

# KALI'S YUG

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The Age of Kali

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WOMEN'S ACTION RESEARCH AND LEGAL ACTION FOR WOMEN



# SEXUAL HARASSMENT AT THE WORKPLACE

by Rashmi Varshney

There is a growing social awareness about sexual harassment in today's world. Though women have always found their own means for coping with sexual harassment, the responsibility for action is now shifting from the individual to the organization. Before organizations can begin to devise effective remedies for sexual harassment, they must have information about the definition, incidence, causes and effects of sexual harassment. Many people assume sexual harassment is an expression of sexuality. But experts see it as a reflection of unequal power in the workplace. Its not a battle of the sexes, its about change-women and men learning new ways to act. Although the surge of women into the labour force - and their increased presence in the ranks of managers and supervisors - has been going on for a quarter of a century, yet some attitudes have been slow to change.

In the US the number of sexual harassment complaints filed with the Equal Employment Opportunity Commission (EEOC) - the federal agency charged with investigating workplace discrimination around the country - has risen slightly in recent years. But women's group say society still has a long way to go in spreading awareness among would be harassers and among victims, who often are hesitant to report abuses and brave the long, expensive and emotionally stressful legal process.

The issue of sexual harassment has also raised complicated legal and constitutional questions. When a Florida Judge last January ruled in favour of a female shipyard welder who had brought a sexual harassment suit because pinups of nude women

had been posted at her work site, attorneys for the American Civil Liberties Union (ACLU) expressed concern that such decisions might violate the right of free speech and expression.

Others think the Courts have gone too far in awarding damages to victims of sexual harassment. Suing under State Laws, plaintiffs have won as much as \$ 3.1 million in punitive and compensatory damages. As sexual harassment cases have developed over the years, Courts have established that companies can be financially liable for the behaviour of their employees, even if they were unaware of it and even if they have a policy against sexual harassment. The Supreme Court of USA has also affirmed that Companies can be liable if they tolerate a "hostile atmosphere" in which sexual harassment can flourish.

## Policy beginnings in context

At the most basic level, sexual harassment was being named and defined as a legitimate and serious problem beginning in the late 1970's. Surveys were a very important element of this consciousness raising effort. In 1976, 'Redbook' published the results of a readership survey which indicated that 88% of the 9,000 respondents claimed that they had experienced some form of workplace harassment in the course of their employment.<sup>1</sup>

Meanwhile, in the realm of litigation, important and related developments were taking place. The Courts, first resisted to recognizing sexual harassment as a violation of Title VII of the Civil Rights Act of 1964, began to exhibit more sympathy for

plaintiffs during the late 1970's and early 1980's.<sup>2</sup> Courts had also "lightened the burdens placed upon plaintiffs in the earlier cases and narrowed the defenses available to employees".<sup>3</sup> They had also begun to recognize as violations the more subtle forms of sexual misconduct outside the direct control of employers. The implications of these developments were clear: an employer could no longer afford to ignore sexual harassment in the workplace.<sup>4</sup>

The most frequently cited definition of sexual harassment was put forward by the EEOC in 1980 during the Carter Administration. It read "Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when 1) submission of such conduct is made either explicitly or implicitly a term or condition of an individual's employment, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."<sup>5</sup>

This definition and general EEOC guidelines on sexual harassment were affirmed by the Supreme Court of USA in its 1986 ruling in 'Merit Savings Bank vs Vinson' in which the Court held that sexual harassment in the workplace is sex discrimination barred by Title VII of the 1964 Civil Rights Act. The Court also ruled that such harassment is illegal not only when it results in the loss of a job or promotion, but also when it creates



an offensive or hostile working environment.

Since 1986, the EEOC elaborated on its sexual harassment guidelines. The agency has noted that both men and women could be victims or perpetrators of harassment. EEOC guidelines also said there could be illegal sexual harassment between people of the same sex. Further, the victim did not have to be the person at whom the unwelcome sexual conduct is directed. For e.g. the sexual harassment of one female employee may create an atmosphere that is intimidating to another employee.

It took years of Court decisions before the distinction was formalized between sexual harassment that involved a direct demand for sex in return for advancement or job security and "hostile environment" harassment, which could include lewd remarks and displays of obscene pictures or cartoons.

Additional information gathered about early harassment complaints mishandled by Senior Managers strongly suggested a number of difficulties in need of attention.

1) many well-intentioned Managers and supervisors needed basic training in how to recognize violations and process complaints.

2) Less well-intentioned Managers needed oversight.

3) Victims of harassment would not always feel safe in filing complaints with their own work units and

4) The existing complaint resolution procedures were not adequate to deal with this new issue.

The year EEOC Act was passed by Congress, the same year, Congress passed the Education Act Amendments which prohibited sex discrimination at schools and universities receiving federal funds. In 1977, students brought charges of sexual harassment for the first time under Title IX of the 1972 Education Amendments. Within a few years,

sexual harassment complaints had begun working their way through the Courts. Sexual harassment victims during these years began suing under a variety of laws, principally Title VII of the 1964 Civil Rights Act. In 1977, the U.S. Court of Appeals for the District of Columbia held in 'Barnes Vs Castle' that sexual harassment constitutes sex discrimination under Title VII if it "adversely affects job condition". Plaintiff also sued under State anti-discrimination laws, state fair employment practice laws and other state contract laws citing infliction of emotional distress, assault and breach of employment contract.

With momentum from Court action, it was only a matter of time before the first major studies of sexual harassment appeared. Lin Farley's - "Sexual Shakedown: The Sexual Harassment of Women on the Job" (1978) defined the concept and compiled anecdotes, while Catherine A Mackinnon's "Sexual Harassment of Working Women: A case of Sex Discrimination" (1979) argued for legal remedies. Famed anthropologist Margaret Mead weighed in with widely noted article calling for a taboo on sexual relations in the work place.

Also at this time, sensational news accounts of sexual harassment prompted a Congressional investigation into harassment in the Federal Government. In 1978, Federal Contractors were required by regulation to ensure a working environment free from harassment. In 1979, the House Post Office and Civil Service Committee held hearings on sexual harassment, and the Office of Personal Management issued a government wide directive warning of the problem. Meanwhile, the EEOC's powers were again boosted when it was handed what had previously been the Labour Department's responsibility for enforcing the 1963 Equal Pay Act. In November 1980, the EEOC issued

its influential guidelines on sexual harassment. They were adopted by most federal agencies and many Private Organizations.

#### **An abridgement of free speech**

The employer, with the approval of the American Civil Liberties Union, protested against the removal of posters and graffiti, which according to him meant abridging employees' freedom of speech. But many of the Women's Organizations vehemently condemned this and avowed their full support to the Court's ruling. The messages conveyed in the pornographic posters would be called sexual harassment- and declared illegal-if these echoed loud at the workplace. The 'right' of Supervisors and male workers to express themselves offensively before female workers must be balanced against other goals, like avoiding discrimination and getting the work done.

