

**Q.** How would you define sexual harassment?

**Ans.** I'd like to explain what I mean by sexual harassment. Sexual harassment occurs when a woman, despite having clearly indicated her disinterest, is pressured into tolerating or accepting undesirable sexual advances by someone who is in a position of power over her and is able to harm her interests if she declines to tolerate these advances or to have sexual relations with him. For example, a boss who threatens, overtly or covertly, to withhold the promotion of a junior colleague or get her fired from the job if she doesn't respond to his sexual overtures, or a professor who uses his power as a member of a selection committee to coax or coerce a women student into a sexual affair, have committed acts of sexual harassment.

Even if a woman takes the initiative in offering a sexual bribe to a man in a position of power to escape a difficult predicament or extract a favour, the man in a position of power who accepts the bribe would still be guilty of sexual harassment. As someone in a position of power, he has a special responsibility to ensure that women working under him do not have to debase themselves simply to get their due or offer their bodies as a bribe to extract extra favours.

If a boss repeatedly makes sexual propositions to a woman employee, day after day, with or without any physical overtures, despite her repeatedly indicating that she finds his advances offensive, he can be

rightly accused of sexual harassment. As someone working under him the woman has little choice but to suffer it daily and constantly. In most jobs, she has no way of escaping these unwanted sexual advances except by quitting. If she quits, she may not be able to get another job at all, or one that pays enough. Repeatedly making advances, even if they don't go beyond the verbal, toward someone who has no option but to suffer them, makes a boss guilty of sexual harassment.

I may be accused of using more stringent criteria for men. But then we are not living in an equal society. We live in a world where men have a near total monopoly of power- economic, political, social. There is at best a microscopic sprinkling of women, mostly token figures, at the top decision making layers of our society. Therefore, women have to enter the job market or the political world on men's terms, which are more often than not highly disadvantageous to women.

**Q.** As a Social activist, how serious do you perceive the problem of sexual harassment is and which section of women in our society is least or most vulnerable to it?

**Ans.** The problem of sexual harassment is part of a whole syndrome of discrimination and sex exploitation that women are subjected to in most societies. But it is important not just because this form of oppression is more gender specific than most others but also because women become even more vulnerable if they protest about it. The veil of silence cast over this

particular form of exploitation makes it much harder to fight against or seek redressal.

Sexual abuse for women comes first and foremost at the hands of those supposed to be their near and dear ones- those supposedly meant to protect them from aggression from the outside world.

The problem of sexual harassment affects women of all classes, strata and communities. Very few women, even among the supposedly privileged sections of society, are likely to have altogether escaped various forms of sexual harassment especially if they do not stay within the extremely narrow and debilitating boundaries and norms set by their community and family. However, I will not be talking about the vast majority of poor urban or rural women who bear the worst forms of sexual violence and coercion.

I'll confine my attention to the experiences of a tiny segment of our population- university students and middle class sections of society. The reason for narrowing down the focus to this group is simply that someone who has taught in Delhi University for several years, I am most familiar with the problems of women in this field. However, I am well aware that women in universities, coming, as many of them do, from relatively elite backgrounds, are the least vulnerable among the various categories of women who venture out of home to seek employment. But the accounts I have put together do point to a general pattern. Sexual harassment is not so much rooted in individual inclinations towards power plays, rather, women become more or less vulnerable



depending on how much control men have over their ability to earn a livelihood or to thwart their chances of acquiring a degree or skills which will equip them for entering the job market.

Another reason for concentrating on the experience of middle and upper middle class women is that they are more likely to take their humiliation silently for fear of seriously jeopardizing their status and survival within their own family and kinship group.

The predicament of women from these privileged strata demonstrates that if well-educated women from well-off families are unable to effectively resist sexual harassment and abuse, how much more difficult it is likely to be for women from vulnerable and poorer sections of society to resist this form of exploitation.

Q. What are the problems associated with sexual harassment?

Ans. Another related dimension of the problem, the use of sexual slander as a weapon to keep women in a perpetual state of fear, the fear of losing izzat in a way that can affect a women's very chances of survival, and result in loss of family support, of a job, and in being treated as a social outcaste.

Sadly enough, women may be subjected to sexual slander not only in situations when they are suspected of having violated some norm of sexual behaviour. Equally often they may become targets of slander when as victims they dare openly protest against sexual harassment or abuse. It's fairly common for a man accused of sexual harassment to start a counter campaign against the woman alleging sexual misconduct on her part. Infact threatening to make such allegations is one of the

most frequently deployed weapons used by men to frighten women, and to keep them subjugated.

