



## ENDEAVOURS TO PROTECT WOMEN FROM SEXUAL HARASSMENT AT WORKPLACE

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### Abstract

In the absence of legislative enactment to regulate the conduct of workers in a workplace; and non availability of any policy regulations to protect women workers from sexual harassment, the Supreme Court's ruling in Vishaka v. State of Rajasthan, has assumed importance in the current Indian Legal literature on the subject. The instant ruling may be rightly viewed as a milestone in this area. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene and to further ensure that there is no hostile environment towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment. The attitudes can be changed well through education like change in curriculum at school level by organizing social awareness camps, by evolving and gearing up State machinery for combating sexual harassment at workplace.

### Key Words:

Sexual harassment, Gay, Academicians, Investigation, Pornography, Discriminatory, Perpetrator, Disciplinary action, Redressal, Counsellor, Complaints committee

### Introduction

In the developing countries of the East, like India, with more and more influx of women into professions, which were conventionally and comparatively monopolized by men the sexual harassment at workplace is gradually surfacing and women have begun to experience the intensity of its bite. The problem has become grave because labour market, as a result of women participation has registered both qualitative and quantitative change. The Indian scene, as such, is not less disturbing. The surveys conducted in this regard present a highly disappointing picture, which shows that sexual harassment of women exists both in urban and the rural areas.<sup>1</sup> The same is confirmed by a survey which reveals that out of 67 women workers from the cross section of the industry when interviewed 54 per cent complained that they faced sexual harassment of one kind or the other. A subsequent survey in five metropolitan cities has shown a startling 98 percent prevalence of sexual harassment of women at workplace.<sup>2</sup>

The National Commission for Women has very recently observed that during 2003 alone it received as many as 5160 cases from women who sought justice against harassment.<sup>3</sup> In the absence of legislative enactment to regulate the conduct of workers in a workplace; and non-availability of any policy regulations to protect women workers from sexual harassment, the Supreme Court's

<sup>1</sup>Anuradha, Women Employees and Rural Development—Problems of Employed Women in Rural Areas of Bhoite (Delhi Gian Publishers, 1987)

<sup>2</sup>The study being carried by Sakshi in New Delhi, Trivandrum, Bhubanashwar, Ahmedabad and

Bangalore where 250 men and women were interviewed.

<sup>3</sup>“U.P. tops list of harassment cases against Women”, The Kashmir Times (8<sup>th</sup> of January, 2004).



ruling in *Vishaka vs. State of Rajasthan*<sup>4</sup>, has assumed importance in the current Indian Legal literature on the subject. The instant ruling may be rightly viewed as a milestone in this area. All the same it is neither exclusive nor exhaustive on the subject, because new contours and nuances of sexual harassment have already come to light in the West and there is likelihood that the same might surface in workplaces in this country. *Vishaka vs. State of Rajasthan* was decided within the conventional social frame wherein harasser is usually viewed as a heterosexual male perpetrator and the victim a woman worker. The post-*Vishaka* events may thus expose the ability of the “heterosexual harassment” test laid down by the Supreme Court to cater to the needs of the times. Whether arguments of the Court shall have any meaning where victim is not a heterosexual male co-worker is an open question? What if a gay or an effeminate complains harassment, does it not fall within the sexual harassment paradigm? These are the conditions that have to be looked into which shall go unanswered unless sexual harassment is properly understood and explained to a point of clarity by the courts and legal academicians. Although the debate on viability of the Supreme Court guidelines may not be questioned within narrow confines of heterosexuality yet it cannot be a substitute for legislation. Legislation, in this regard, has to be made because the problem is highly pressing and the issues involved are humanitarian and fundamental. The academicians shall have to stimulate the State to come out with a law to deal with this menace, more so, it should brace up its apparatuses to rise to the occasion and

provide an appropriate and timely remedy to the victims of sexual harassment. Such urgency is already being felt in the West and we cannot afford to sleep over it.