#### **The two major issues of Meritor v Vinson**

The Supreme Courts' opinion in 'Meritor v Vinson' is significant in several respects. Apart from being the first expression of the Court's views on the issue of sexual harassment, Meritor finds the Court giving great deference to the EEOC guidelines. The opinion also clarifies the Courts' position on several points of law, not the least of which is the viability of Title VII claims alleging the hostile work environment effect.

The situation of the case involved a female, former Meritor Savings Bank employee who had charged her supervisor, a bank Vice-President and Branch Manager, with creating a hostile and intimidating work environment over a period of years, by fondling her publicly, and on two occasions raping her. Since the Supervisor did not make such acts a condition of employment or base



tangible economic benefits such as promotion on acquiescence to such acts, the District Court denied 'Vinson' relief, when the case was originally tried. The Supreme Court, however, emphatically and unanimously rejected this line of reasoning, holding that unwelcome sexual conduct of a sufficiently serious and pervasive nature violates Title VII if it creates a "hostile or abusive work environment", whether or not tangible economic benefits are involved.<sup>6</sup>

The Court's second major holding related to the liability of employers for acts of their supervisors. As part of its defense, Meritor Bank argued that it should be insulated from liability for its supervisor's alleged acts because it had in force at the time a written policy against discrimination and an employee grievance procedure which Vinson had failed to use to give notice of the offensive behaviors. The Court rejected this argument, noting that the policy statement did not specifically address the prohibition of sexual harassment and that the grievance procedure was not constructed to encourage victims to come forward with their claims.<sup>7</sup> The Court's strong position on these matters should serve as fair warning to employers who are hoping that the existence of "paper policies and complaint processes" would save them from successful suits.

Although the Court spoke with one voice on the foregoing issues, it was not unanimous on a related aspect of employer liability. In offering the majority opinion, it was noted that while employers are absolutely liable for acts of their supervisors when economic benefits are involved, some limits might be placed on employer liability when hostile work environments were the issue.<sup>8</sup> The Court declined however, to issue a definitive ruling on this matter.

The Overwhelming impression of

Meritor is that hostile and abusive work environment should be a matter of grave concern and that employer who tries to take the easy way out cannot expect to prevail in the Courts.

#### Government Action

In Washington, the EEOC, citing a rise in sexual harassment complaints, implemented new procedures to accelerate complaint processing (from one to two years to as little as a month) and sent packets of sample legal pleadings to women's groups and lawyers.

'Sexual harassment is the crime of discrimination which keeps on hurting', said current EEOC Chairman Evan J. Kemp Jr. 'No time should be wasted in protecting its victims and bringing an employer who harasses to Court'.<sup>9</sup>

#### Trips through the Courts

Most sexual harassment incidents are never reported and those that are often get resolved by Managers on the scene. Victims who seek legal redress face a hard road-the average civil lawsuit for sexual harassment takes two to three years. "It takes a superhuman effort to go to Court", says Alison Wetherfield Legal Director of the Now Legal Defense and Education Fund in New York City. In the U.S. it was only after the enactment of the Civil Rights Act 1991, that a victim of sexual harassment could claim punitive and compensatory damages.

Only four times in its history has the U.S. Supreme Court ruled in sexual harassment cases. And in all four instances, the justices have ruled unanimously for the plaintiff.<sup>10</sup>

In 1986, the Court held in *Meritor Savings Bank Vs Vinson* that on-the-job sexual harassment is a form of sex discrimination prohibited by Title VII of the Civil Rights Act. Six years later, the Court extended the principle to public schools in *Franklin vs*

*Gwinnett County Schools*.

Then in 1993, it held in *Harris Forklift Systems* that a workplace "permeated with discriminatory intimidation, ridicule and insult violates the law even if the victim has not suffered obvious psychological damage.

The latest decision came on March 4, 1998, when the Court ruled *Oncale v Sundowner Offshore Services*, that sexual harassment of a man by a male supervisor violates Title VII.

Oncale reinstated a lawsuit filed by Louisiana oil rig worker Jose Oncale, who quit his job after he was grabbed, taunted and threatened with rape in a shower by two men, including a supervisor.

Justice Antonin Scalia's short powerful opinion seems intended to allay the fears of a wider audience concerned that the changing rules of the American workplace are becoming too rigid.

Scalia announced four important conclusions in his opinion. The first is that Title VII's prohibition of discrimination "because of sex" protects both male and female employees from sexual harassment regardless of harasser's gender.

The second: Illegal harassment can be motivated not only by sexual desire but also by hostility. In his ruling, Scalia disagreed with some courts that have said same-sex harassment is outlawed only in the classic case of a gay supervisor preying on a worker of the same gender.

Third, he said the ultimate test is whether the harassment is so severe as to constitute actual "discrimination because of sex". The behavior must be "so objectively offensive as to alter the conditions of the victim's employment" and put him or her at a disadvantage compared to others because of sex.

Finally, Scalia concluded



common sense and social context count. In an instantly famous example, he said a pro football coach who "smacks a player on the buttocks as he heads on to the field" would not be guilty of sexual harassment. However, if the coach did the same to his office secretary, he might be in trouble.<sup>11</sup>

The experts disagree on the opinion's likely effect. Those who see the ruling as foreshadowing a further expansion in sexual harassment law seize upon Scalia's first two conclusions, and those who foresee a contraction cite the last two.

Civil rights groups are in the former camp. "The Court affirmed what we have always maintained that sexual harassment is about power, not sex, and that the sexual orientations of the people involved are totally irrelevant," says Elizabeth Birch, Executive Director of the Human Rights Campaign.

Steven R. Shapiro, the ACLU's legal director, lauded the Court for making clear "there is one set of rules. No one should suffer sexual harassment as a condition of going to work, regardless of whether you are male or female, gay or straight."

#### ***Boxing Clinton in: Paula Jones Case***

President Clinton, it must now be openly acknowledged has a "P" problem. P, of course is for Paula. But Ms. Paula Jones's husband Stephen, has taken to referring to the President of the US as a "Pervert". It must, however, be admitted that the army of women who claim to have experienced close encounters of the lurid kind with the U.S. President is swelling to incredibly preposterous propositions.

Paula Jones, a former Arkansas State Clerk said she was subjected to a crude proposition from then Governor Bill Clinton. But U.S. District Judge Susan Webber Wright, following precedent set by the 8th U.S.

Circuit Court of Appeals, dismissed Jones' case in part because she did not suffer a "tangible job detriment" after rejecting his alleged advances.

After a four year legal struggle in which the world had been titillated by lurid allegations and heated denials concerning the President's sex life, the lawsuit was finished and with it any clear and present danger of impeachment of the President (the accused).

Judge Wright did not try to determine whether a lewd advance had taken place in a room in Little Rock's Excelsior Hotel seven years ago, as Jones alleged. Nor did she clear Clinton's name. Wright simply said that even if everything Paula Jones alleged were true, which have constituted behavior that was "certainly boorish and offensive", it still did not meet the standards the law required to establish sexual harassment. "There are no genuine issues for trial in this case," Wright concluded in a 39-page opinion.