Q. What weapon do men use to maintain their dominance over the female counterpart?

Ans. Aggressive sexual encounters are used by men as one of the means of maintaining dominance and control, and often as a weapon for humiliation as well. When men use their power to seduce or compel women into sexual relations, it often has little to do with mutually sought after physical pleasure. Sex is frequently used as a weapon to try to debase the woman, to train her to accept a demeaning self view, to see herself as a thing rather than a person in her own right, a person who can demand and get her due. If in any society men feel safe in demanding sexual bribes or inflicting sexual harassment with impunity and actually get away with humiliating women in this fashion fairly frequently, it is a good indication of a gross power imbalance between men and women.

Q. Can you explain with the help of an illustration any instance where authorities tried to protect the culprit when matters of sexual abuse were brought to its notice?

Ans. Even when women raise timely protests the outcome is not necessarily very encouraging. In the vast majority of cases where such instances of sexual abuse come to light the authorities invariably protect the culprit and further punish the victim- in those few instances where they don't succeed in silencing her in the first place. Let me illustrate this by another example from Delhi University. J had opted for a newly

introduced course during semester studies for M.A. the books required for the course were not available in the market. The professor teaching the course offered her the books before the examinations. When she went to his house to collect them he tried molesting her. His children were present in the room not far away from the room. J and the professor were tried resisting, but he refused to stop his attempts. She slapped him and ran out of the house. A week later, when the examination results were announced, she found that while she had done fairly well in her other papers she had been given a failing mark in the paper which was corrected by B. Convinced that this was an act of vindictiveness on the part of the professor, she went to lodge a complaint with the head of the department demanding a re-evaluation of the paper. The head simply refused to accept her written complaint asserting he was doing so in her best interest, because if she made it a public issue "mud would stick to her name". J, who was 20 years old, was thus left with no choice except to drop that paper and take an additional course in the next semester. She happened to learn that the head of her department was himself regularly subjecting his own students who were a student at the university and department, to the same kinds of sexual harassment whenever this young niece came over to her uncle's house on weekends.

Among the many reasons why men spontaneously tend to oppress each other when they learn of women's misdemeanors against women is that too many of them are men who have attained such power



themselves committed such abuses. Any woman who dares make a public issue of sexual harassment must face the risk of being put down and humiliated so that she becomes an lesson for others and few will dare follow her example.

Q. How do you look at the Rupan Deol Bajaj's case?

Ans. Rupan Deol Bajaj, a Senior IAS officer of the Punjab cadre, was treated no better by the higher bureaucrats when she dared complain against sexual misbehaviour by a senior IPS officer. This occurred despite the fact that the sexual misbehaviour took place at a public party in full view of dozen of people, and the IPS officer was known to have acted similarly with other women. Yet the police chief was not only avidly protected by the bureaucratic and political establishment, but the man was actually decorated with the Padma Bhushan while this case was going on in the courts. To add further insult to injury, Rupan Deol Bajaj was slandered and demeaned in several ways. She was accused of helping terrorist, as the IPS officer was supposedly spearheading the anti-terrorist campaign in Punjab. A number of other irrelevant charges were brought against her. She has been fighting this lone battle for years in the courts and in the public realm. Very few of her women colleagues in the IAS dare support her openly for fear of damaging their own careers. Even fewer now dare come out and complain against personal harassment or abuse after seeing how Rupan's case has been handled. She has been able to press her case simply because she has the support of her fairly wealthy and influential family. Even so it is

an extremely unequal battle in which she is more likely to be the loser than the man who misbehaved with her.

Q. Can sexual harassment be avoided if women stay indoors or away from places of work?

Ans. The unfortunate truth is that, as things stand, it is virtually impossible for women to "stay away" from sexual harassment. All those millions of women who decide to stay homebound, and do not venture outside the home for a living, are not really "staying away" from trouble. We know, from world wide experience, that women and girls suffer the worst forms of sexual harassment and abuse at the hands of various male relatives, including brothers, uncles, cousins, brother-in-law, and fathers. Yet the physical and ideological power of the male dominated family is such that the possibility of sexual harassment at work is used as one of the important reasons for not allowing women to go and seek work outside the house. Instead they are often urged to accept a life of crippling dependence on the men of the family. Sexual harassment is one of the few crimes which are seen by most people as primarily the fault of the victim rather than the aggressor. The victimized women are the ones who are sought to be imprisoned within four walls, not the aggressive men. Such crimes set into motion a vicious cycle, entrapping women so that they end up seeming voluntarily to choose to be confined within the house.

