually colored gender specific jokes;
- innuendoes and off-color remarks;
- comments about how someone looks, especially about parts of the body;
- catcalls, whistles and forms of address like 'honey', 'sweetheart' etc.

Indicative situational examples for the above could be:

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Example A

A male supervisor of an industrial unit propositions several of the female employees. On many occasions he has been heard joking around the unit that having "beautiful women" at work at the unit make him feel like a "real man" and "improves the atmosphere" at work. The supervisor is creating an atmosphere of disrespect for women whose presence is entirely linked to his sexuality and their looks rather than to their ability as workers. This would probably constitute non-verbal sexual harassment.

Example B

A floor manager in an automobile plant states that he doesn't think women can make good foremen. Often he publicly humiliates and reprimands Janaki, the one woman foreperson at the plant. He gives her tasks impossible to perform. The floor manager has made his lack of respect for women workers in senior positions apparent. He is intent to prove the same by using Janaki as an example.

Example C

'I and a male colleague are both junior assistant lawyers in a senior advocate's chamber. We began at the same time and are both toppers yet my boss continues to distinguish between us even in name. He constantly refers to me as "sweetheart" or "darling" while he refers to my counterpart by name. I have to remind him that my name is Zeba but his behaviour persists'

Often such remarks are viewed as harmless terms of endearment 'like those a father feels for his daughter.' Zeba of course does not view herself as her senior's daughter. But the remarks have the effect of undermining her abilities as a competent lawyer and perceive her as less serious and skilled just because she is a woman. Behaviour which, though acceptable in a family situation, may, in a work context, be sexually offensive.



Can you think of remarks at your workplace that you find sexually degrading?

d) Display of pornography

The display of pornographic material with a woman employee as the target is obviously discriminatory and offensive. "Pornography on an [employee's] wall or desk communicates a message about the way [the employer] views women, a view strikingly at odds with the way women wish to be viewed in the workplace."⁴⁴

The display of sexually explicit material is a common occurrence in both the formal and informal sectors. Women have often complained of washrooms which contain graphic graffiti of sexual acts and body parts, of receiving material on their desk with sexually explicit words or pictures and where photographs and/or calendars of nude or semi-nude women are freely on display in offices spaces. This kind of display conveys the message that women are sexual objects intended for sexual gratification, a message which often creates discomfort for both men and women working in the office. The effect of such display is to embarrass and isolate women.

Mamta, the mother of a sexually abused ten-year-old son, works as a government servant in the department of immigration. The fact of her son's abuse was widely publicised at the time especially as the perpetrator was both the father and a senior government official. Soon after, Mamta faced discriminatory and crude treatment from her colleagues who resented her reporting the case. One day she found a large poster pinned up on the wall in front of her desk. The poster, crudely drawn, depicted her in the nude, with metal rods inserted in her anus and vagina, and an instrument with pincers at the end was pulling at her nipple, and the other was the centre of a crudely drawn dart-board. All over the poster were lewd statements suggesting that Mamta was a crude and 'characterless' woman.

Other forms of unwelcome visual displays are:

- ◆ written material that is sexual in nature such as letters or notes containing a sexual comment;
- ◆ leering or staring at another's body and \ or sexually suggestive gesturing;
- ◆ displaying sexually visual material such as pinups, cartoons, graffiti, computer programs, catalogues of a sexual nature;

Some situational examples that could be categorized under the above definition would be as follows:

Example A.

A female worker reporting to her supervisor is regularly handed out information sheets pertaining to her work with sexually explicit scribbles on the side. On pointing this out to the supervisor, he simply passes them off as just a joke and of little consequence. This act would probably amount to non-verbal sexual harassment.

Example B

A woman employee in an engineering industry complained that the walls of the washrooms displayed nude photographs of women with pincher attached to the pubic area. Such acts would qualify under non-verbal sexual harassment.

Example C

Aradhana, a journalist working with a well known mainstream newspaper was shocked to learn in her first year of an 'event' which takes place at the paper on Holi. A rag containing lewd and sexual offensive pictures is circulated throughout the paper from the Senior Editor to the press room as a "joke". Aradhana found the so-called 'ritual' extremely offensive but is unable to do anything since it has the active participation of the management.



Are you aware of such activities occurring in other work establishments during festival seasons such as Holi? If so, this is behaviour which creates a hostile and offensive working environment and is probably sexual harassment?

e) Any other verbal or non-verbal conduct

There is a whole range of behaviour and activity, which may not fall squarely within sexual harassment as defined above but the sexual harassment guidelines have added a sweeping definition to capture such behaviour/activity within the ambit of sexual harassment.

Illustrations of any other verbal or non-verbal conduct of a sexual nature are given below.

Example A:

A male employee approaches his female colleague and asks her if she would like to go out with him for dinner the next day. She firmly and politely tells him that she does not want to. He repeats his invitation the next day. Again she rejects his invitation and requests him not to badger her anymore. A week later she begins to get anonymous phone calls, and then calls from the colleague whose invitation she declined to accept. He calls her at home at 2 a.m. and asks her personal questions, begins to threaten to "get back at her in very unpleasant ways."

The male colleague is making demands on the woman that she is not comfortable with, and is harassing her by calling her late at night, using threats to intimidate her etc. This would probably qualify as sexual harassment.

Example B

A professor takes an advertising and marketing class for a group of MBA aspirants. In the course of his lecture he uses examples to illustrate his point, especially during the sessions on advertising.

"Women" he says "are your best USPs, your best models, the best way to sell a product... For instance, a car's lines should be sleek and sexy like a woman... soap has to be soft to the touch, you should be able to hold it comfortably in your hands and squeeze it lightly... like a woman's breasts." And so on. The female students were very offended by the use of such examples and felt humiliated.

The professor makes statements that are derogatory to women, and shows lack of respect for the students in his class and for all women. The environment is offensive and makes the girls feel uncomfortable because of the sexually coloured remarks. The example is one of sexual harassment that creates a hostile and offensive environment on campus.

Example C

In a machine tools and metal works factory, the foreman picks on a young factory worker name Arun, who, according to the foreman is "effeminate". The foreman and his cronies waylay Arun after hours and call him names like 'pansy' and other names which suggest that he is 'not quite a man', that he is only 'half a man'. The young man being shy and withdrawn is unable to respond and has no one he can trust in his workplace. He cannot complain to anyone without going through the foreman. He finds that he cannot concentrate on the job and has developed sleeping problems, anxiety and loss of appetite.⁴⁵

The victim suffers sexual harassment since his work atmosphere is hostile and uncomfortable and the acts contain elements of animosity owing to his mannerisms or appearance. This form of harassment often parallels the experience of many women.

Example D

Sujata, a lecturer needed to discuss her course work with the department professor, one of the senior most members of the faculty. She saw that he was having a working lunch at his desk, so she excused herself saying that she would come back later. He called out

to her just as she was leaving and said that it would be no problem for her to discuss her work at that time. Sujata sat across from him and began telling him about her progress so far, and the problems she was facing. As she did so he picked an apple, the last part of his meal, and began rubbing it in a slow circular motion. He was listening to her but his eyes roved all over her neck and arms. The rubbing and the stroking of the apple continued. Such deliberate and poorly veiled behaviour left Sujata extremely upset and embarrassed, who left quickly mumbling that she would speak to him later.