President Clinton may have held her close or tried to kiss her or even dropped his trousers but because Jones acknowledged that he had not threatened her and did not touch her when he allegedly exposed himself, he had not committed sexual assault under Arkansas law. As for harassment, Wright followed the well-trodden path of higher Courts which have defined two kinds: "quid pro quo", in which a plaintiff suffers for not submitting to a superior's advances, "hostile environment", the somewhat murkier area involving an abusive working environment.

Jones had asserted both kinds of harassment, but Wright made short work of each. Jones had suffered no "tangible job detriment". In fact she had been promoted and given a raise. Nor was there evidence of a hostile work environment. Jones continued to work at the Arkansas Industrial

Development Commission for 19 months. She never asked to be relieved of her duty of delivering items on a daily basis to the Governor's Office, never filed a complaint, told her supervisors of the alleged incident or sought counseling. If Clinton indeed exposed himself, Wright concluded, the act was not a sexual assault but "a mere sexual proposition or encounter, albeit an odious one, that was relatively brief in duration, did not involve any coercion or threats of reprisal and was abandoned as soon as plaintiff (Paula) made clear that the advance was not welcome."<sup>12</sup>

The decision was not welcome to Jones. Jones' lawyers pledged to appeal to Wright's decision, but even if they were successful in having the judgment overturned, there is little likelihood now that the President will be tried on these charges in the less than three years that remain in his second term.

In Washington, wishful aides predicted Wright's action would mean a quick end to Kenneth Starr's four year \$35 million investigation.<sup>13</sup> Although Starr was originally appointed to investigate the failed Whitewater land deal, his inquiry has spread to encompass the 1993 suicide of White House Lawyer Vincent Foster, and most recently, the Monica Lewinsky case. That investigation grew from the Paula Jones lawsuit when Jones' Lawyers, in an effort to show a pattern of harassment on Clinton's part, attempted to determine whether the President had lied having an affair with the White House intern and tried to cover it up.

A New Yorker piece referred to the present as "Post-Paula Jones". That alas, was premature. This country is still very much in the Paula Jones era. And, following Ms. Jones' decision to appeal against the Little Rock Court verdict throwing out her case, she, her case, and its implications for the



feminist cause are again the subject of debate.

### **Monica accuses President Clinton of sexual harassment**

The issue that rocked the media and created waves in international news was the Monica Lewinsky sexual harassment case, involving the U.S. President Bill Clinton. When the news struck the screen and made way in newspapers, the presidential allies were quiet and some speculated that the President might have to step down and give way to the Vice-President. The aides of the President were of the opinion that he never had the alleged sexual liaison with Lewinsky. But some believe that he may have to admit his relations with Lewinsky. *Time* American Magazine NEWSWEEK learned that Lewinsky visited the White House till mid January, after which her story surfaced. NEWSWEEK dealing with the entire story went to great lengths and obtained details.

One of Lewinsky's colleagues was Linda Tripp, an aide in the Pentagon public office. The two shared their gossips and experiences at high places. One such conversation between Tripp and Lewinsky was taped by Tripp without Lewinsky's knowledge.

Soon after this Tripp made a call at the office of Whitewater Independent Counsel, Kenneth Starr, informing him that the President was having an affair with a government employee. The taped conversation between Lewinsky and Tripp was heard by the investigating team. This could not be a piece of evidence because it was not authenticated, thus taping a conversation without the consent of the parties, according to the State of Maryland, was illegal. But if the information was true, it could lead to the impeachment of the President. Thus an investigation began and Tripp fixed a meeting with

Lewinsky. Tripp had a device which enabled the investigating agents to hear the conversation between the two ladies. It was shocking to the agents when they heard Lewinsky speak of Jordan (President's close friend and Washington Lawyer) and his assurance to her that she would not go to jail if she denied everything.

Starr decided to approach the Justice department to make his investigation official and seek permission from it to investigate the President and his friend for perjury and obstructing Justice Department.

The Justice Department approved Starr's wide power of investigating the matter and booking the President and Jordan for obstructing justice. Some sources revealed, that Lewinsky was willing to say that she had sexual relations with the President, only if she was given immunity. But the Prosecutors wanted her to testify to what the President and Jordan wanted her to say.

The President, unequivocally, denied all such accusations and repeatedly said that neither did he ask anyone to lie nor did he have any sexual relations with Monica Lewinsky. Hillary Clinton, on hearing the news, remarked that 'the allegations were false and when the person who is liked and admired is attacked, it is very painful'.<sup>14</sup>

Like just about everyone else in America, Bill Clinton had a sexual affair- if not dictionary- definition "sexual relations"- with intern Monica Lewinsky. It's likely, that he lied about that affair in a sworn deposition.

Media-savvy but legally unsophisticated liberal commentators, such as radio talk show host Tom Leykis, made a fairly persuasive argument about Clinton's presumed affair: "It's between Bill, Hillary, and Monica. It's none of our business. It certainly doesn't belong to Court". "Why are we asking questions about the President's sex life?" asks Leykis.

"Why is that relevant to anybody? Why should the President be put in position of having to lie about something that's none of our business in the first place?"<sup>15</sup>

Why indeed? The answer is "Because you asked for it. Demand it, Screamed and yelled and waxed indignant. You dedicated the 1996 Democratic National Convention to the cause. Remember 'The Year of the Women?' It was frenzy. And the number one agenda item was a ban on any hint of sexuality in the workplace".<sup>16</sup>

Congress had ratified in 1994, that sexual harassment is too serious a matter to be governed by normal legal constraints, the very same Democratic Congress that reauthorized the Independent Counsel statute rewrote the rules of evidence. The new rules allow defendant's sexual history- not previous allegations of harassment- to be dragged into sexual harassment suits (The plaintiff's history, however, was made inadmissible).

So the President of the United States can be asked, under oath, about his sex life. It doesn't matter if the sex was consensual or even if the woman made the first move. It doesn't have to be harassment; indeed, one claims anything of the kind in the Lewinsky case. But Congress chose to make every intimate detail a game. And if, like many a cheating spouse, the president lies to cover adultery, he is guilty of a serious crime-perjury, a potentially impeachable offense.

It's not clear if President Clinton will survive the allegations surrounding former intern Monica Lewinsky. Many partisan defenders of the administration have contended that the President has done no wrong and even if he did engage in dalliance, Bill Clinton's personal life is nobody's business. But it is clear that, through his own actions



those of his subordinates, President Clinton has continually undermined the theme that has dominated agenda :personal responsibility.

After six months of aloofness, Monica Lewinsky testified before the federal grand jury to answer questions that have almost paralysed the Clinton administration. Lewinsky and her lawyers opted to open up because she got total immunity from prosecution for whatever she might have said or done prior to the grant of immunity.