It is proof of the low opinion men have of themselves and of each other that jobs outside the home which bring a higher degree of exposure to men are considered more disruptable for women, as

though mere interaction with men will pollute women. For example, the job of a nurse is considered much less respectable than that of a primary school teacher because in the former case she is expected to deal with a large number of men but in the latter case this contact is minimal, especially if her colleagues are women. Unfortunately men's mutual mistrust of each other's intentions towards women doesn't affect men as adversely as it does women. It virtually imprisons and severely restricts women's existence. Since those jobs that bring women social exposure are usually the ones where sexual harassment is most frequent and dangerous, women are expected to either stay homebound or take up only those kinds of jobs where their interaction with the male world is minimal. Barring a microscopic sector among the educated elite in metropolitan cities, the social status of the working women is in many ways much lower than that of a homebound women.

Q. Why do women constitute a small percentage of professional or organised labour force in India?

Ans. The middle class women gets ghettoised into certain low paying, high drudgery jobs with negligible upward mobility such as school teaching. Even when they open businesses they must choose businesses in which they deal primarily with other women-such as running beauty parlors, or garment boutiques for women. Otherwise they must choose to be home based workers-give private tuitions to children, knit and sew for other women. Thus the few women who do manage to be allowed to seek work outside their homes have to severely restrict their choices and access to skills and work. In



addition they must be willing to give up jobs as soon as their husband or other family members find their attendance at their jobs inconvenient or objectionable.

Q. What is the reason for lower percentage of literacy among girls? Is sexual harassment acting as a hurdle in the acquisition of educational skills by girls and women?

Ans. An important reason why few girls are allowed to be educated in India is due to the fear parents have that their daughters will be sexually harassed if the school is situated far away from their village. Even those few who get educated are allowed to do so only within narrow confines. If higher education demands letting a daughter study in a co-educational institution, live away from home, or even travel long distances, many parents would rather discontinue her studies.

Normally it is assumed that women coming to study in co-educational institutions are likely to enjoy a freer atmosphere and be more "liberated". In actual fact it often works to the detriment of women students. As someone who studied in an all women college, I found that we could be more relaxed and free within our college. We did not feel inhibited about how we dressed or looked. Women students freely sat and lounged around on the lawns, talked and laughed without a feeling of being constantly "watched" and observed by leering men. Similarly, in the class room, we were relatively far less inhibited in discussing or asking questions. In contrast my experience of teaching in a co-ed college tells me that women students tend to lead a ghettoised existence. They behave as though they are being forever "observed" and most of them

are afraid to draw any attention.

Very few dare to intermix freely with male students for fear of inviting rowdy behaviour or even flirtatious attention. Very often male students bully them into accepting dates and will not hesitate to blackmail them with threats of violence if they turn down their advances. Sometimes this can take fatal forms as, for instance, it did for a young girl from Bombay who was doused with acid and set on fire by a young man who felt snubbed because she refused to have an affair with him. On the other hand open dating a boy could equally well invite the wrath of her family and ruin her marriage chances because she would be then suspected of being a "loose" woman.

While the college compound may offer some degree of security, the streets on the campus are truly menacing for women. A woman walking down a campus street is in perpetual fear of being hit, pawed or molested and/or subjected to obscene vulgar comments. No wonder then that a large number of parents prefer sending their daughters to off campus all women's colleges even though that does not take care of the sexual harassment suffered by women in public buses. Many a parent tries to take care of that by insisting that their daughter study through a correspondence course.

Hardly any woman student stays back to participate in any activity on the campus, however important, if it requires her to miss the "University Special bus" and to take a general bus because the harassment in the latter case is far more severe than in the University Special.

Even during exams very few women students, even those living in campus hostels, will be found

using the library in the evening because it would involve a long walk back to the hostel or bus. Women students lead a marginal existence in the cultural and political life of universities. Thus we find that the threat of sexual harassment and violence is acting as a very real hurdle in the way of acquiring education and skills which can equip them for an independent life.

Q. Have prejudices against women in the employment sector broken down completely or do they still exist strongly against women?