The Supreme Court of India in *Vishaka* case has expressly admitted the same and hence it had to rally around the right to equality and right to life under the Constitution,<sup>5</sup> as would the courts in United States take refuge to the Civil Rights Act of 1964. The observations of the Supreme Court appear to have been made after scanning the international legal material on the subject. That is why these observations correspond to the International Convention prohibiting all kinds of discrimination against women besides what the Supreme Court of the United States observed in *Meriter Saving Bank vs. Vinson*<sup>6</sup>. This prompts one to study the legal issues generally arising out of sexual harassment in the United States. In consonance with the same the Indian Supreme Court has certainly pointed out at the acts that would constitute harassment of women if discovered at a workplace. To nip the evil in the bud the Court has laid down guidelines to prevent and investigate the cases of sexual harassment of women in workplace.<sup>7</sup> It is debatable whether such guidelines alone would help us to fight sexual harassment at workplace? Nonetheless the Supreme Court of India has done the needful and the same should not pass incognito down the pages of sexual harassment jurisprudence in this country. The present study therefore desires to examine the syndrome of sexual harassment at workplace and finally leave it to the wisdom of individual readers to decide whether or not there is need to evolve our

<sup>4</sup>(1997) 6 SCC 241: 1997 SCC (Cri) 932.

<sup>5</sup> See, Constitution of India, Arts. 14, 15(3), 16, 19, 141

<sup>6</sup> 477 US 64 (1986)

<sup>7</sup> Generally see LalitaPariharet. al., o.p.cit., Vol. XXXII, Nos. 1 & 2 (2006)



own jurisprudence on the subject underhand. The need arises because reverence of women is the hallmark of Indian cultural ethos and the meaning of right to equality and right to life has to be searched within the parameters of the calculus of reverence and not exclusively looked into within the periphery of the economics of utilitarianism. An effort shall be made to analyse the literature on the subject thus evaluate that how far the criteria laid down by the courts within Western setting might benefit us.

In *Vishaka vs. State of Rajasthan*<sup>8</sup>, the Supreme Court considered it necessary and expedient for employers in workplace as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

#### **DUTY OF THE EMPLOYER OR OTHER RESPONSIBLE PERSONS IN WORKPLACE AND OTHER INSTITUTIONS**

It shall be the duty of the employer or other responsible persons in workplace 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.

#### **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 and 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 recruitment 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.

#### **PREVENTIVE STEPS**

All employers or persons in charge of workplaces, 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 workplace 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;

<sup>8</sup>See *supra* n.4 p.2



- (c) As regards private employers steps should be taken to include the aforesaid prohibition in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946;
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene and to further ensure that there is no hostile environment towards women at work places and no woman employee 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 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 constitute 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.

**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 members 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, which 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 employee and the person in charge will also report on compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the government department.

**WORKER'S 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 meetings.

**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.

**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.

### PRIVATE SECTOR

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 employers in the private sector.

### RIGHT UNDER THE PROTECTION OF HUMAN RIGHTS ACT, 1993

These guidelines will not prejudice any right available under the Protection of Human Rights Act, 1993.

### BINDING NATURE

It was directed by the Court that the guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working woman. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

The Supreme Court followed suit in *Apparel Export Promotion Council vs. A.K. Chopra*<sup>9</sup> whose facts are as under:

The respondent was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council, the appellant herein. It was alleged that on 10.8.2010, he tried to molest a woman employee of the Council, Miss X (name withheld by us) who was at the relevant time working as Clerk-cum-Typist. She was not competent or

trained to take dictations. The respondent, however, insisted that she go with him to take dictations to the Business Centre at Taj Palace Hotel for taking dictation from the Chairman and type out the matter. Under the pressure of the respondent, she went to take dictation from the Chairman. While Miss X was waiting for the Director in the room, the respondent tried to sit too close to her and despite her objection did not give up his objectionable behaviour. She later on took dictation from the Director. The respondent told her to type it at the Business Centre of Taj Palace Hotel, which is located in the basement of the Hotel. He offered to help her so that her typing was not found fault with by the Director. He volunteered to show her the Business Centre for getting the matter typed and taking advantage of the isolated place, again tried to sit close to her and touched her despite her objections. The draft typed matter was corrected by the Director (Finance) who asked Miss X to retype the same. The respondent again went with her to the Business Centre and repeated his overtures. Miss X told the respondent that she would "leave the place if he continued to behave like that". The respondent did not stop though he went out from the Business Centre for a while, he again came back and resumed his objectionable acts.