On August 17, '98, President Bill Clinton will answer questions from independent counsel Kenneth Starr. This looms large over America's political horizon, infact there is increasing speculation and a great degree of public anxiety over how the entire Monica Lewinsky affair will end.

If President Clinton gets caught in a lie, the consequences are too terrible to contemplate. It would lead to dismissal and ignominy. Here, Monica Lewinsky's trump card could well be the navy blue cocktail dress that the FBI forensic lab is now testing for any stain that might support Lewinsky's claim of a sexual encounter. If the FBI finds such a stain and a DNA match from President Clinton's saliva or blood, the President could well be on a difficult turf.

Beyond the legal skirmishes of this summer, one of the legacies of President Bill Clinton's legal struggle may well be a shrinking of confidentiality and privilege for his successors.

#### **The Clarence Thomas Hearings**

In October 1991, the Senate Judiciary Committee completed hearings to consider President Bush's nomination of conservative Appellate Judge Clarence Thomas to the Supreme Court. Two days before the scheduled vote, a startling challenge to Thomas's character arose. A radio reporter learned that the FBI had

interviewed a former government lawyer, Anita Hill. She told investigators that, a decade earlier, when Thomas was her boss, he had repeatedly subjected her to unwelcome sexual attention.

Thomas steadfastly denied Hill's allegations, the Senate approved his nomination, he was appointed Associate Justice of the Supreme Court. But the storm stirred up by Hill's charges wasn't over. Throughout the country, sexual harassment became a matter of heated discussion. Countless women were moved to discuss their own harassment experiences publicly.

Some people said they had learned only through the Thomas hearings that sexual harassment was illegal. Many were outraged by the Senate's unsympathetic treatment of Anita Hill. Some believed that the Thomas hearings sent a strong and discouraging message to harassment victims - when it's her word against his, he wins.' But others felt that by bringing the issue into the public eye, the hearings had a positive impact.

As a result of the hearings, even those who weren't sure what to think about Anita Hill and Clarence Thomas learned that sexual harassment is a pervasive problem.

#### **Victims right to collect damages under Federal Law**

Until the end of 1991, Federal Law did not allow harassment victims to collect much money. All they could win under Title VII were remedies that would reinstate them if they had been fired, give them promotion if had been denied one, back pay, and attain attorney's fees. There were no remedies for out-of-pocket expenses like medical bills or for emotional pain and suffering. Nor was there any way to assess punitive damages against the employer.

In the light of Anita Hill's testimony on sexual harassment,

Congress passed legislation strengthening several aspects of Civil Rights Law. The Civil Rights Act of 1991, gives victims of sex, race, and religions discrimination the right to sue for both 'compensatory' and 'punitive' damages. Further in February 1992, the Supreme Court affirmed that Title IX of the Education Amendment of 1972 gives students the right to recover from schools for sexual harassment.

Apart from the few sexual harassment cases which have managed to stay in news, make big headlines, involving huge sums of money, both the law and the enforcement system still pose formidable obstacles for the victims of harassment. The burden rests on the victim to prove both that harassment took place and that the offender's conduct was unwelcome. As new statutes are passed and new cases decided, sexual harassment law proceeds on its evolutionary course.

#### **Effects of sexual harassment**

Victims of sexual harassment can be rightfully compared to the victims of crime. Except that crime victims generate empathy and sexual harassment victims generate accusations and verbal brickbats. They could cruise through their lives nursing broken spirits for many years.

Sexual harassment can have serious psychological, physical and economic repercussions not only for the victim, but in severe cases, it can devastate the victim's family. Further, victims of sexual harassment experience a whole gamut of emotions swinging from extreme irritability to severe depression. Victims tend to revel in self-pity, self-blame and self-doubt, questions like 'why me?' constantly pricking their conscience. Psychological distress of this enormity can ravage the victim's physical health. Sexual Harassment



victims don't always recognize the connection between their physical symptoms and the stress they are experiencing. But sometimes, the physical distress is what finally makes the victim realize she has to take action.

Being harassed is hard enough. But many victims suffer economically as well. They lose their jobs and settle for lower-paying ones. They bear attorney fees and foot Doctor and counseling bills. 'Leaving a job can mean forfeiting time accrued toward a pension or seniority built up toward a promotion'.<sup>17</sup>

Sexual harassment hurts the company as well as the victim and her family. There are serious financial losses due to absenteeism and lower productivity due to rehiring and retraining when talented staff leaves because of harassment. Harassment can adversely affect other employees too, not just the direct victim. Women who fear of being harassed by a particular employer go out of their way to avoid any kind of interaction or contact with the person. As a result they may slow their own career advancement or reduce their efficiency.

Such costs are measurable. But who can measure the damage to a Company's reputation, especially if such cases are reported in the media. Management might just as well put up a sign announcing, 'Talented People Stay Away'.

### **Recommendations**

For most large Organizations, the complete elimination of sexual harassment is simply not a realistic goal in the short term. Workplaces mirror the cultures from which they draw their values, their resources and their employees, and despite obvious advances, American culture remains racist and sexist to a significant extent. A meaningful standard of organizational success in addressing

sexual harassment is possible to define.<sup>18</sup>

First, the issue must be given extremely high visibility as a legitimate problem, and it must acquire the status of a taboo. Second, employees must understand what constitutes both inappropriate and illegal behavior, and they must be absolutely confident that swift and proportional remedies will be applied when indicated. Actual and potential victims must feel a real invitation to complain and a reasonable sense of safety in doing so. Managers and Supervisors must be trained to respond to problems quickly and effectively. At the very least, overtly offensive behaviour should diminish over time as training and enforcement initiatives take hold.

Organizations committed to dealing with this problem may wish to implement the following sequence of basic steps:

1. Begin by establishing a strong anti-harassment policy which takes the matter out of the realm of debatable politics and advocacy and places it squarely into the realm of law.

2. Create administrative orders which identify sexual harassment as an ordinary workrule violation and which connect such violations to disciplinary remedies.

3. Involve all Managers and as many employees as feasible in the creation of basic policy and procedural documents.

4. Establish a complaint investigation and resolution process which is clearly tied to the chain of command but which utilizes specialists from core staffing functions.

5. Consider the development of an Employee Assistance Program (EAP) to provide counseling and referral services to employees experiencing exceptional stress due to controlled abuse, alcoholism and

family problems. This stress, ignored, may be expressed as harassing behaviors.<sup>19</sup>

### **Conclusions**

By drawing attention to the complex implications of women's increasing role in formal work, and in particular to the potential for backlash and dysfunctional male responses, we are in no way arguing that the efforts to achieve greater equality are misplaced. Far from it, they need to be reinforced.

To acknowledge the fears of many men have about the changes that are under way as a real social force does not mean substituting compassion for men's angst with concern with women's oppression. Rather, it indicates that we need to find ways of making much clearer the benefits that both men and women stand to gain from a transformation of gender relations at work. Men need to learn to support each other in the process of forging new masculine identities, as well as supporting women in the transformation of male institutions. The future, as always, will be the product of the choices that both men and women make.