Ans. Prejudice against women in the employment sector and upper class women seeking employment outside the home is especially in secure government jobs or public undertakings has been breaking down slowly over the last few decades, especially in big cities. However, the prejudice against women engaging in politics on their own is still very strong. It seems that a much larger number of women participated in political movements during the Gandhian freedom struggle than today. The fear of sexual abuse, harassment and slander has only increased over time as politics seems to have been taken over more and more by goondas and hoodlums. An unprotected woman feels unsafe in virtually any and every political arena today. This partially explains why the few women who are active in politics today or have been elected to state assemblies and Parliament are mostly wives, daughters or sisters of powerful politicians, who thus have some protection. Women who need to deal directly with politics are at a disadvantage. Unlike in jobs where sexual harassment occurs because a woman has to work as a subordinate of men, in the real



politics the mere entry of woman excites hostility from men who will unleash slander campaigns against the woman who dares enter unaccompanied by a husband or father. A woman in politics is the easiest target because politics necessitates a great deal of public contact. A woman entering politics, therefore, cannot escape slander no matter at what level - from the gram panchayat and zilla parishad to state assemblies or Parliament - or, for that matter, in student unions or trade unions.

My own experience as a student of Delhi University is a fairly typical one and helps demonstrate the process through which men manage to keep women politically peripheral and, therefore, powerless in society.

In the early 70s Miranda House Student's Union was the first women's union to get affiliated to Delhi University Student's Union (DUSU). The reason some of us initiated this move was to try and loosen the hold of hoodlum male politicians over the affairs of the University. They could not formally oppose the move but they tried various methods to intimidate women representatives from attending the crucial meetings where important decisions would be taken. Their style of operation was such that it made it virtually impossible for young women to participate in campus politics without seriously jeopardizing their safety and reputation. For example, most important meetings would be held during late night sessions, with liquor flowing freely and the threat of intergang violence forever looming large. If we women representatives kept away from these meetings then the very purpose of our joining DUSU was nullified. On the other hand if we dared attend those meetings then all manner of scandalous rumours

would be let loose about us.

Very often the male leaders would themselves warn us that we better stay away from certain meetings to ensure our own safety, especially the late night ones. The reputation of the DUSU office was such that a woman seen entering that building late at night or even in the evening hours would be automatically viewed as a prostitute or a call girl. And that's precisely the kind of rumours they would spread about us if we dared be present at their really important meetings. The reason for keeping us women out was obvious: they could not make their shady deals - which included wining, bribing and womanizing - in our presence. We inhibited those transactions by our mere presence and hence we were not allowed to have more than a token presence. Most of my fellow women students refrained from those meetings because of the risks it involved. I was one of the few women who persisted, though I couldn't make too much of a dent in their political culture because there weren't enough of us to make a difference. I could afford to take the risks involved, especially their slanderous talk, because I was confident of support from my parents - they wouldn't doubt me and believe those stories. But most women cannot count on such support. Even a whiff of slanderous talk associated with their name can ruin their lives.

That this problem persists even at the higher echelons of political life came out clearly in recent interview with Sarojatai Kashkar - the Shetkari Sangathan MLA from Maharashtra. Explaining why women can't act effectively in politics she described how she herself never dares sit down in the Mantralaya canteen even for a cup of tea with male politicians (except the three or four who are close to her husband

and family on account of their Sangathan connection) because it could easily lend itself to scandalous talk. Thus women politicians are unable to keep themselves well informed because of the restrictions on their social interaction. Sexual slander is such a powerful weapon that even an ordinary nobody can end up harming even a powerful woman in serious ways. Mahasati Sita was after all discarded by Ram at the instigation of a dhobi casting aspersions on her sexual fidelity.

Q. How widespread is this problem in the West? How are such women (victims of sexual harassment) treated in our society?

Ans. The revelations in the Anita Hill hearing in the US show how a woman could end up living a traumatized and scarred existence even in a culture where remarriage, multiple affairs, even certain types of extra marital sex are socially tolerated to a large extent. Imagine the consequence to a woman in our culture, where even divorcees and widows are treated as "soiled" goods, where remarriage of even a young divorced woman is a difficult proposition in many communities because she is stigmatized as a used and discarded woman. In such a situation, most women cannot afford to carry the stigma of being (even wrongly) suspected of sexual affairs outside marriage because the punishment can go far beyond mere social disapproval. It can take deadly forms such as murder or can end up with the woman being discarded by her husband and family, being socially shunned and put into the category of the "disreputable" woman - the ostracized prostitute.

The categorization of women into two mutually exclusive



categories- the izzatdar buhu beti samaj and the so called patita samaj- acts as one of the biggest factors for women accepting extremely circumscribed lives of crippling restrictions. The mere threat of being pushed into the second category through sexual slander, even when it is baseless, can jeopardize the very survival of a woman. The fear of punishment for even unwittingly crossing lakshman rekhas that most women have to deal with make it virtually impossible for them to open and boldly seek redressal for sexual wrongs committed against them.