The behaviour is non-verbal and is laden with sexual innuendo that make Sujata uncomfortable; such behaviour sends out messages of a sexual nature, that she is the subject of his innuendo, that she is the apple.



Can you think of other or similar examples which is suggestive of behaviour that is sexually offensive in the workplace?

Unwelcome

While there are many clear examples of sexual harassment such as when a supervisor demands sex from an employee or a colleague draws sexually explicit material on a woman's desk, there are some examples, which are less obvious. The operative word in the definition of sexual harassment is "**unwelcome**". The test of whether something in the workplace (verbal, non-verbal or physical) is "unwelcome" or not is a purely subjective one.



But is it sexual harassment ?

- A man puts his arm around a woman at work
- Someone tells an offensive joke
- Someone comments on the appearance of another: "You look good in that saree"; "What were you upto last night"; "You should be nicer to me"



The important question for the employee to ask herself is: do you feel comfortable with this person making this comment or behaving towards you in this way?

One example may be as follows. A group of factory workers tell off-colour jokes but they are all comfortable with each other in doing so. No one feels uncomfortable or offended by what is being said. A new person may join the factory line and is disturbed by the jokes. In that case, such behavior must stop. If it persists however, this would amount to unwelcome sexual harassment.

Asma has just joined the firm as an administrator. The others in the firm all know each other well as they have worked together for some time. They go out together, have lunch together and share jokes. Asma is left out. She tries to deal with the problem by talking to the only other woman in the department, Neera. Asma feels the groupism is harming the work. Neera disagrees and says Asma is just "oversensitive". After this, the workplace becomes unpleasant. It's apparent that the

group is talking about her. One morning she finds a slip of paper on her desk which reads "It would be so much easier if you just become one of the boys." Asma complains to her boss who offers to transfer her: "This team has worked together for a long time. You obviously don't fit in."



What do you think of what has happened to Asma?

Sexual harassment depends on how the person being harassed is affected- not on the harasser's intent

The atmosphere at work has become hostile towards her. She finds such an atmosphere uncomfortable and unwelcome. It is the boss's duty to see that such behaviour changes.

So if someone's words or actions-

- are unwelcome or offensive to you
 - make you feel uncomfortable or threatened
 - affect your job performance
- it is probably sexual harassment.



Q: But how will I know it is unwelcome ?

A : Always assume 'NO'.

What organizations can do to deal with sexual harassment

(see Annexures 'G1', 'G2' & 'G3')

According to CEDAW it is implied that sexual harassment at the workplace is violation of a woman's right to **".....promotion, job security⁴⁶....[as well as her]..... right to protection of health and to safety in working conditions"**⁴⁷ What this means is that sexual harassment (or any other form of harassment) is discrimination and that there is an obligation to ensure that women can work in a secure and stress-free environment.

Consistent with this obligation, the new guidelines give clear direction to employers for eradicating sexual harassment at the workplace through a double-pronged process:

- a. adopting specific preventive measures
- b. establishing a sexual harassment complaints committee

According to the new guidelines, "the employer or other responsible persons in workplaces and other institutions"⁴⁸ are under a mandatory obligation to implement the law (whether the public or the private sector):

From this it is evident that an organisation can (and should) be responsible for investigating and pursuing the matter, and can be held accountable for the occurrence of such incidents of harassment.

Preventive measures

It is only when a workplace takes effective pro-active steps to highlight sexual harassment and expressly prohibit the same that an equal, safe and healthy work environment is possible. For this a good deal depends on the attitudes of employers. Trade Unions and other Forums for workers rights can undertake similar activities to educate its membership about the issue of sexual harassment. Giving emphasis to preventive measures, which are both cost effective and easy to implement, the guidelines give some direction to enable employers to undertake the following:

- ◆ Express prohibition of sexual harassment as defined should be notified, published and circulated in appropriate ways.
- ◆ In-house policies on sexual harassment that are communicated at the workplace should be developed. Such policies should be regularly reviewed and circulated to all concerned.
- ◆ Affirmatively raise the issue of sexual harassment and its consequences at trainings, meetings or any other such gatherings.
- ◆ Inform employees of how to exercise their right to raise and talk about sexual harassment both through formal and informal procedures.
- ◆ Develop educational methods, such as training, programs to sensitize all concerned about sexual harassment at the workplace.
- ◆ Amend existing codes of conduct and service rules to include sexual harassment as an offense and provide for appropriate discipline against the offender.
- ◆ Include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to cover private employers.
- ◆ Provide appropriate work conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at the workplace.

It can also play a pivotal role at labor management meetings to ensure that the employer has an anti-sexual harassment policy in place.

Additional preventive measures: Management has a key role in correcting sexually inappropriate behavior, which may include:

Make sure everyone knows your workplace has a policy on sexual harassment

State in clear terms that the workplace will not tolerate sexual harassment in any form

- ◆ setting a good example
- ◆ being informed about the sexual harassment guidelines as well as the complaints procedure

- ◆ being aware of conduct in the workplace that betrays discomfort or inappropriate behavior

Treat every incident of sexual harassment seriously.

- ◆ ensure that inappropriate behavior is promptly dealt with
- ◆ remove offensive and/or suggestive pictures,

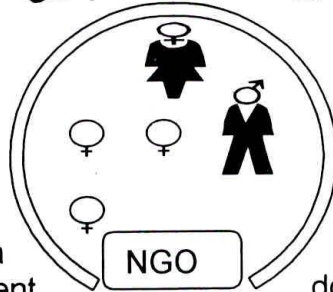
Always keep all matters relating to a complaint of sexual harassment confidential. Both the 'accused' and the 'complainant' have this right

posters and signs from the workplace especially those that may be degrading to women

- ◆ involve the expertise of those who have greater knowledge and experience in addressing sexual harassment issues

Complaints mechanism

Complaints Committee



In the event that a sexual harassment case of does occur despite preventive measures, the new guidelines impose an obligation on employers to set into motion the complaints' mechanism. The complaints procedure involves a complaints' committee, who may either directly or indirectly take on investigation of the case. Mandatory prerequisites for such a committee are that it:

- ◆ be headed by a woman,
- ◆ have half of its members as women
- ◆ include a third-party representative from an NGO or any other agency conversant with the issue of sexual harassment (to prevent undue pressure from within the organisation with respect to any complaint)
- ◆ it handles complaints in a confidential manner and within a time-bound framework
- ◆ it prepares an annual report on sexual harassment cases to be submitted to the appropriate government department (for eg. the Ministry of Labour, Department of Women and Child or the Ministry for Social Justice and Empowerment) and report on action taken by the Committee.

For effective functioning of the Committee the following additional practices may be undertaken:

- ◆ provision for medical, counseling or any other support service required by the affected person (as mandated by the new law);
- ◆ prevent retaliation, victimization, additional harassment and/or humiliation against the complainant or of any witnesses (in this regard, the guidelines create an option in favour of a complainant to seek transfer of the perpetrator or their own transfer);
- ◆ given that women, for a variety of reasons (including shame, guilt and fear), do not always report sexual harassment promptly, a delay in reporting should not work against her.