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# SUPREME COURT WRIT PETITION *Vishaka & Ors Vs State of Rajasthan & Ors* *Excerpts*

IN THE SUPREME COURT OF  
INDIA CRIMINAL ORIGINAL  
JURISDICTION WRIT PETITION  
(CRIMINAL) No. 666 - 670 OF 1992  
IN THE MATTER OF:-

1. Vishaka 0-7 Hospital  
Road, Jaipur-302001

2. Mahila Purnvas Samou B-118  
Mangal Marg, Bapu Nagar Jaipur-  
302004

3. Rajasthan Voluntary Health  
Association C-80 Ramdas Marg Tilak  
Nagar Jaipur 302004

4. Kali For Women A-36  
Gulmohar Park New Delhi-110 049

5. Jagori B-5 Housing Co-  
operative South Extension Part-I New  
Delhi- 110 049...Petitioners Versus

1. State of Rajasthan notice to be  
served through the Secretary Dept.  
of Home Affairs, Jaipur.

2. State Women and Child  
Welfare Dept. through Director  
Women's Development Opposite  
Raja Mandir Cinema, Jaipur.

3. Secretary, Dept. of Social  
Welfare, Jaipur.

4. Union of India Notice to be  
served through Ministry of Home  
Affairs North Block New Delhi-1  
...Respondents

To,  
The Hon'ble Chief Justice of India  
and His Companion Justices of the  
Supreme Court of India

The humble petition of the  
petitioners above named

**MOST RESPECTFULLY  
SHEWETH:-**

1. This is a Petition filed under Art.  
32 of the Constitution of India wherein  
the petitioners seek relief from this  
Hon'ble Court for violation of the  
fundamental rights of working women  
under Articles 14, 19 and 21 of the  
Constitution of India.

2. In the present case the  
petitioners seek relief for such  
violations in respect of repeated acts  
of sexual violence experienced by  
such women while performing  
functions for the benefit and on behalf  
of the Respondents No.1 and 4 and  
in furtherance of the said  
Respondents' declared objective  
towards the upliftment and  
advancement of women. In this  
regard the petitioners seek further  
relief in respect of the Respondent  
No.1 and 4's failure time and again  
to recognise that working women, in  
particular those working as change  
agents for the benefit or on behalf of  
the state are by virtue of their gender,  
consistently vulnerable to various  
forms of sexual harassment and  
abuse.

3. The Petitioner's submit that in  
the present case, the said  
Respondents failure in this regard has  
been clearly manifest in the gross and  
negligent abuse of power by  
Respondent No.1, its agents,  
servants, and others in response to  
the brutal gang rape of the Bhanvari  
Bhai of Bhateri Village, Bassi Tehsil  
on the 22nd of September this year.  
As a result of the said Respondents'  
acts and omissions, Bhanvari Bhai  
and others before her have had to  
endure the humiliation and insult of  
social ostracism as well as  
emotional, physical and psychological  
terror at the hands of dominant  
powers within entrenched Village  
systems. Such powers have thereby  
threatened to wholly undermine  
and intimidate the longstanding  
achievement and effectiveness of  
women participating in increasingly  
successful intervention and  
awareness work, such as that set up  
by the Respondent No.2 & 3, or

otherwise as change agents for  
benefit or on behalf of the Respon  
No.1. The Petitioners further stat  
the outcome of this petition will  
far-reaching consequences  
women participating in work  
development and intervention g  
as well as those functionin  
change-agents all over the cou

4. The Petitioners further s  
that in the event the Responde  
1 and 4 are not compelled  
recognise the inherent risk  
danger to women working as ch  
agents, the net effect will be  
back the rights of women substa  
in violation of article 14  
constitution of India.

5. The Petitioner No.1 is a  
working in the field of education  
a focus on rural women and ch  
The said petitioner has linkage  
groups/programs who have a  
approach to women's empower  
elsewhere in the country. Th  
petitioner's involvement in Raj  
has for many years been pr  
through the Respondent No.3

6. The Petitioner nos. 2 to  
women's group who also deal v  
empowerment and individual r  
women and in particular de  
cases of oppression of wome

7. The said petitioners hav  
and again dealt with sexual v  
inflicted upon working women  
performing functions for the be  
on behalf of the Respondents  
furtherance of the cause of  
in India as a whole. The Pet  
submit that in the course of  
with such cases of sexual v  
and abuse of working wom  
petitioners have met with co  
failure on the part of  
Respondent Nos. 1 and 3  
functionaries to respond ade



to the needs of working women who are constantly vulnerable to sexual harassment given the nature of the work they carry out. The said petitioners submit that the gross negligence and abuse of power by state officials of Respondent No.1 arising out of the rape case of Bhanvari Bhai combined with the National Commission For Women's condemnation of such negligence and abuse based upon its own independent inquiry is further evidence of the Respondent's utter disregard and neglect of working women which will have far reaching consequences for women workers participating in similar women's development, empowerment, and intervention programmes which exist all over the country. That apart from the cause of women involved in the present case, public interest demands that the dangerous precedent being set in the case of Bhanvari Bhai requires the attention of this Hon'ble Court under Articles 14, 16, 19, and 21.

8. At the outset the petitioners submit that with the advent of increased awareness and empowerment of women in the country, the growing contribution of women as change agents at the rural level has developed into a national phenomenon. That contribution has found expression at various levels resulting in mass awareness and the advancement of women's rights, particularly at the rural levels. Women are becoming increasingly trained in various vocations such as ANM'S Aanganwadis, Sathins, Sakis etc. The success of such empowerment amongst women has clearly found expression in very positive ways. However success has also brought to the forefront the fact that such women working as change agents often have to encounter hazardous situations arising out of entrenched village norms where women and female children have long been tolerated as

subservient to their male counterparts. The case of the Bhanvari Bhai has clearly brought to light the most brutal expression of this as well as of the Respondent No.1 and 4's utter disregard and failure to recognise that women are systematically vulnerable to various forms of sexual abuse given the nature of the work they do in such state run programmes or in their work as change agents for the benefit and/or on behalf of the state which is in violation of articles 14, 19, and 21 of the Constitution of India.

9 For the sake of clarity, it is submitted that sathins are engaged by the WDP to carry out a specific function under the programme. That is the Respondent No.2 through WDP lays central emphasis on the formation of live communication forums at the village level. It works on the assumption that if women can come together, develop a mechanism in their specific situation for fighting their oppressed status. The WDP therefore lays great emphasis on awareness building in the hope of facilitating sustained and organised resistance to processes that go against women. One such focus of this process is at the village level to bring the issue of violence against any woman or female out into the open. The issue is discussed in specially organised village meetings, jajams (routine monthly meetings), training programmes and block level meetings where decisions are taken on how to deal with the issue. It follows therefore that the entire success of WDP is largely based on the strength, confidence, assertiveness and awareness building skills of saathins counter this custom which destroyed the lives of female children. But given that such a custom was of a deeply entrenched nature, despite its adverse and destructive effect on female children in the community, a joint report published by the Institute

of Development Studies and others in 1986 clearly reveals that many women felt "they could not escape from being a party to such marriages, as the decision of stopping a child marriage could not be taken at an individual level. Their caste would ostracize their daughters if they were not married early. Who would marry them later, they asked."