In appeal *Export Promotion Council vs. A.K. Chopra*<sup>10</sup>, it was held by the Court that where any of the acts mentioned in the definition of sexual harassment in *Vishaka vs. State of Rajasthan* 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, such conduct can be humiliating and may

<sup>9</sup> (1999) 1 SCC 759: 1999 SCC (L&S) 405

<sup>10</sup> (1999) 1 SCC 759: 1999 SCC (L&S) 405



constitute health and safety problems. Adverse consequences might be visited if the victim does not consent to the conduct in question or raise any objection thereto. The Supreme Court in all such cases has touched a very sensitive note.

Accordingly to Miss X, the respondent had tried to molest her physically in the lift also while coming to the basement but she saved herself by pressing the emergency button, which made the door of the lift open. On the next day, that is on 16<sup>th</sup> August, 1988, Miss X was unable to meet the Director (Personnel) for lodging her complaint against the respondent as he was busy. She succeeded in meeting him only on 17<sup>th</sup> August, 1988 and apart from narrating the whole incident to him orally submitted a written complaint. The respondent was placed under suspension vide an order dated 18<sup>th</sup> August, 1988. A charge sheet was served on him to which he gave a reply denying the allegations and asserting “the allegations were imaginary and motivated”. An Enquiry Officer was appointed to enquire into the charges framed against the respondent. The Enquiry Officer concluded that Miss X was molested by the respondent at Taj Palace Hotel on 12<sup>th</sup> August, 1988 and that the respondent had tried to touch her person in the Business Centre with ulterior motives despite reprimands by her. The Disciplinary Authority agreeing with the report of the Enquiry Officer, imposed the penalty of removing him from service with effect from 18<sup>th</sup> June, 1989. Aggrieved by the order of removal from service, the respondent filed a departmental appeal before the Staff Committee. The Staff Committee considered the entire issue and came to the conclusion that the order terminating the services of the respondent was legal, proper and valid. The

appeal was dismissed and the removal of the respondent for causing “sexual harassment” to Miss X was upheld. The respondent, thereupon, filed a writ petition in the High Court challenging the report of the Enquiry Officer, as well as the decision of the Staff Committee dismissing his departmental appeal.

The Judge allowing the writ petition opined: that the petitioner tried to molest and not that the petitioner had in fact molested the complainant. The Court disposed of the writ petition with a direction that ‘respondent be reinstated in service but that he would not be entitled to receive any back wages’.

The appellant was directed to consider the period between the date of removal of the respondent from service and the date of reinstatement as the period spent on duty and to give him consequential promotion and all other benefits. It was, however, directed that the respondent be posted in any other office outside Delhi, at least for a period of two years.

The appellant being aggrieved by the order of reinstatement filed letters patent appeal before the Division Bench of the High Court. The Division Bench dismissed the LPA filed by the appellant against the reinstatement of the respondent, the Division Bench agreed with the findings recorded by the learned Single Judge that the respondent had “tried” to molest and that he had not “actually molested” Miss X and that he had “not managed” to make the slightest physical contact with the lady and went on to hold that such an act of the respondent was not a sufficient ground for his dismissal from service.



It was held by the Court that:

Where any of the acts mentioned in the definition of sexual harassment in *Vishaka vs. State of Rajasthan*(supra) is committed in circumstances hereunder the victim's employment or work whether she is drawing salary, 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 recruitment 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 raise any objection thereto.

In *Nilabati Behera vs. State of Orissa*<sup>11</sup> a provision in the International Covenant on Civil and Political Rights was taken recourse to, to support the view 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 tort. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed under the Constitution which embody the concept of gender equality in all spheres of human activity.

The Supreme Court in all such cases has touched a very sensitive note and admitted the fact that sexual harassment at workplace is not only humiliating but may also constitute health and safety problems.

Reporting a crime and misconduct puts the female employee in a disadvantageous position in connection with her employment (recruitment or promotion) and also creates a hostile environment, which is discriminatory. It was directed by the Court that appropriate preventive steps should be taken by employers to prevent such harassment and creation of hostile environment, it was further directed that the guidelines and norms laid down by the Court should be included in the regulations of government, public sector and in the Industrial Employment (Standing Orders) Act, 1946.

If, according to any employer or the person in charge, a conduct amounted to misconduct, disciplinary action/criminal proceedings (if it falls within the definition of a specific offence) can be initiated ensuring that victims are not victimized or discriminated against while dealing with complaints of sexual harassment.