Employers or those otherwise appointed to a complaints, committee at work will find the following useful in evaluating the responses of a woman complainant:

Women respond to sexual harassment in a number of ways, and the coping strategy she selects depends on her personal style, the type of incident, and her expectation that the situation is susceptible to resolution. Typical coping methods could include⁴⁹:

- ◆ denying the impact of the event, blocking it out.
- ◆ avoid the workplace or the harasser, for instance, by taking sick leave or otherwise being absent
- ◆ telling the harasser to stop
- ◆ engaging in joking or other banter in the language of the workplace in order to defuse the situation

- ♦ threatening to make or actually making an informal or formal complaint.



While investigating a complaint of sexual harassment the Committee ought to keep in mind the following:

- whether the conduct was verbal or physical, or both
- how frequently it happened
- whether the conduct was unwelcome
- the working relationship in terms of hierarchies between the alleged harasser and the affected person.
- whether others joined in perpetuating the harassment
- whether the harassment was directed at more than one individual
- assess the impact of harassment on the affected person

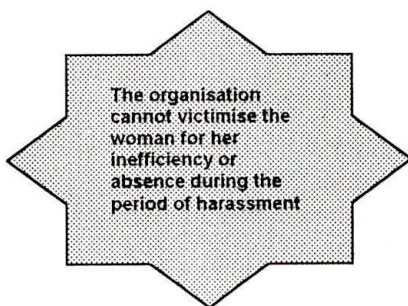
Criminal Law

While the shift in focus arising from the guidelines is from criminal law to a human rights understanding of sexual harassment, an affected person can simultaneously avail of the criminal law (however limited) in a situation of sexual harassment. According to the guidelines:

- ♦ Where such conduct amounts to a specific offense under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with the law and file a complaint with the authorities.

- ◆ Complainants or witnesses must not be victimized or discriminated against while dealing with complaints.
- ◆ Where sexual harassment takes place as a result of an act or omission by any third party or outsider, the employer and/or person in-charge must take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

Remedial Measures : Where there is a finding of the Complaints Committee in support of the complainant, each organisation may adopt its own remedial measures within a declared policy. To provide options for adequate redress to women who experience sexual harassment at the workplace, the Committee might also consider the following suggested remedies. Each should be subject to the nature and intensity of the harassment:



- i. the affected woman can be given adequate compensation for any wages or salary lost or any other benefits instead of financial payments as a result of the harassment.
- ii. documenting the harassment in the harasser's confidential report and issue a warning to him.

- iii. the harasser can be asked to give an apology, either written or verbal, in public or private to the affected woman.
- iv. remove any detrimental comments in the files on the work performance of the affected complainant which may have been recorded during the period of the harassment
- v. downgrade the job status of a perpetrator
- vi. observe the harasser more closely at work
- vii. transfer, suspension or dismissal of the harasser

Training program guidelines to combat sexual harassment at the workplace

All government and private sector organisation including hospitals, universities and other responsible person come under the purview of the sexual harassment guidelines.

The new guidelines have just begun to receive visibility at the workplace especially in light of a subsequent decision of the Supreme Court of India which reaffirms sexual harassment as a human rights violation and recognises such abuse as women experience it.⁵⁰ Strategies in different workplace contexts are only beginning to emerge but are not as yet sufficiently broad-based to allow for general examples. Whatever the context therefore, strategies should include examining social messages that do not fit today's work environment. To do so it is important

that organisations/employers undertake the following critical steps:

- ◆ an effective policy which defines as well as illustrates the meaning of sexual harassment at work
- ◆ effective and creative preventive mechanisms
- ◆ an effective complaints procedure
- ◆ education/training programs for all levels/members of an organization.

Given that the primary task of an organization/employer ought to be prevention of sexual harassment, this section focuses on education/training as a critical aspect of prevention. Below therefore are basic training /education guidelines to employers, trade union officials, government departments, NGOs and international bodies that might help to mainstream prevention of sexual harassment at the workplace. The scope of these guidelines will vary according to the needs of a particular workplace, organization or institution.

I. Recognise and Acknowledge Sexual Harassment as an Issue

Recognising means to:

- **Redefine attitudes**
- **Unlearn socialisation**

Behavior that many women or courts can now label as sexual harassment has often been accepted as normal in the

workplace. Women have been expected to tolerate off color jokes, demeaning remarks, sexual innuendoes, obscene remarks and visuals. In some organizations they may even have faced some activities as offensive as pornography.

Such behaviors are often the result of our socialization. It is therefore important to first recognise and acknowledge the existence of sexual harassment as a health and safety issue at the workplace before any kind of education can begin. To do this an employer may begin by a simple but clear statement about the issue to be circulated to employees. This will lend some degree of seriousness to the issue and alert employees to concern about sexual harassment at the workplace.

2. The assessment:

An assessment of your workplace, will allow better planning of a training program as well as provide real examples which might be used during workshops and/or training's.

Gathering focus groups of different target employees, such as lower level women, higher level women, lower level men, higher level men, will allow for quick and effective collation of concrete data on the organization's problems and needs as well as determine the scope and extent of intervention necessary. It is preferable that the initial assessment exercise does not allow for a mix in terms of either gender or hierarchies as this may not allow for an honest assessment.

To gather this data, interviews, questionnaires or surveys may be employed depending on comfort levels and also allow for discussion (see Annexure 'H'). **Confidentiality as well as anonymity** with respect to data collected, must be maintained at all times. Such intervention should be designed to assess the extent of sexual harassment as a problem



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in an organisation; existing responses to such harassment and a preliminary response to preventive and remedial measures proposed under the guidelines.

Experience has shown that this initial intervention will assist in the disclosure of sexual harassment at work.

3. Management/Senior level support

- Senior management support and commitment to a harassment-free workplace is a critical strategy to ensure effective training or awareness-raising programs. In the absence of such commitment and support it will be difficult for any awareness programs to succeed. This strategy may be effected by sharing results of the needs assessment with senior persons in the organisation and inviting them to be involved in review of the training design.
- Most important, if a workplace has not established a sexual harassment policy, there is a need to encourage it to do so in compliance with the Supreme Court guidelines. Initiating training is one way to ensure some degree of awareness about the law and organisational liability under it. It may not always be possible to have the policy in place prior to training, but initiating the process of creating such a policy is critical to ensure long-term benefits of such training.
- A letter or statement from a senior person or team should go out to members of the workplace announcing an upcoming sexual harassment program. It should indicate senior level

commitment to eliminating sexual harassment at the particular workplace, the goals and broad outline of a training program and whether attendance is mandatory (this may vary according to context). This should then be followed up with subsequent detailed information about the program itself.

- Management support can also be demonstrated by having senior members of the management open different training sessions. It provides a strong display of management commitment and its stand on the issue.