10. In this context the Respondent No.3 through the WDP and with the assistance of its sathins including Bhanvari Bhai became actively involved in the matter of stopping child marriage. The said Respondent along with WDP found strength from the fact that the Respondent No.1 was also supporting the effort against child marriage.

11. Against this background Bhanvari Bhai along with a Pracheta (block level worker) and the Project Director of District Women's Development Agency (DWDA), both functionaries of WDP worked to persuade the people in the area against child marriage. At the time it was clear that some of the influential Gujar families were planning child marriages as a result of which there was definite disapproval from the local leaders and the Pradhan over the issue.

12. When Bhanvari Bhai visited Ram Karan Gujar of Bhateri and tried to convince him not to get his one year old daughter married on Akha Teej, she met with a hostile and aggressive response particularly from Badri Gujar. The Vidhayak (MLA) Kanhaiya Lal Meena, an independent of the area, also strongly opposed Bhanvari Bhai due to certain vested interests.

13. In response to the appeal of the District Collector V. S. Singh on child marriage planned for this year, the said D.C. demanded that a list be prepared by all sathins in the district of child marriages proposed to take place on the occasion of Akha Teej. The name of Ram Karan Gujar as well



as those of some other families belonging to various castes/groups of neighboring villages were included in the said list. Throughout the WDP and sathins worked with the clear intention of stopping child marriage through more effective forms of persuasion and protest which had been developed in the course of WDP training.

14. Despite failure on the part of the police to stop the aforesaid marriages the fact of police to stop the aforesaid marriages the fact of police action was itself perceived by most people in the village as directly connected with the sathins efforts, including that of Bhanwari Bhai's, to convince them against child marriage through police action. As a result, the said sathins incurred the wrath of other castes and communities in neighboring villages as well. The Sathins were being constantly threatened and warned not to enter the village.

15. Various reports were received by WDP that such communities being agitated and angry over the interference with child marriage threatened to take revenge from the sathins. From the Pracheta of Bassi Block (Roshan Devi Chaudhary) reports of May 1992 it is clear that the overall atmosphere in the village as well as in the neighboring areas was very tense and threatening.

16. It is clear that as a result of the police action, and the fact that somehow this was being associated with WDP's earlier efforts to stop the marriage of Ram Karan's daughter as well as others, the aforesaid reports reveal that the atmosphere in the villages had become increasingly tense and hazardous for sathins working in the area. With the marriage of the one year old child (Manbhar) having been performed the Gukar Community were clearly enraged at the WDP and registered its anger by announcing openly that "Bhanwari

must be taught a lesson".

17. The ensuing harassment of Bhanwari Bhai began to manifest itself in various ways. A tree was cut and fodder taken away from her field around the 15th of May, 1992. At the same time Bhanwari was made the victim of a full scale economic and social boycott which continues until today. The entire Gujar community in the village was instructed not to sell milk either to Bhanwari or to her family and not to buy any earthen pots made by her and her husband. Bhanwari's husband Mohan, who used to supplement the family income by pulling a rickshaw in Jaipur, could no longer do so as he was unable to leave his wife alone in the village. As a result Bhanwari Bhai and her family have had to face serious economic hardship.

18. Sometime in end of May, Badri Gujar came personally to Bhanwari Bhai's house to register his anger and beat up her husband. When Bhanwari Bhai tried to intervene and argue that her husband had nothing to do with her role as a Sathin, there was a scuffle and Bhanwari's bangles were broken in the process. Shortly thereafter the Project Director DWDA was also threatened by Badri Gujar.

19. In addition, during the Rajaswa Abhiyan (Revenue Campaign) in Bhateri on June 2, 1992 Bhanwari Bhai was allotted a piece of land in the village. During the same Rajaswa Abhiyan, the Pracheta of the block was admonished by the local MLA Kanhariya Lal Meena for WDP having played such an active role in trying to prevent child marriages during the Akha Teej campaign. To this, her significant reply was "I am committed to trying to enforce the law of the land in spirit and in letter. As a legislator, if you have no faith in the law, you should try to change the law". The above exchange clearly reveals the ambivalence of the Respondent No.1

political functionaries and consequent harm at the vulnerable level.

20. In response to the aforesaid hostile environment Sathins in neighboring Villages, Pracheta as well as the Project Director visited Bhanwari at brief intervals. Having acted faithfully in carrying her duty to stop child marriage in the area, Bhanwari continued to take legal action, or to lodge an F.I.R. as she felt this could only worsen the tension. Her position was consistent with her WDP training which promoted discussion and persuasion strategies rather than police action. Instead the WDP functionaries assembled themselves into a committee and opted for a face-to-face dialogue with the community. A jajam (village level meeting) was then convened on June 22, 1992 at Bhateri. Pritam Pal (the Project Director DWDA) was proceeded to leave and was unable to attend the jajam on June 35. However she had already informed the District Collector on June 18 and that she was very worried about Bhateri and Bhanwari's protection. The District Collector replied that he would look into the matter. At the said jajam on June 22, Badri Gujar again reiterated his threats stating that he "could not guarantee that no harm would be done to Bhanwari in the next six months".

21. At this time the Postmaster (Mr. Nathu Joshi) who also runs a shop in the village employed the Bhanwari Bhai to manage the Piau (water kiosk) shop on a wage of Rs. 300 per month. However, he was soon forced to discontinue her services as five persons came and roughed up for daring to come to her shop.

22. Significantly, Badri Gujar met Godavari (ex-Sathin of V. Patan) at Patan around this time. According to an affidavit given by Godavari Devi on 19-10-92,



about May 12, 1992, one week after Akha Teej Badri Gujar, one of the five who subsequently raped Bhanwari Bhai, is stated to have said "What I will do to her will not leave her in a state to walk or show her face to anyone.

23. Around 6:00 p.m. on the evening of September 22, 1992 Bhanvari Bhai and her husband Mohan were working on their field in the village. While Mohan had gone to relieve himself in the neighboring field, 5 men Ram Sukh Gujar, Ram Karan Gujar, Badri Gujar (Ram Karan's younger brother), Gyarsa Gujar and Shravan Sharma attacked him with lathis and beat him up. On hearing his screams, Bhanvari Bhai suspecting that he had been bit by a snake, called back. Receiving no reply she anxiously rushed to the spot. Taking advantage of Mohan's injured state, two men Shravan and Ram Karasn Gujar bodily held Mohan down. While Ram Sukh Gujar caught hold of the Bhanvari Bhai, Badri and Gyarsa took turns to rape her. To prevent her from screaming her odhni was stuffed into her mouth, causing her to feel suffocated. One of them pulled at her locket and ear-rings which were connected by a common thread and took them away. Bhanvari Bhai was threatened with dire consequences if she were to speak about the incident.