This is one of the special features of women's oppression. They have been trained to consider such abuse 'unspeakable'. The manner in which they are socially criticized for speaking against sexual abuse ensures their silence much better than any external censorship or bans on freedom of speech. To put up with indignity and act as if nothing has happened has been socially defined as the most dignified course for a woman to adopt. Any attempt at making a public issue of it is seen as proof of having invited trouble through some fault of their own.

Q. How can women strengthen their position?

Ans. The point when the censorship imposed by the family and the society becomes the woman's internal self censorship is the point of her final silencing. Unless women can struggle successfully against bans imposed on their speaking against abuse that affects them most intimately, they are unlikely to have their voices heard on other important social and political matters, or for that matter to act as full members of society. They will remain socially and

politically marginalised, thus facilitating their continuing subjugation.

Q. Why it is difficult for women to resist sexual harassment and abuse?

Ans. One of the reasons why women find it difficult to effectively resist sexual harassment and abuse is that in the existing state of male female power relations women do not receive very respectful kinds of sexual attention from men even within "normal" family and other relations. They are used to being manipulated and having men take decisions on their behalf as well as trained to accept sexually passive roles. With such a conditioning they often mistake sexual advances as a sign of genuine interest or attraction on the part of the man and often succumb to it in part or full especially during the early stages of what may appear as a harmless flirtation. If, in addition, the man is in a position of power and influence, the idea of being sexually wooed by such a man may even be gratifying to a woman's ego, even if it is a blatantly manipulative relationship. It may also appear attractive because of the potential enhancement in career prospects. Thus it may well happen that the attention which may initially appear flattering begins to assume threatening dimensions only when a woman discovers that she is unable to draw a line of thus far, and no more, becomes a hapless object (whose futile objections are ignored) rather than a consenting individual. It is in situations like this, when it's hard to tell where consent ends and harassment begins, that women have the least chance of being taken seriously, and later attempts at protest often boomerang on the woman.

Q. What steps according to should be taken to fight against sexual harassment and slander?

Ans. The battle against sexual harassment and slander will have to be a central one if women want to affect meaningful changes in their currently powerless and vulnerable position.

If we had a functioning judicial system, I would have begun emphasizing the need to make enforce laws which stipulate heavy fines and damages for men who indulge in sexual abuse and harassment. But knowing full well that our judicial system is a national total disaster and is not likely to undergo major changes in the near future, we need to create other channels for redressal.

The first step in this direction is to recognize that living confined lives at home does not offer any protection to women. It only enhances their vulnerability. Like Sita we may spend a lifetime zealously guarding our chastity, but Ravans are lurking even within homes, and the Rams of this world have never had any compunction about discarding their Sitas even when baseless accusations are made. In fact, the solution lies in the opposite direction. The larger the number of women entering the public realm the safer each woman is likely to be just as currently the presence in small insignificant numbers renders the few who venture out far more vulnerable. As we enter the public realm in respected positions we are less likely to be treated shabbily than when we enter trying to fit into the glamorous doll roles in the job market which seem to attract large numbers of women from western educated families. A woman person, secretary or an air-hostess, for instance, is more likely to



sexually harassed than a woman doctor or a bank officer. Yet large numbers of women from elite families tend to gravitate towards glamorous but vulnerable jobs. This despite the fact that they have the option to qualify for and get less glamorous but more remunerative and respected career jobs.

Also, if a woman has an independent source of income, assets and resources, she is less likely to experience or need to succumb to sexual manipulation than if she lives a life of dependence.

It is equally important to try and break out of the demeaning behaviour patterns men have taught us to adopt for seeking advancement. We would do well to recognize that flirting with those on whom you are dependent can land you into real trouble. Even at the risk of sounding prudish I'd say that in present situation of gross imbalance in male female power relations, flirtation, especially with men in authority, is too dangerous a game for women to play. It may become harmless in a more egalitarian society but in today's context failing to practice the required art of saying "No" at the right moment only conditions women into accepting the role of playthings.

It is also important to recognize that this is one battle in which we can expect very little support from men. They have a tendency to protect each other unless, of course, they have some other score to settle against someone, in which case the whole issue gets politicized between two rival gangs of men in such a way that the wronged woman becomes a mere instrument for men's political ends.