4. Participants

- Depending on the organisational structure, there is often apprehension that placing senior and junior level persons together in training may intimidate junior level workers. It is a matter of discretion (perhaps after an initial separate training) to offer a combined training of supervisors and employees (provided there are no immediate subordinates and their supervisors). This is useful to allow supervisors overcome any denial regarding the existence of sexual harassment as a problem in the organization.
- The success of sexual harassment education depends on the extent to which it is interactive. Discussing various sexual harassment topics may generate strong feelings in some participants, including resistance, hostility, confusion, hurt, pain, and denial. As a facilitator, dealing with these feelings is a necessary skill that involves:

- not being confrontational
 - encouraging allies in the group to address these issues
 - adopting role plays
 - identifying myths and stereotypes about sexual harassment early on in the process (See Annexure 'I')
- In many organizations, the denial that sexual harassment exists is common. This is to be expected because if participants have not witnessed or experienced the negative results of sexual harassment personally, they may have difficulty perceiving the problem. Denial also extends to not wanting to recognise the unequal way in which men and women interact in a workplace as this may create some level of insecurity and disempowerment for some male members. During training--especially in hostile work environments--it is important to encourage female participants to share personal experiences in order to help male colleagues understand the impact of sexual harassment. However, it is important to be aware that women feel pressure to deny a problem, even though they may be experiencing direct harassment themselves. Women often feel that if they complain openly they will face retaliation. It is important to raise this understanding in the training and encourage participants to speak.

1. Awareness of their own values, biases, and comfort with diversity.
2. Understanding of group learning processes.
3. Flexibility while conducting the exercise and the unanticipated situations that arise in them.
4. Knowledge about the sexual harassment guidelines, including recent developments.
5. Respect for diversity and acceptance of participants' various styles and allowing all members the freedom to participate in their own way and at their own pace.
6. Ability to establish an informal, warm, and supportive atmosphere using a relaxed approach.
7. Ability to deal with highly-charged emotional issues;
8. Ability to handle participant resistance and denial;
9. Ability to remain open to feedback of participants in order to learn about her or himself.

- Given that sexual harassment as an issue has only just gained visibility in India, finding in-house trainers equipped to deliver training may not be easy. But such persons need to be built up by institutions over a period of time through the use of external facilitators in the first instance.
- Sexual harassment trainers should have a good understanding of sex discrimination, sexual harassment and the laws governing it and of other related issues such as prejudice and heterosexism. Facilitators should also have a solid base of group process skills, including skills to create a climate of trust so participants feel safe in exploring sexual harassment issues.

The following qualities possessed by a facilitator will enable them to conduct a more effective training:

- While the Supreme Court guidelines have seemingly been targeted for the formal sector, much of what is raised can also be adapted for the informal sector. The aim of training with informal groups has so far been to bring about awareness of the guidelines, interactive understanding of what constitutes sexual harassment and lobbying to establish committees within such sectors. For example, women who carry out trade at vegetable or fish markets have spoken openly of sexual harassment as an inhibiting factor at work. Small group meetings have begun to empower such women with a demand that complaint committees be established within such markets.
- Finally, the actual content of training should address the following topics:
 - ◆ introduction to the Issue
 - ◆ perception vs. realities of sexual harassment
 - ◆ defining sexual harassment
 - ◆ the incidence of sexual harassment based on an assessment report
 - ◆ impact of sexual harassment on individuals and the workplace
 - ◆ the sexual harassment guidelines, specifically prevention and the complaints committee

These are only a few suggestions to initiate voicing this issue at workplaces. This is only possible if first and foremost employers/organisations and employees/workers begin to talk about the guidelines and appreciate their value for creating a healthy and safe work environment.

What should you do if you have been sexually harassed?

Having gone through this chapter there maybe some incidents or concepts with which readers can identify. Below are some

Don't feel guilty

it's not your fault!

suggestions which while not appropriate in many work contexts may provide some direction in terms of what a person affected by sexual harassment might do⁵¹

- ◆ **Tell the harasser to stop.** Given our social context and conditioning, some men as well as women may not recognise that certain kinds of behaviour are harassing. At the same time many women are unable to inform a harasser that his attentions are unwanted. Keeping this in mind it is

Know your employer's policy on sexual harassment. If one doesn't exist, offer to help to develop one

surprising
how
effective
such a
statement
can be to
end
harassment

before it escalates. It requires an affected woman to make clear that she finds the behaviour offensive. If the behaviour persists, a memo may serve the purpose.

- ◆ **Keep a record or talk to someone.** Even if you are unable to say anything to harasser, and if it's

practical, try to keep a 'diary' of everything he has said and done- messages, cartoons, off-colour comments, inappropriate comments about your appearance etc. Keep a record of dates and as meticulous a record of everything that was said and keep this with you at home. If you are not in position to keep your record in writing or work in an informal sector, try and relate it to someone you can trust. If you are a union member, you can talk to someone in charge in your union. If the harasser is your superior, try to talk to his superior or a trustworthy co-worker. Where NGO groups are accessible and equipped to know about sexual harassment, consult one for advice (see the end of this chapter). It is important for any potential inquiry to be clear about the exact nature of the harassment and when it occurred.

- ◆ **Keep your evaluations.** If periodic evaluations of your work have been done, make sure you have copies of them. If your personnel file shows that your performance was good before the harassment began, and that it subsequently deteriorated, keeping such documentation will be of help.
- ◆ **Get a medical check-up.** If you have been raped or physically assaulted take a friend along and go for a medical check-up. Obtain a medical report. This is important should you decide to pursue a legal case. Once your organisation has a policy according to the Supreme Court's guidelines, your employers would have to take on the responsibility for arranging this.

- ◆ **Informally raise the issue at work.** Talk to other women in the office, and find out if any of them have had similar experiences at the workplace. It is not uncommon to find others who may have experienced the same but chose to keep silent, fearing the social as well as economic repercussions. Encourage them to talk and support the issue. **The new guidelines prohibit victimisation of a complainant.**

Be supportive of people who are being sexually harassed. Offer to be a witness.

- ◆ **File a Complaint.** If there is a complaints mechanism in place then follow the procedure and file a complaint. If one does not exist then encourage your colleagues and others at the workplace to lobby for one with details about the complaint mechanism and members of the Complaints Committee.

Avoid making assumptions that "jokes" or "friendly gestures" are harmless or inoffensive. The person experiencing such behaviour may not view it that way.

- ◆ **Remember, the guidelines require the process of be confidential**

Raising the issue or complaining about sexually offensive behaviour that an employee knows of is one step towards creating a largely healthy and safe work environment for all.

If you are facing a problem of sexual harassment at the workplace, or are aware of someone who is, and if you feel confused, hurt or angry and want to know what your options are, you may wish to contact any one of following for guidance:

SAKSHI



B -67, First Floor,
South Extension Part 1,
New Delhi -110 049

phone/ fax: 464-3946

email: sakdel@sakshi.unv.ernet.in

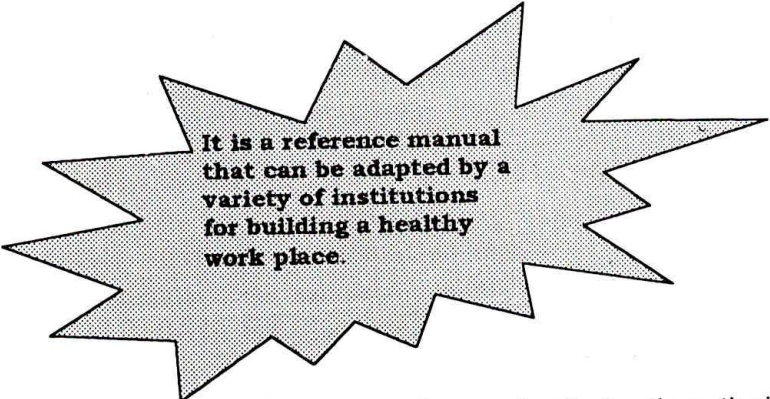
Alochana Kedar,
86/11-B,
Kanchan Gali, Erandvare,
Pune-411001.