Judicial activism is markedly apparent while Supreme Court decided the case of *State of A.P. vs. Bodem Sundara Rao*<sup>12</sup>, where High Court of Andhra Pradesh had awarded meager sentence and the case came before the Supreme Court. The Apex Court expressed its sensitivity in the words that crimes against women are on the rise. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encouraging a criminal. The courts must not only keep in view the rights of the criminal but also the rights of the victims of the crime and the

<sup>11</sup> 1993 SCC (Cri) 527

<sup>12</sup>(1995) 6 SCC 230, 232.



society at large while considering imposition of the appropriate punishment.

In *RupanDeol Bajaj v. Kanwar Pal Singh Gill*<sup>13</sup> the Supreme Court again expressed the seriousness of the problem. In this case, the FIR and private complaint filed in Court of Chief Judicial Magistrate, Chandigarh were quashed by the High Court of Punjab and Haryana where the victim was a senior IAS officer and the accused was a senior Police Officer. The Supreme Court set aside the order of the High Court and observed that the sequence of events culminating in slapping on the posterior of a woman in a public function disclosed in the FIR amounted to prima facie offence under Sections 354 and 509 of the Indian Penal Code.

#### COMPARATIVE POSITION IN USA AND UK

The first successful claim in sexual harassment is *Walker vs. Northumberland County Council*<sup>14</sup>, where psychiatric damages were awarded by the English Court arising out of occupational stress. In such a case action may be initiated against an employer for negligence. Mental harassment as different from physical contact theory.

The insult (harm) may be caused by verbal insult and may occur at mental level, Legal response is articulated and rigorously pursued.

England—154 of Cr.; Justice and Public Order Act, 1994 has inserted a new Section 4-A into the Public Order Act, 1994.

Threatening abusive or insulting words or behaviour or disorderly behaviour.

These provisions were designed primarily to deal with incidents of racial violence and racial harassment.

In USA it was only in 1980 that the United States Equal Employment Opportunities Commission defined sexual harassment. It is basically the same definition as was adopted by the Convention on the Elimination of All Forms of Discrimination Against Women (1979). Thirdly, where such conduct has the effect or purpose of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

In United States of America, the legislation is not sufficient to deal with the problem. The Federal Criminal Code, 1986 punishes sexual contact and harassment at work place as sexual harassment is a form of sex discrimination. In *Merritor Savings Bank v. Vinson (Michell)*<sup>15</sup>, the legal issue facing sexual harassment is a form of sex discrimination that is actionable under Title VIIth? The Court's decision set a precedent for sexual harassment cases involving hostile work environment claims where the victim suffers no tangible or economic loss. An important point made by the Court is that an employee's apparent consent to sexual activity does not necessarily negate a claim of sexual harassment. The employees' submission to a sexual relationship cannot be considered truly voluntary if the harasser has the power to fire, demote, or blackball an employee, or deny raises, bonuses or promotions. The Court's ruling firmly

<sup>13</sup> (1995) 6 SCC 194; AIR 1996 SC 309.

<sup>14</sup>(1995) IRLR 35.

<sup>15</sup> Ss. 2241, 2243, 2244



established the working definition of sexual harassment and the kinds of workplace conduct that may be actionable under Title VII. The Judiciary has been vigilant about the problem. Interest of State was upheld by the Court as employer to improve efficiency by eliminating adverse conditions in place of work<sup>16</sup>. The US Supreme Court agreed with the argument of the American Civil Liberties Union (the appellant in this case) that same sex sexual harassment is equally covered under Title VII of the Civil Rights Act of 1964 and that motive of harassment is of no relevance<sup>17</sup>. The Supreme Court and the Equal Employment Opportunity Commission recognize two types of sexual harassment claims under Title VII. One type is the economic “quid pro quo” sexual harassment i.e. unwelcome sexual advances, request for sexual favours and other verbal or physical conduct of sexual nature in exchange for a job benefit and other type is “hostile environment” sexual harassment which occurs when the harassment has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment<sup>18</sup>. Position of women in USA is not normal as stated by Prof. Cynthia Bowman in an article<sup>19</sup> that one of eight American women have been raped in offices, public places or their homes. About the instinct behind rape, study of Diana Russel<sup>20</sup> reveals that there is rape testing by which miscreants test vulnerability of victims and

their resistance. Well-known case of President Bill Clinton (USA) and Monica reveals the problem at highest desk. As per report of US Merit System Promotion Board 42 per cent of women institute establishes that 20 to 60 percent face verbal harassment, 50 to 60 percent complain of unwanted flirtation and invitation of dates, pinching and so on<sup>21</sup>.