Women, unfortunately, make it easy for men to get away with exploiting them because they

seldom rise to defend each other in this type of situation as men so spontaneously tend to do. In fact, in most of such situations women tend to remain hopelessly divided against each other, each one trying to safeguard just her own interest. It is time we understood that women's safety is indivisible. None of us is truly safe till each one of us is safe. The most powerful of male protectors cannot provide us the safety that a socially safe environment can do.

We have to fight to make the workplace safe for women by stipulating a code of conduct which is enforceable even more stringently than service rules. We have to demand a permanent machinery at every level of employment to handle women's grievances and complaints of sexual harassment, one which has well defined rules and obligations about seeing a every complaint through within a specified period of time. For this women have to learn to take an active interest in the politics of their respective workplace so as to have a say in the many important decision making processes as well as in the functioning of the grievance machinery.

Men will not feel as bold as they presently do in their behaviour if such acts are routinely made public. Even if the man can't be punished through the legal machinery, public exposure and building social opinion against men who abuse their positions of power is bound to act as some kind of check and balance. However, such exposures can go against the interests of the victimized woman herself unless every work place : has women's support groups who protect the woman from further harassment and slander and raise public awareness to ensure that men who harass and abuse women are

socially ostracized. If men cannot feel "manly" in sexually abusing women, they are less likely to try and do so. However, these collective efforts are likely to take a long time in materializing. In the meantime each one of us has to learn to protect herself in the best possible ways that we can individually devise.

Q. What remedy or strategy can you suggest to overcome problems of this kind?

Ans. I will share with you a strategy which I find has been usefully employed by many women who have learnt to deal effectively with men. However, I do not claim universal application or a uniform success rate for this strategy. One of the characteristic features of our culture is that men in India are habituated to fearing and respecting strong female figures. The very same man who thinks nothing of beating his wife or daughter has no psychological barrier to bowing in reverence and fear before a chandi or a durga. Our culture worships two kinds of goddesses. The benign consort goddesses like Parvati, Sita, Laskhmi are revered but not feared. The other kind of goddesses are far more numerous and culturally more powerful. Each region, often each village in India, worships its own local version of the chandi/durga type of deity. Such goddesses have some common features. Frequently, the story of their origin is derived from that of a woman who transformed herself into a ferocious being in order to defend herself from being wronged by some man or the other. The all pervasive religious folklore has thus made available to the women of India certain powerful forms of social protest and redressal not available to woman in many other cultures. This includes the socially



and culturally sanctioned right to assume the durga/chandi roop to defend herself against wrong. I have found that men in India are conditioned to accept and fear this aspect of women. This is not true for cultures with less varied patriarchal religious traditions in which God and other authority figures are invariably male. If men are aware that a woman is capable of rising to her defense, with ferocity if necessary, they are less likely to attempt to harass or abuse her than if they know her to be trapped into wanting to fit into the female stereotype of the helpless creature and sex object that suits men's requirements. The reputation of

being upright and ferocious may invite ridicule or hostility in many cultures where women have been more successfully manipulated into playing the decorative sex object role with pride. But in India it brings an unusual kind of respect and saves a woman from many a potentially exploitative situation. However, we have to remember that becoming durga can be very self destructive if we don't regulate our anger and keep it under control. If turned inwards it can harm us both physically and emotionally as well as destroy our ability to receive and give affection without fear. And once that happens, then we are defeated anyway.

In short, the simplest way to

render men powerless is to stop fearing them without hating them. We are lucky that men in India have the good sense to fear women who are not afraid of them.

However, it is not enough that some women manage to keep men at bay by provoking in them a fear of a woman's wrath. Ultimately our aim has to be to create a society in which no man can abuse or exploit a woman with impunity, to build new social norms whereby it is considered despicable rather than as admirable for men especially, those in positions of authority, to use sexual aggression as an instrument of abusing and exploiting women.

□



## Interview With Mr. S. Ganesh. Advocate, Supreme Court Of India

by Rashmi Varshney

Q. What is your opinion about the Supreme Court judgment in Vishaka case (*Vishaka vs State of Rajasthan*) 1997, 6 SCC CASE 241. Please comment on the guidelines framed and suggested by the Court.