National Alliance of Women (NAWO)
20 J/3, Krishna Nagar
Safdarjung Enclave
New Delhi – 110 029
Phone – 6171446

Sanhita
Gender Resource Centre
89B, Raja Basanta Roy Road
Calcutta – 29
Phone – 4662150/4631430
Fax - 4730687/5619
e-mail- sanhita@calvsnl.net.in

Conclusion

This chapter is a preliminary effort to document the prevalence of sexual harassment at the workplace and measures that can be adopted by various institutions to eliminate this violence. The guidelines laid down by the Supreme Court of India have been unique in terms of making civil society accountable to



**It is a reference manual
that can be adapted by a
variety of institutions
for building a healthy
work place.**

maintaining women's integrity and eliminating their abuse at work. It is a unique exercise that addresses women's violence from a Human Rights perspective and interprets law from her substantive reality. As the chapter mentions, sexual harassment is not confined to the formal sector and proof lies in the fact that these guidelines emerged from harassment followed by the rape of a Saathin, in a rural setup in Rajasthan.

The judgement is vast in its content giving space for its interpretation and adaptability in a variety of workspaces. The guidelines are a proactive measure that demand attitudinal shifts in mainstream male behaviour thereby re-defining the interplay of power equations in working relations between men and women. By laying down a mechanism for the

guidelines and sharing our knowledge base on this issue, this chapter is an initial endeavour to empower women worker's rights in India with yet another tool.

- 1 Based on an unpublished preliminary spot survey conducted by Sakshi (see Annexure 'A').
- 2 The 9 to 5 Guide to Combating Sexual Harassment: p5; Ellen Bravo & Ellen Cassidy.
- 3 India Economic Yearbook, 1995 pg. 113
- 4 "From 1989 to 1993, there was an overall 25.2 percent increase in crimes against women in India. From approximately 65,000 cases in 1991, this figure increased to 100,000 by 1993. The National Crime Records Bureau in its 1994 report revealed an appallingly low level of convictions and an increasing number of pending cases in crimes against women cases." Gender and Judges: A Judicial Point of View Sakshi, 1997 at pg. 8
- 5 Reference is invited to *Women Employees and Rural Development* Problems of Employed women in Rural Areas Anuradha Bhoite, Delhi, Gian Publishing House 1987
- 6 The study being carried out by Sakshi is at its pilot stage but the present statistic is based on an initial survey of 250 men and women in New Delhi, Trivandrum, Bhubaneshwar, Ahmedabad and Bangalore.
- 7 *ibid.*
- 8 (1997) 6 SCC 241. The case is discussed later in this chapter.
- 9 Janzen & Govereau V. Platy Enterprises Ltd. (1989) 59 D.L.r. (4th) 352 (S.C.C.)
- 10 The effect of a State ratification of an International Instrument is an implied promise to other states, to adhere to its obligation under the instrument and

to ensure that domestic laws are in compliance with that instrument.

- 11 In contrast the International Convention on the Rights of the Child was ratified within three months of being signed by signed by the Government of India.
- 12 These included the following:
 - The Indecent Representation of Women (Prohibition) Act, 1986
 - The Equal Remuneration Act, 1976 (amended in 1987)
 - Commission of Sati (Prevention) Act, 1987
 - Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988
 - The Maternity Benefit (Amendment) Act, 1988
 - The Criminal Law (Amendment) Act, 1983 which made several amendments to the Indian Penal Code (s.228-A, 376B, 376C and 376D); the Code of Criminal Procedure, 1973 (s.327 amended) and the Indian Evidence Act, 1872 (s.114A) in respect of Rape
 - The Dowry Prohibition Amendment Act, 1984
 - The Criminal Law (Second Amendment) Act, 1983 and The Dowry Prohibition (Amendment) Act, 1986 which made several amendments in the Indian Penal Code (s.304-B and 498-A), the Indian Evidence Act (s.113-A and 113-B) and the Criminal Procedure Code, 1973 (s.174 and s.198-A) n respect of dowry.
 - The Muslim Women (Protection of Rights on Divorce) Act, 1986.
- 13 See the Criminal Law (Amendment) Act, 1983; the Criminal Law (Second Amendment Act) 1983; the Dowry Prohibition (Amendment) Act, 1984 and the Family Courts Act 1984.

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- 14 Section 228A Indian Penal Code, 1860
 - 15 Section 376(2)(a) Indian Penal Code, 1860.
 - 16 Section 114A, Indian Evidence Act, 1872
 - 17 Section 498A Indian Penal Code, 1860
 - 18 Section 8, Dowry Prohibition Act, 1961
 - 19 See "Combating Sexual Harassment at Work" ILO Seminar Manila, Nov. 22-26, 1993 (Country Paper, India) Rajesh Kishore, Deputy Secretary, Dept. Of Women & Child Development, Ministry of Human Resource Development and Sashi Jain, Joint Secretary, Ministry of Labour at pp. 1
 - 20 Reference is invited to:
 1. Republic Act No. 78771 "An Act Declaring Sexual Harassment Unlawful In the Employment, Education or Training Environment, And for Other Purpose." (Republic of the Philippines, Congress of the Philippines Metro Manila, 25.7.1994
 2. No. 1994: The Ministry of Labor in Japan published two different versions of pamphlet on sexual harassment. (Ref. "No! Sexual Harassment" NO! SH, Japan)
 - 21 Reference is invited to "Combating Sexual Harassment at the Workplace" ILO Digest Vol. No. II, 1992
 - 22 General Recommendation No. 19 of the Committee on the Elimination of Discrimination Against Women, Eleventh session, New York, 20-31 January, 1992. Item 7 of the agenda (CEDAW document CEDAW/C/1992/L.1 Add. 15, 29.1.92)
 - 23 Ibid, pg. 1
 - 24 Ibid, pg. 5
 - 25 (1997) 6 SCC 241 (hereinafter referred to as "*Vishaka*")
 - 26 The name has been changed to protect the identity of the complainant.

- 27 The new guidelines are mandatory and legally binding. In the words of the Court "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 work places, we lay down the guidelines and norms specific...for due observance at all work places or other institutions, until a legislation is enacted for the purpose..... These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field."
- 28 Janzen & Govereau vs. Platy Enterprise Ltd. 1989; 59 D.L.R. (4th) 352 (S.C.C)
- 29 see section 509 Indian Penal Code, 1860
- 30 see 1984 Cr.L.J. 786; 1984 Cr.L.J. 1254; AIR 1992 SC 2043; 1991 Cr.L.J. 411; 1989 Cr.L.J. 383 H.P.
- 31 Translate extract from the trial court judgement of the District and Session court (Jaipur, Rajasthan) in **State vs. Ramkaran and others** at pp. 17 dtd. Nov. 15, 1995
- 32 Lehmann vs. Toys 'R' US, Inc. 132 N.J. 587
- 33 Adapted from 'Combating Sexual Harassment at the Workplace' ILO Digest Vol. 11, 1992
- 34 Reference is invited to Condition of Work Digest, Volume 11, p9 , 1992 ILO
- 35 Reference invited to Theresa Rehman vs. Toys 'R' US . Supreme Court of New Jersey.132NJ 587,626 A 2d 445. 1993.