24. Despite their injured condition, Bhanwari Bhai and Mohan somehow managed to reach home. Later Bhanwari appealed to two families in the Village for help. One was Shravan Sharma's brother, Rameshwar Sharma whom she considered to be a sympathizer. The other was the local Postmaster (Nathu Joshi) who had earlier employed here at his Piau. However, she was rebuffed by the latter's wife for having already brought enough troubles to them. They advised Bhanvari Bhai to seek help from the "programme officials".

Despite her shocked state it was because of her WDP training that she refrained from bathing, washing or changing her clothes. Bhanvari Bhai did not go to the Chowki at Khatiwara post because not only was she afraid that Mohan and she might be attacked on the way at night she also feared for the safety of her two children aged 23 old daughter Rameshwari and 8 year old Mukesh.

25. As the last bus from Bhatari leaves at 4.45 p.m. Bhanvari Bhai along with her husband reached Patan, only by the first bus the next morning and shared her plight with Krishna, a sathin of the Village. Together with Krishna, Bhanvari Bhai and Mohan reached Bassi. Given their existing vulnerable status Krishna went on to Jaipur DWDA to mobilize help while Bhanvari Bhai and Mohan waited at Bassi.

26. On the morning of September 23, 1992 a Pracheta (Rasila Sharma) had gone to the DWDA office to file her monthly work report. While she was there, sathin (Krishna) arrived at the office in search of the Project Director. She wanted to bring to her immediate notice the gang-rape of Bhanwari Bhai and the need to mobilize help for her. Since the Project Director was on tour, the Pracheta left a message and immediately rushed with Krishna to Bassi arriving at around 1 in the afternoon. Bhanvari Bhai narrated the incident which took place on September 22 in between spells of crying.

27. Thereafter, all four including Bhanwari Bhai together went to the Bassi Police Station to lodge the FIR. At this point resistance from State functionaries of the Respondent No.1 became clear. Rather than register the FIR as required by law, Bhanwari Bhai and those accompanying her, spent one hour arguing with the Dy. S. P. Rajendra Joshi and Thanedar Chittar Singh who expressed skepticism about the incident. The

DYSP repeatedly asked them as to whether they were reporting true facts. When the pracheta asked the Dy. S.P. as to why would the Bhanvari Bhai and Mohan lie, he replied 'Aji Saab, Ranjish ke maare jhoot bhi likhwa dete hain' (Due to personal enmity people sometimes make false allegations). He inspected Bhanwari's back for signs of injury and also took note of the scratches on her forearms and legs. Not only was the Dy.S.P. obviously disbelieving of the report, but upon being asked by Pracheta Rasila as to why he thought the Bhanvari Bhaoi was lying, he retorted "Madam, do you know the meaning of rape? Ultimately the FIR was lodged and the AST Ghanshyam Sharma was deputed to accompany Bhanvari Bhai and the rest to the PHC, Bassi for the medical examination.

28. The male doctor present at the PHC, Dr. Bhardwaj refused to conduct the examination and neither of the two lady doctors posted at the PHC was available. Therefore Bhanvari Bhai was referred to SMS Hospital in Jaipur. Significantly, it was revealed that the reference given by the PHC doctor, Dr. Bhardwaj requested a medical examination for confirming the age of the victim rather than rape. So Bhanwari was brought to Jaipur. While a medical examination of Mohan was carried out, the Medical Jurist at SMS Hospital, Dr. P.C. Vyas, Jaipur refused to conduct a medical examination on Bhanwari without orders from the Magistrate.

29. Meanwhile, on 23.9.92, Roshan Sharma, Pracheta bassi returned from her tour at 11 p.m. Early next morning, she informed the Director DWCD Anjana Bhushan, who instructed the Additional Director, Venu Gupta to personally visit the Mahila Thana and take immediate steps to ensure that the medical examination took place.

30. At around 2:30 p.m., the



Additional Director telephoned the Additional SP to check on the progress of the case and was informed that the Dy.S.P. Rajendra Jain had been entrusted with the case. The Dy.S.P. informed the Director, DWCD, that the Magistrate had eventually passed orders at 5:00 p.m. However according to the order, examination "for rape and injuries" was specifically struck off and Bhanwari Bhai was sent for only a general medical examination.

31. A medical examination was ultimately carried out on Bhanvari Bhai and a vaginal swab taken. The medical report clearly corroborated the fact that there were injuries on the petitioner's hand and legs caused by a blunt and simple instrument. However the report also revealed that, contrary to proper medical procedure, the medical examination was conducted after 48 hours after the rape. The medical personnel failed to take an inter uterine examination as was required.

32. The petitioner and her husband were sent to Bassi thana Accompanied by The ASI. At this point despite knowing that the petitioner did not have change of clothes, Bhanvari was told to deposit her lahanga as evidence. Despite the said petitioners assurance that she be allowed to go home and change and then deposit the lahanga the police at Bassi refused. The petitioner was compelled to cover herself with her husband's blood stained turban, and had a humiliating 3 km walk back to the nearest sathin's village at Khapuria at nearly 1:00 a.m.

33. On the morning of 25.9.92, a group of women reached Bhateri and found Bhanveri bai in a severely demoralised and shocked state. She was physically sore, bruised and weak. After rendering emotional soccor to Bhanvari and her family they then visited the site of occurence and attempted to discuss the issue with

the villagers but met with hostility.

34. The group decided to take Bhanvari back to Jaipur for medical help. En route to Bassi, they crossed the vehicle of Dy SP who along with the thanedar Bassi was proceeding to Bhateri for investigating the case. Since the Dy SP inisisted on Bhanveri Bai's presence during the investigation the group returned to Bhateri. The two persons whom Bhanveri stated to have contacted on the night of 22..92 were questioned closely. Although they both admitted that Bhanveri Bai had informed them of the anyaya (injustice) meted out to her, both professed not to have construed from her words that the word anyay referred to rape. (It is note worthy that in common village parlance rape is usually referred to as anyay or bura kaam rather than as balatkar.

35. In full public, acting wholly outside his official capacity, the DySp then attempted to ensure the truthfulness of the two persons' statement disclaiming the occurence of rape by requesting that they touch ganga jal (holy water). Bhanveri bai then offered to do the same to verify the truth of her story whereon the thanedar replied "by doing so she would make the ganga jal impure.

36. Upon being asked to take Bhanveri Bai's torn blouse as evidence the DySp expressed disbelief and pointed out that the said petitioner's back was not grazen, despite knowing that Bhanveri bai's had flung onto a grassy surface. The obvious scratches on her arms, legs and neck from the thorny bushes were taken of as of no consequence by the said DySp.