Ans. The Supreme Court Judgment in the Vishaka case must only be regarded as a stop-gap solution until a comprehensive law is framed which contains specific and stringent penal sanctions and also an effective and inexpensive Tribunal (like the Consumer Forum) for adjudicating complaints made by employees and other victims of sexual harassment. The Tribunal should expressly not be under any obligation to follow either the provisions of the Evidence Act or the Civil Procedure Code and should be free to evolve and follow its own procedures and ordinarily dispose of a complaint within a period of not more than six months and grant interim relief. The Tribunal should have sweeping powers including not only the award of damages, but the passing of orders for restitution of job benefits, promotions, prospects etc. of which the victim has been unfairly deprived and also issuing orders and directions for dismissal of errant employees, change of office procedures, transfers etc.

The Vishaka Judgement only contains guidelines which are pious aspirations. From a practical point of view, they are not enforceable to give them teeth, a legislation on the above mentioned lines is an absolute must. Criminal sanctions with their deterrent effort which are lacking today are also indispensable.

Q. What do you think of the Rupan Deol Bajaj's case and the conduct of Mr. Gill?

Ans. There can be no doubt at all that Mr. Gill had committed offences under sections 354 and 509 of IPC. Also his conduct was highly offensive and certainly came within the definition of sexual harassment as expounded in the Vishaka case.

Q. Please comment on the Paula Jones case and Monica Lewinsky in relation to sexual harassment? Why did US President not file the suit for defamation after the dismissal of Paula Jones case?

Ans. I feel quite strongly that Judge Wright's decision in the Paula Jones case is grossly and outrageously wrong. Paula Jones, a Arkansas state clerk was sexually propositioned in the crudest possible manner by the executive head of the State Government, the Governor himself. Paula Jones had to listen to Clinton's lewd remarks and watch him expose his private parts. This situation must have caused the greatest distress to her, especially because she was in Clinton's private room and could not know what was to come next. She also had every reason to believe that she would be victimised in her employment if she refused Clinton's advances. Clinton was fully aware of this commanding position he enjoyed vis-a-vis Paula and the fact that his proposition could not possibly be equated with the advances of an obnoxious stranger which could be rebuffed with impunity and contempt by Paula. Clinton's conduct cannot be

lightly or casually dismissed as merely "boorish and offensive". It was unquestionably 'sexual harassment' within the criteria laid down by the Supreme Court in the Vishaka case. I am clearly of the opinion that Paula had a cause of action to claim damages against Clinton at least for the mental distress caused by him, irrespective of whether her career actually did or did not suffer as a result of the incident. Further, in any event, whether Paula had actually suffered any 'tangible job detriment' (to use the words of Judge Wright) is a matter of evidence at the trial. A person may suffer such a job detriment even by being denied in a subtle and imperceptible manner, avenues of advancement which are otherwise available. An order of summary dismissal, holding that the case did not even warrant going to trial. There is a very simple reason why Clinton did not sue Paula for defamation. Clinton had taken every possible step for ensuring that the Paula Jones trial was postponed for as long as possible. To sue Paula for defamation would be to invite a trial in which Paula would get the opportunity yearned for by her to step into the box and tell the nation what kind of man Clinton was. This Clinton would avoid at all costs. Secondly, the Judgment proved nothing against Paula. It did not hold that she had lied, rather, it assumed that her allegations were true. The essence of an action for defamation is false statements which damage the reputation of the suitor. Allegations which are true do not constitute defamation.



**Interview with Professor M.P. Singh**  
**Ex-Dean, Delhi Law Centre, Delhi University**

*by Rashmi Varshney*

Q. Is the Supreme Court Judgment in Vishaka's case adequate to deal with sexual harassment?

Ans. Till date there had been no legislation on the issue of sexual harassment. A beginning has been made for appropriate legislation and its implementation is further required. The Supreme Court judgment is a watershed judgment for it seeks to alleviate sufferings of sexually harassed women. On the hindsight, the fact that women play an important role in the society, and the corresponding need to accord them special protection through law has come to the fore. Previously, sexual harassment cases had been regarded as private matters, and therefore not appropriate for government action. The judgment in the Vishaka and others vs. State of Rajasthan has undeniably addressed the fact that sexual violence against women is a violation of human rights. Despite the Supreme Court judgment, I doubt the problem of sexual harassment can be dealt firmly until it is not corroborated with adequate legislative and executive action. These developments were due in part to intensified efforts by women's NGO's to draw attention to the problem.

Q. What steps should be taken by a harassed victim?

Ans. Today there is a growing global concern regarding incidents of sexual harassment. In keeping with this, a policy on sexual harassment should be formulated and formal and informal procedures should be laid down for its

implementation. Employees and staff should take note of strong disapproval of any and all conduct which constitutes sexual harassment.