35 **Gender Violence: Interdisciplinary Perspectives**, *Changed Women and Changed Organisations: Consequences of and Coping with*

Sexual Harassment, Barbara A. Gutek and Mary P. Koss, 1997 pg.151 at 161-162.

38 *ibid*

39 Recount of a female journalist to Sakshi (1998)

40 Complaint of sexual harassment at work
(Reference, Sakshi, 1998)

41 K.P.S. Gill vs. St. & Ors. (Crl. Appl. No. 20 of 1996
decided on Jan. 1, 1996)

42 See Apparell Export Promotion Council vs.
A.K.Chopra (Civ. Appl. No. 226/227 of 1999
decided on Jan. 20, 1999)

43 A misogynist is one who practices hatred of
women

44 Robinson v. Jacksonville Shipyards, Inc., 760 F.
Supp. 1486 (MD. Fla. 1991)

45 While the new sexual harassment guidelines were
created to specifically deal with the more common
forms of sexual harassment of women at work, the
example illustrates a case of male sexual
harassment. In the small instances where this is
found to exist, the majority of perpetrators are men

46 CEDAW, Article 11, para 1 (c)

47 CEDAW, Article 11, para 1 (f)

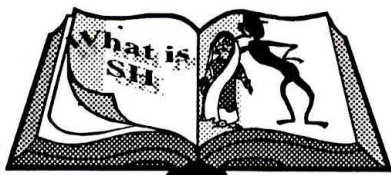
48 Refer to *Vishaka*

49 Meritor Savings Bank v. Vinson, 477 U.S. 57
(1986)

50 See Apparel Export Promotion Council vs.
A.K.Chopra (Civ. Appl. No. 226/227 of 1999
decided on Jan. 20, 1999).

ANNEXURE 'A'

BRIEF DETAILS OF PILOT STUDY CARRIED OUT BY SAKSHI IN NOVEMBER 1996.



Sakshi conducted a preliminary spot survey in both industry and an academic setting to investigate the prevalence and nature of the sexual harassment faced by women. The spot survey was carried out to support the *Vishaka* case while it was still being heard before the Supreme Court of India. The general trends gathered through this brief survey are given below.

All private companies, public-sector units (seven in number) and the university approached are based in New Delhi and the survey was conducted over a period of four months. Sakshi used a questionnaire with both men and women (a different one for each) followed by in-depth interviews with certain respondents.

General Trends

Sakshi's spot survey threw up some interesting results regarding sexual harassment at the workplace as experienced by women in a large university in New Delhi and in different firms in the city. The perceptions of men as to what constitutes sexual harassment and how and when it occurs were issues we were also able to tap. These results are in no way indicative of the feelings and outlook of the majority of people, though we have interviewed what could statistically be called a 'large sample' i.e., more than thirty people. At

this stage we cannot make blanket generalisations regarding the experiences and attitudes of men and women. Our aim in this report is to highlight that sexual harassment is a violation whose very existence has been denied and that the experiences of the women we interviewed is a testament to this fact.

Sample: Female students and faculty at a large university in New Delhi & employees (female and male) in seven firms in the city.

Our definition of sexual harassment we found is broader than what most men and women think it is. When we communicated this to female respondents in the group, they were easily able to identify with it. For them sexual harassment included:



- unwelcome, non-verbal sexual conduct
- offensive language
- uninvited sexual remarks pertaining to clothes, physique etc.
- unwelcome invitations outside of office/ college hours
- a sexually hostile environment on campus

Half the group had experienced abuse of this kind with a larger number having faced physical assault, i.e. unwelcome non-verbal sexual conduct. This was borne out through the experiences of women who have faced sexual harassment in the group.

Respondents were unable to speak about verbally offensive sexual conduct like discriminatory sexual remarks, language, innuendo etc. given a real fear that they would not be believed; that this would not survive as a complaint with any forum and that sexual harassment could be justified only by visible, physical scars. Thus in many cases physical assault was the culmination of a number of instances of verbal conduct. One reason underlying the inability to identify verbal conduct as sexual harassment is that both men and women believe verbal conduct is socially acceptable and taken for granted. It is indicative of an attitude that regards women's realities as immune to such behaviour which is not otherwise physically offensive. This was supported by the view of male respondents in the survey who felt that a woman would generally receive the following responses if she were to complain about verbally offensive conduct:



- she is 'over-reacting'
- she is a 'poor sport'
- she is a 'trouble-maker'

This is precisely what makes it difficult for women to talk about such forms of harassment.

Sexual harassment is as devastating as it is owing to the impact of such abuse, of resisting it and of speaking about it. The abuser is often a person in a position of authority and power who can affect a woman complainant's professional/ academic

existence or potential for advancement. In the case of respondents in industry, business and trade, the harasser was found to be either a supervisor or other organisational superior; in the case of faculty and students surveyed it was reported that third party harassment is a common experience, while harassment by students and faculty members was also reported.

In the cases of sexual harassment where complainants sought redress from within the organisation, the management representative ignored the complaint. This response was commonly rooted in a fear of 'upsetting' the harasser (generally as senior person in the organisation). In one case, the harasser persecuted the complainant by ensuring that she lost every other opportunity to work that she later explored. A more common basis for such lack of response or initiative in reacting to sexual harassment complaints is that those who receive such complaints are concerned with their own career prospects and feel an outward response will impact negatively on them.

Our findings then appeared to indicate two options available for women who experience sexual harassment on work or on campus, neither of which is palatable: keep quiet and put up with the abuse, or leave the organisation. Neither option actually addresses the issue. It only serves to exacerbate the indignity of such violations.

The sexual harassment guidelines have widened those options. At the time of conducting this survey, the guidelines did not exist and a majority of women did not take action against the harasser. An optimistic

note however is that when asked whether an in-house complaints committee and procedure would help to address sexual harassment at work and on campus, there was a resounding 'yes' from respondents.

Attitudes formed a critical part of many responses to the survey. Often it is precisely an attitude that makes a woman feel she is not equal to her male colleagues, which undermines her sense of confidence and esteem and which makes her feel like an object of sexual repartee. Fears of not being believed, of being accused of 'sleeping her way to the top', of taking revenge on male colleagues for relationships besmirched and encounters compound her silence and confusion. Attitudes that signal how women "ought to be" must be excavated to locate the source of disbelief and silence that surround sexual harassment at the workplace.