The European Commission Recommendations on the Protection of the Dignity of Men and Women at workplace reveals ... conduct of sexual nature, or other conduct based on sex affecting the dignity of women and men at work ... unacceptable if a) such conduct is unwanted, unreasonable and offensive to the recipient, b) is used ... as a basis for an (employment decision) and c) such conduct creates an intimidating, hostile or humiliating work environment for the recipient<sup>22</sup>.

In United Kingdom, the Sexual Offences Act, 1965 used the expression “sexual assault” for punishing the sexual harassment occurring in general community<sup>23</sup>. Recently legislated, the Sexual Offences Act, 2003 uses the expression “sexual assault” to describe the sexual touching by the accused without the victim’s consent<sup>24</sup>. However, discrimination on sex is prohibited under the Sex Discrimination Act, 1975.

Sections 6(2)(a) and (b) deal with quid pro quo form of sexual harassment. The

<sup>16</sup> Rankin v. M.C. Pherson, 483 US 388.

<sup>17</sup> Joseph Oncal’s v. Sundowner Offshore, Services of Richard J. Townshend Smith, Discrimination Law: Tex Cases and Materials, 237 (1988).

<sup>18</sup> *Supra* n. 13,

<sup>19</sup> Prof. Cynthia Bowman, “Street Harassment and the Informal Ghettoization of Women”, 106 Harvard Law Review (1993).

<sup>20</sup> Diana Russel, Politics of Rape (1975).

<sup>21</sup> Babara Guttack, Sex in the Workplaces.

<sup>22</sup> European Commission Recommendation on the Protection of Dignity of Men and Women at Work, 91/131/EECDJL47/1/1999

<sup>23</sup> S. 14 of the Sexual Offences Act, 1956

<sup>24</sup> S. 3 of the Sexual Offences Act, 2003.



Act holds the employer liable whether or not the harassment was done with his knowledge or approval<sup>25</sup>. In the famous case of *Strachlyde Regional Council vs. Porcelli*<sup>26</sup>, the distinction was drawn between the situation of harassment and sexual harassment. In this case campaign to drive Mrs. Porcelli to leave the school was started. The Court held that it is a case of mere harassment because sex factor is missing in it. The European Economic Community has adopted several instrument to face the problem of sexual harassment and exploitation of women.

#### **FACTS OF D.S. GREWAL VS. VIMMI JOSHI<sup>27</sup>**

Respondent I, a female, was employed as a teacher in an Army Public School. She was subsequently appointed as Principal. Appellant, (D.S. Grewal) DSG, was the Chairman of the School and the other appellant, (HitendraBahadur) HB, was the Vice-Chairman. HB, while on official duty at a distant place, wrote a letter to Respondent I expressing that he had “fallen in love with” her. Apart from admiring Respondent I’s qualities and beauty, HB, concluded the letter with the following invitation of help to her, “May I extend my hands towards you and hold your hands tightly and ask you to lean on my shoulder whenever you need me. It will be a great pleasure.” Respondent I and her father complained to the appellant, DSG, but DSG did not take any action to redress Respondent I’s grievance. Apart from this, Respondent I also alleged that HB was making advances towards her.

Respondent I’s services were terminated after receipt of two anonymous complaints. The High Court held that it was a clear cut case of sexual harassment and therefore directed Army Authorities to take disciplinary action against appellants, DSG and HB. The Supreme Court however found that the school authorities had not constituted a Complaints Committee, as directed in Vishaka case, to look into the grievance made by Respondent I.

Before the High Court the appellants filed their counter-affidavits inter alia contending:

- (i) That the order of termination has nothing to do with the alleged sexual harassment.
  - (ii) Writing a letter merely appreciable in nature and by reason thereof no sexual harassment was caused by HitendraBahadur.
  - (iii) HitendraBahadur has nothing to do with the management of the school and that the letter having been sent from Sonamarg cannot be said to have any sexual harassment at the workplace of the first respondent.
- In the words of High Court, “Therefore, the Secretary, Ministry of Defence, Government of India and the Chief of the Army Staff are directed to take disciplinary action against these two officers, as the case of sexual harassment is evident from the contents of the letter and the admission by both the officers followed by the termination of the petitioner.