37. The petitioner pointed out that 3 days having passed since the brutal rape of Bhanveri bai, no effort was made on the part of Respondent no.1 functionaries to track down the culprits or bring them to book. In fact the said functionaries made

every effort to ensure that Bhanveri bai's complaint was publicly disclaimed and Bhanveri humiliated.

38. In addition to the aforesaid actions of Bhanveri bai the petitioner brought before the Hon'ble court similar instances of sexual assault of change aged women in the course of their duty which accounts for only a handful of cases.

68 In May 1985, Manju Singh was selected by WDP for training as a sathin and in mid 1987 was selected as an Anganwadi worker at Maahendragarh. On 1.10.1987 Manju was sexually assaulted at Aangadwadi premises.

69 Mohan bai had been working as a sathin in the WDP since 1985. On August 25, 1991, the Sargodha after engaging her in conversation about her role as a sathin attempted to sexually assault her. Despite her complaint to the police authorities no action was taken.

39. Gayatri Sharma residing at Fatehpura, has been working as an Anganwadi worker in village Tarn Taran for a number of years. On 9.5.92 she was sexually assaulted by two boys. Despite her having her file for FIR, no arrests were made. Gayatri had to incur the social ostracism and anger of her village.

40. Aggrieved by the total disregard of respondent no. 1 in expediting a quick and efficient inquiry into the case of Bhanveri bai and total inaction in offering any redress to and being fearful of the far reaching effects of such failure as the refusal on the part of respondent no. 1 to recognise that women workers are most vulnerable to sexual harassment and abuse, the petitioner invokes the jurisdiction of the Hon'ble court.

#### **FOUNDATIONS**

1. That respondent no. 1 and its functionaries through their total inaction in offering any redress to and being fearful of the far reaching effects of such failure as the refusal on the part of respondent no. 1 to recognise that women workers are most vulnerable to sexual harassment and abuse, the petitioner invokes the jurisdiction of the Hon'ble court.



her redress thus in violation of Article 14 of the Constitution of India.

II. That the repeated acts of sexual violence experienced by working women in particular those performing functions for the benefit of and on behalf of respondent no.1 and 4, are by virtue of their gender consistently vulnerable to various forms of sexual harassment and abuse is in violation of Articles 14 and 21 of the constitution of India.

III. That given the ongoing and repeated instances of sexual harassment and abuse experienced by working women, and the failure on the part of Respondent nos.1 and 4 to recognise the same as an inherent occupational hazard for all working women, and in view of inadequate evidentiary and technical requirements of the investigative process in sexual harassment and rape cases which result in a denial of

justice for women, the petitioner submits that the Hon'ble court be pleased to direct that a committee headed by the National Commission For Women in consultation with women's groups and individuals as well as lawyers be appointed to prepare and submit guidelines on sexual harassment to be submitted for consideration by respondent no 4 within a stipulated time with a view to implementing the same. The petitioner submits that the proposed guidelines address the following.

(1) The nature of sexual harassment as experienced by women in workplace.

(2) The standard for measuring liability for sexual harassment of a woman by persons in authority over her or by her co workers.

(3) The liability of the state and the preventive steps required to be taken by it with respect to a woman who

while acting in furtherance or as agents of change in different government programmes is sexually harassed in course of doing such work.

(4) The nature of the remedy to be available to a woman who has been sexually harassed in the course of doing such work.

#### Prayer

Issue a writ, order or direction in the nature of Mandamus or any other appropriate writ directing respondent no 4 to constitute a committee to frame guidelines for the prevention of sexual harassment and abuse of women.

Issue a writ or order or direction in the nature of Mandamus or any other appropriate writ directing respondent no 1 to pay compensation of rupees 10 lakhs to Bhanveri bai.

Pass such other writ or directions as this Hon'ble court deems fit.

□



**REPORTED JUDGEMENT**  
**1997 (6) Supreme Court Cases 241**  
**(Before J.S. Verma.C.J and Sujata V Manohar and B N Kirpal.JJ)**  
***Vishaka & Ors petitioners v State of Rajasthan & Ors***

VERMA,C.J.- This writ petition was filed for the enforcement of the Fundamental rights of working women under Article 14, 19, 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 of 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 workplaces 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 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 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 practise 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. A writ of mandamus of such a situation, if it is to be effective, needs to be accompanied by directions 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 Article 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 of this social problem of considerable magnitude. In addition to Ms Meenakshi Arora and Ms Naina Kapur

who assisted the Court with commitment, Shri Fali S. Nariman appeared as amicus curiae and rendered great assistance. We on record our great appreciation to every counsel who appeared in the case and rendered the necessary assistance to the Court which enabled us to deal with this important 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 eradicating this social evil. Some provisions of 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 or place of birth - [1] The State shall not discriminate against any citizen on grounds only 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 special provision of women and children".

**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**

"51-A Fundamental duties - It shall be the duty of every citizen of India [a] to abide by the Constitution and respect its ideals and institutions ...



[b] - [d] xxx xxx  
xxx

[e] 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".

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 -

[a] - [b] xxx xxx xxx

[c] foster respect for international law and treaty obligations in the dealing of organized peoples with one another; and

#### 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 - I - Union List

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

In the absence of domestic law occupying the field, to formulate

effective measures to check the evil of sexual harassment of working at all workplaces, 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 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 is, therefore, available till Parliament enacts legislation to expressly provide 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 requirement 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 workplaces to curb this social evil.

Gender equity 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 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 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;

[f] The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

#### ARTICLE 24

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

13. 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 pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may 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 of coercion in the work place".

The Government of India has ratified the above Resolution on 25-6-1993 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 equality in our Constitution.

The meaning and content of the fundamental rights 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 v. Teoh* <sup>(1)</sup> has

recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of Bill of Rights in the Constitution of Australia.

In *Nilabati Behara v State of Orissa* <sup>(2)</sup> a provision in the ICCPR was referred to support the view taken that "an enforceable rights compensation is not alien to the concept of enforcement of 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 in 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 workplaces, lay down the guidelines and norms specified hereinafter for observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Articles 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as a law declared by this Court under Article 14 of the Constitution.

17. 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 spe-



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 in 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 work place 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 :

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 to the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

### **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 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.

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.

These 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 workplaces for the prevention 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 .

[a] Express prohibition of sexual harassment as defined above 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 orders 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 workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.



#### **4. 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 victimised 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.

#### **5. Disciplinary action.**

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

#### **6. Complaint mechanism**

Whether or not such conduct constitutes an offence under law or a breach of the service rules, and 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 counselor 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 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. 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.

#### **9. Awareness.**

Awareness of the rights of female employees in this regard should be created in particular by prominently displaying the guidelines [in accordance with 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 should take all steps necessary to ensure that reasonable steps are taken 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 the private sector.

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

These directions would be binding and enforceable in law until such legislation is enacted to occupy the field.

#### **Footnotes:**

1. 128 Aus LR 354
2. (1993) 2 SCC 746: 1993 SSC 527