We asked male respondents questions pertaining to their attitudes regarding women who work with them and their opinions about sexual harassment at the workplace. The following quotes illustrate some of the attitudinal barriers that need to be crossed or dismantled for sexual harassment to become a visible form of discrimination and violence. The respondents were from both public and private sector organisations:

'Women who are bold, outspoken and aggressive....those who live with a man outside of marriage.. and those who wear revealing 'Western clothes'... are most likely to be harassed'



' There should be dress codes in an office... to promote the Indian way of living... to promote

Indian culture and traditions and respect for women.....to be decent and go with society's norms...."

'Women will be successful only in certain departments in an organisation....in the Indian environment women are structured to take on certain jobs only.. like nursing, modelling, sales/shop assistants, as airhostesses....they will do justice to these assignments in keeping with physique and Indian conditions...'

' Women in my organisation are extremely beautiful and graceful... no wonder they would face the threat of harassment...'

' Sexual harassment doesn't take place in our organisation... only those foreign multinational companies with their Western work culture and free and easy manners where women are allowed to do and say what they want....is where all this happens.'

Note: In late 1998 Sakshi expanded the scope of this survey to a more broad-based study which includes more respondents and a wider cross-section of working sectors from around the country to provide a more representative picture of the nature and prevalence of sexual harassment at the workplace. The study is still ongoing and aims for completion by the end of 1999.

ANNEXURE 'B'**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION****WRIT PETITION (CRIMINAL) NOS. 666-70 OF 1992**

Vishaka & Ors Petitioners

Versus

State of Rajasthan & Ors.... Respondents

JUDGEMENT**Verma, CJI:**

This Writ Petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident

is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures.

In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.

Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19 (1) (g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by direction for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of

fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a law officer to help us find a proper solution to this social problem of considerable magnitude. In addition to Ms. Meenakshi Arora and Ms. Naina Kapur who assisted the Court with full commitment, Shri Fli S. Nariman appeared as Amicus Guriae and rendered great assistance. We place on record our great appreciation for every counsel who appeared in the case and rendered the needed assistance to the Court which has enabled us to deal with this unusual matter in the manner considered appropriate for a cause of this nature.

Apart from Article 32 of the Constitution of India, we may refer to some other provisions which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14, 19 (1) (g) and 21, which have relevance are:

Article 15:

“15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

- (1) The State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them.

- (2) XXX XXX XXX
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) XXX XXX XXX

Article 42:

42” Provision for just and humane conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief”.

Article 51 A

“51A. Fundamental duties. It shall be the duty of every citizen of India.

- (a) to abide by the Constitution and respect its ideals and institutions,...

XXX XXX XXX

- (b) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

XXX XXX XXX

Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may

advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51:

"51. Promotion of international peace and security. The State shall endeavour to

XXX XXX XXX

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another and

XXX XXX XXX

Article 253:

"253. Legislation for giving effect to international agreements. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body".

Seventh Schedule:

"List 1 – Union List:

XXX XXX XXX

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

XXX XXX XXX

In the absence of domestic law occupying the field, to formulate effective measures to check the evil of

sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, 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. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which parliament has power to make laws. The executive power of the Union shall extend to the matters with respect to which parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil.

Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirements as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned

Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that these should be the guidelines and norms declared by this Court to govern the behaviour of the employers and all others at the work places to curb this social evil.

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:
- (a) to ensure that all persons are able to live securely under the Rule of Law;
 - (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
 - (c) to administer the law impartially among persons and between persons and the State'

Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are:

Article 11 :

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
 XXX XXX XXX
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
 XXX XXX XXX

Article 24:

"States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention'.

The general recommendations of CEDAW in this context in respect of Article 11 are:

“Violence and equality in employment:

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.
23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pronography and sexual demands, whether by words or actions. Such conduct can be humiliating and many constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.
24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the work place”.

The Government of India has ratified the above Resolution on June 25, 1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made an official commitment, inter alia, to formulate and

operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a commission for Women's Rights to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform for Action. We have, therefore, no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

4.

The meaning and content of the fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in *Minister for Immigration and Ethnic Affairs vs. Teoh*, 128 ALR 353, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

5.

6.

In *Nilabati Behera Vs. State of Orissa*, 1992 (2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of

enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

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 work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2 (d) of the Protection of Human Rights Act, 1993.

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where-under 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 safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps:

All employers or persons in charge of the workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing order under the Industrial Employment (Standing Orders) Act, 1946.
- (d) 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 places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with the law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

Disciplinary Action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism

should ensure time bound treatment of complaints.

7. Complaints committee

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The complaints committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such complaints committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The complaints committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meeting.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by

prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment :

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. The guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places 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. These Writ Petitions are disposed of, accordingly.

..... C.JI

.....J

(Sujata V. Manohar)

New Delhi
August 13, 1997

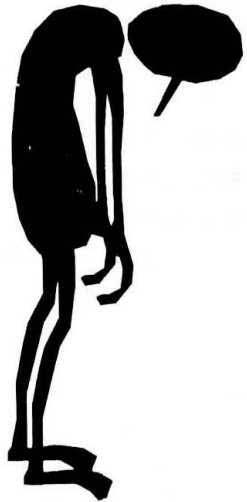
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(B.N.Kirpal)

ANNEXURE 'C'*

CONSEQUENCES OF SEXUAL HARASSMENT

For the Complainant:

Emotional Stress
(humiliation, anxiety, anger,
powerlessness, depression)
Physical illness (headaches,
nausea, insomnia, high blood
pressure)
Loss of work motivation
Absences at work
Missing out on training or
promotions
Resignation or dismissal



**** Adapted from "Combating Sexual Harassment at the Workplace" International Labour Organisation, East Asia Multidisciplinary Advisory Team (ESMAT)***

ANNEXURE 'D'*

SEXUAL HARASSMENT AT WORK

Sexual harassment is unwanted and unwelcome sexual advances, requests for sexual favours or other verbal, non-verbal or physical conduct of a sexual nature. Its purpose or effect is to interfere with an individual's work performance or to create an intimidating, hostile, abusive or offensive work environment. Given that the majority of sexual harassment involves women as victims, it is important to perceive sexual harassment as the reasonable woman would understand it.

There is widespread recognition that sexual harassment is an obstacle to equality of opportunity and treatment and an unacceptable aspect of the working environment which must be addressed.

Preventive policies and procedures at the workplace should be encouraged to reduce the risk of sexual harassment.