We are passing this order in view of the law laid down by the Hon’ble Apex Court in *Vishaka vs. State of Rajasthan*<sup>28</sup>.

<sup>25</sup> S. 41(1) of the Sex Discrimination Act, 1975.

<sup>26</sup> 1986 IRLR 134

<sup>27</sup> (2009) 2 SCC 2010

<sup>28</sup> (1997) 6 SCC 241: 1997 SCC (Cri) 932. *supra* n.4 p.2



The progress of the disciplinary action so taken in such a serious matter which may even warrant the court martial proceedings of these two officers shall be submitted before this Court within a period of two months from the date of production of the certified copy of this order”.

The Apex Court furthermore placed on record that a first information report was also lodged against Respondent I by the School Management alleging financial irregularities. After investigation carried out in this behalf a final report was submitted exonerating her and the report has been accepted by the Chief Judicial Magistrate, Pithoragarh by an order dated 13.2.2006.

However, indisputably, in terms of the judgment of the Supreme Court in Vishaka certain guidelines have been laid down by the Court till an appropriate legislation is made in this behalf, some of them being disciplinary action, complaint mechanism and complaints Committee.

The Supreme Court, in modification, of the order passed by the High Court, directed:

That as no Complaints Committee has been constituted, which was imperative in character, the High Court may appoint a three-member committee headed by a lady and in the event it is found that the writ petitioner was subjected to sexual harassment, the report thereof may be sent to the Army Authorities for initiation of disciplinary action against the appellants herein on the basis thereof. All the expenditure which may be incurred in this behalf may be borne by the Army Authorities.

The unpublished survey conducted by SAKSHI reveals that sexual harassment at workplace has been on a gradual increase both in rural and urban India. As such it is not purely a western concept. In the rural areas the reason behind sexual harassment of women workers is their eagerness to fight conservative forces and push in developmental programmes, so that the attitude of the public regarding traditional practices and taboos change. That is why women working as family planning workers in villages, gram sevikas, nurses, midwives and other change agents working with woman social/rural development departments as, they face sexual harassment in order to deter them from undertaking such assignments. This is a unique kind of experience that shows peculiar characteristic of sexual harassment at workplace in rural India. In urban areas it may be the male reaction against women giving up stereotype roles and adopting modern attitudes, which includes picking up unconventional occupations, threat to masculine norms of the workplace, value conflict at workplace, individual psychological aberrations and threat of competitions because women have generally succeeded to display their submerged abilities. The problem is one that cannot be exclusively fought with legislation. For the same different measures need to be adopted to fight the forces of conservatism but the strategies should operate with spontaneity not that one should follow the other. The attitudes can be changed well through education like change in curriculum at school level by organizing social awareness camps, by evolving and gearing up State machinery for combating sexual harassment at workplace. It shall be highly helpful if the Grievance Redressal Committees in all institutions are empowered



to investigate sexual harassment practices suo moto and also by involving female NGO's with such committees to prevent administrative intervention and ensure implementation of its findings in sexual harassment cases.<sup>29</sup>

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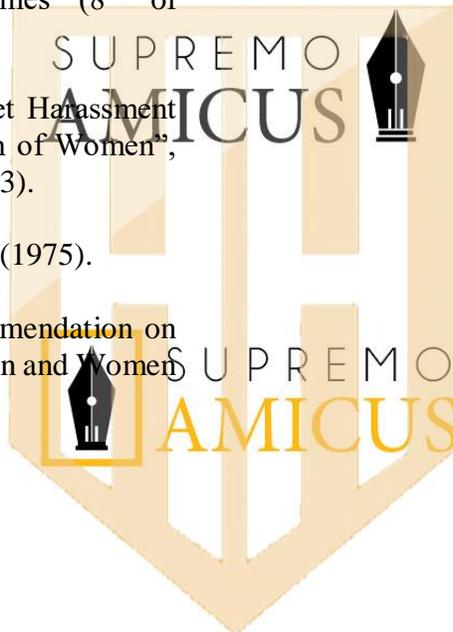
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<sup>29</sup>Lalita Dhareet. al; “The Jurisprudence of Sexual Harassment; Old Beginning and New Thinking”, op. cit.