A sexual harassment policy should contain:

- ☐ A policy statement
- ☐ A complaints procedure and committee
- ☐ Amendment of workplace rules of conduct
- ☐ A training and communications strategy

**** Adapted from "Combating Sexual Harassment at the Workplace" International Labour Organisation, East Asia Multidisciplinary Advisory Team (ESMAT)***

ANNEXURE 'E'*

PERCEPTIONS OF SEXUAL HARASSMENT

- Social and economic problem
- Attitudinal problem
- Personal problem
- A trivial matter or "normal behaviour"
- Shameful, embarrassing, taboo subject
- Violation of human rights
- Violence against women
- Sex discrimination
- Against the law
- Health and safety issue
- Unacceptable condition of work
- Labour and management issue

**** Adapted from "Combating Sexual Harassment at the Workplace" International Labour Organisation, East Asia Multidisciplinary Advisory Team (ESMAT)***

ANNEXURE 'GI'*

COMBATting SEXUAL HARASSMENT AT WORK

- Acknowledgement of sexual harassment as a problem
- Awareness-raising by all social partners to make sexual harassment a subject for public discussion
- Organisation or institution to formulate and implement an explicit sexual harassment policy
- Effective in-house mechanisms and procedures for lodging of complaints
- Support services to provide counselling, emotional support and legal assistance to complainants
- Training/Education for members of the complaints committee and others who handle complaints
- Training/Education for workers on the sexual harassment guidelines



*** Adapted from "Combating Sexual Harassment at the Workplace" International Labour Organisation, East Asia Multidisciplinary Advisory Team (ESMAT)**

ANNEXURE 'G2'*

COMBATTING SEXUAL HARASSMENT ROLE OF TRADE UNIONS

- Develop a sexual harassment policy for members
- Educate members to change attitudes especially in male dominated unions
- Establish a complaints committee in accordance with the sexual harassment guidelines for handling complaints
- Provide training for members of the complaints committee and others who handle complaints
- Set up a counselling service for complainants
- Maintain a record of complaints
- Take effective consequent action against members involved in harassment

**** Adapted from "Combating Sexual Harassment at the Workplace" International Labour Organisation, East Asia Multidisciplinary Advisory Team (ESMAT)***

ANNEXURE 'G3'*

COMBATTING SEXUAL HARASSMENT ROLE OF GOVERNMENT

- Implement the sexual harassment guidelines at all workplaces
- Mount awareness campaigns
- Ensure the establishment of effective complaint committees at all workplaces
- Set an example by having a policy and procedure for the civil service
- Institute a sexual harassment policy with the following elements:
 - a statement that sexual harassment is unacceptable and discriminatory behaviour;
 - a clear definition of what is regarded as sexual harassment
 - specification of responsibilities for employers and employees;
 - establishment of a formal and informal complaints process;
 - guarantee enforcement of the policy
 - provide for protection of complainants against victimisation and/or retaliation.

**** Adapted from "Combating Sexual Harassment at the Workplace" International Labour Organisation, East Asia Multidisciplinary Advisory Team (E\$MAT)***

ANNEXURE 'H'

Given below is a sample questionnaire survey (that can be adapted according to each work context) to help assess the extent and existence of sexual harassment at a workplace. It should be accompanied by a covering letter from senior persons or management reaffirming a commitment to ending sexual harassment at work.

SEXUAL HARASSMENT SURVEY: Please tick mark [✓] the response which is most appropriate for you.

1. Male ☐ Female ☐

2. Do you believe you have ever experienced any form of sexual harassment?

☐ yes

☐ no

3. If yes, did the sexual harassment occur ?

☐ at your present place of work

☐ at your past place of work (specify type of work)

4. When did the sexual harassment occur?

☐ I am currently experiencing a sexual harassment problem

☐ Two years ago

☐ more than two years ago

5. Who was (were) the harassers?

- ☐ a supervisor
- ☐ a higher management official
- ☐ a union official
- ☐ a co-worker(s)
- ☐ client, vendor or other non-employees

6. What was the nature of the harassment? Check all that apply.

- ☐ unwelcome sexual relations
- ☐ unwelcome physical contact or advances (eg. touching, pinching)
- ☐ sexual comments about your body and/or appearance
- ☐ demand for request for sexual favours
- ☐ sexually suggestive displays in the workplace
- ☐ other _____

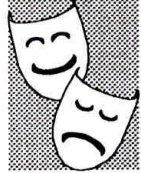
7. Did you sense any underlying threat or insinuation that your failure to submit to the harassment would affect your employment?

- ☐ yes
- ☐ no

(* adapted from "Stopping Sexual Harassment: An AFSCME Guide")

ANNEXURE 'I'

One of the most common obstacles to understanding sexual harassment at the workplace are the myths which have emerged around this issue. Such myths and stereotypes shape the attitudes and disbelief which often confront women who wish to complain about sexual harassment. The following are just a few examples of these myths that exist and the facts to counter them.



Sexual Harassment: Myths and Facts

MYTH: Sexual harassment is rare.

FACT: Sexual harassment is extremely widespread. It touches the lives of 40 to 60 per cent of working women, and similar proportions of female students in colleges and universities.

MYTH: The seriousness of sexual harassment has been exaggerated; most so-called harassment is actually trivial and harmless flirtation.

FACT: Sexual harassment can be devastating. Studies indicate that most harassment has nothing to do with 'flirtation', or sincere sexual or social interest. Rather, it is offensive, often frightening and insulting to women.

Research shows that women are often forced to leave school or jobs to avoid harassment; many experience serious psychological and health-related problems.

MYTH: Many women make up and report stories of sexual harassment to get back at their employers or others who have angered them.

FACT: Research shows that less than one percent of complaints are false. Women rarely file complaints even when they're are justified in doing so.

MYTH: Sexual harassment is normal behaviour and a woman should feel complimented.

FACT: Sexual harassment is about power, a tactic to dominate by embarrassment or degradation. It is not an expression of healthy human relationships. In the majority of cases, sexual harassment involves men harassing women.

MYTH: If you ignore harassment, it will go away.

FACT: It will not. Research has shown that simply ignoring the behavior is ineffective; harassers generally will not stop of their own accord. Ignoring such conduct may even be perceived as condoning or encouraging it.

MYTH: I will not be able to compliment someone without being accused of sexual harassment.

FACT: Compliments in and of themselves are not generally considered sexual harassment- but when in doubt, don't. It is the impact of, not the intent behind, a behaviour or remark.

ANNEXURE 'J'

DO'S AND DON'TS: DETERMINING WHAT AMOUNTS TO SEXUALLY INAPPROPRIATE BEHAVIOR.

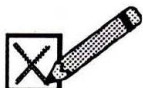
The following are recommended 'dos' and don'ts for employers to both recognise as well as help prevent sexual harassment at the workplace. Once again, these may only serve as an example and will vary according to different work contexts.

DO...



- Give employees the space and time to hold meetings on sexual harassment at the workplace.
- Display your organisation's policy on sexual harassment prominently.
- Treat any complaint of sexual harassment with sympathy and sensitivity.
- Take a stand against your colleagues who may use sexually offensive remarks, innuendo, or derogatory statements about other employees.

DON'T....



- Use language that may be offensive, sexually colored or derogatory
- Bring up issues of a sexual nature which you might not necessarily perceive as being offensive.
- Touch anyone in genital areas, engage in stroking of any sort, touching anything other than hands when extended towards you, intentionally brushing against or touching anyone, kissing etc.

- Stare at sexual body parts of another or otherwise leer or gawk.
- Engage in physical intimacy at work, in any area on workplace property, or in your car in the parking lot at work; any kind of sexual intimacy and contact at any time or place that is designated for work.
- Help someone at work because you find him/her attractive and want to get close to him/her, or with the intention of using this assistance as a basis for forming a more intimate relationship.
- Assigning work to employees in a secretive or poorly controlled way on the basis of friendship, appearance or other non-professional parameters.
- Assign the most lucrative, high-profile accounts/customers/jobs/postings etc. to a select group of employees on the basis of perceptions about compatibility related to sexual issues.



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