Public awareness and attitudes against this malpractice should be mobilized and effective mechanisms should be provided whether formal or informal. This should be followed up with more direct legal action if necessary. Anyone subjected to sexual harassment should be urged to make it clear to the offending party that such conduct is offensive. If this has no effect, the matter should be pursued with appropriate person(s). To be taken serious note of, the complaint must be prompt and unpremeditated. The complainant's identity need not be disclosed. Further, the complainant need not be cross-examined before the accused. The authority in turn must take formal note of the complaint while treating it with the strictest confidence and open-mindedness. Efforts should be made to resolve the matter through personal discussion. Authorities must also take note of fake cases that may be reported for character assassination. A record must be kept and a file maintained in such cases. The harassed victim can also report the matter to the employees' union, the police and the National Commission for Women.

Q. How can sexual harassment be proved if it takes place in privacy?

Ans. Let the other party disprove. The situation is similar as in the case of the custodial rape. Many times sexual harassment cannot be proved for lack of evidence. There is no eye witness who is willing to testify,

nothing short of carrying a concealed video camera will enable the victim to prove her case convincingly.

Q. What role can the police play in such cases?

Ans They must take prompt action as in any cognisable offence. Although lack of faith in policemen is also a very common reason. Several women today have found that the policemen themselves misbehave with them: and often when the women complain to them they do not take the complaint seriously. On the other hand it has been observed that the victims of eve teasing generally choose to ignore the advances of men and very rarely hit back verbally or physically or report back to the police. Public assistance is very essential in order to formulate a joint strategy to curb the evil of sexual harassment. The Women's Cell is doing a good job to create fear of punishment atleast in some prospective offenders.

Q. How can Courts deal with this problem? Is our legal system adequately equipped to handle these problems because the male psyche dominates the framing of the laws, its interpretation and implementation. Do you think they can understand this problem?

Ans To begin with they may be inadequate but they can be sensitised in due course. There are provisions under section 509, 294 and 350 of the Indian Penal Code for dealing with sexual harassment, but the way these provisions have been worded, the complexities of the procedural laws and the type of proof that is required, make it very difficult to get the culprit punished.



Q. What role can women and other voluntary organisations play?

Ans. They must take up, publicise and litigate such cases. Women who play an active role in politics and represent their electorate should take all steps to establish a strong anti-harassment policy and place it squarely into the realm of law.

Q. What are the reasons for rise in crimes against women?

Ans. One of the major reasons for increase in spate of crimes against women can be attributed to the lack of understanding of human rights. More daunting, however, is the possibility that the more women succeed, the more sexual harassment suits we will see.

Q. What kind of changes does the employment law need so that they can be an effective deterrent?

Ans. Some of the changes in the employment law have already been pointed out in the Vishaka case. Linking the 'inalienable right to work' with the 'right to work with dignity' positions harassment as a cognisable offence.

Q. What do you think of the Rupan Deol Bajaj's judgment and the conduct of Mr. Gill?

Ans. I support the judgment. Mr. Gill sought to minimise the whole incident. He felt that all women should endure the behaviour while attending official parties or if an important person as himself assaults a woman, apology should suffice. Protection given to a high ranking officer, and a belief that the alleged behaviour is a part of what every woman must endure without a complaint is an unfortunate part of modern society. The case was dismissed by the High Court and Deol

had gone for an appeal to the Supreme Court. If the judgment is upheld by the Supreme Court it leaves little doubt concerning the continued futility of the provisions of the Penal Code and indicates it insensitivity to the increasing sexual assaults on women. One infact wonders what level of harassment and degradation a woman must tolerate before the criminal laws will offer protection?

Q. Please comment on the Paula Jones case in relation to sexual harassment?

Ans. With respect to Paula Jones case, if what is alleged against Clinton is true, then it is highly reprehensible and should be condemned. Although District Judge Wright threw out Jones' case saying that Clinton's alleged behaviour may have been "boorish and offensive" it did not constitute sexual harassment; yet, her case, and its implications for the feminist cause should remain a subject of debate.

Q. What are the issues in Monica Lewinsky's case? Please elaborate.

Ans. The main issue in the Monica Lewinsky's case has been the misuse of power and position. It started in January as the sensational story of a President's affair with an intern not much older than his daughter. As time passed, through a blizzard of legal motions the President and the intern held their silence until now. The intern, Monica Lewinsky in exchange for immunity, is telling her story to prosecutor Kenneth Starr's deputies. And Bill Clinton, the President of USA, under duress, is about to become the first sitting chief executive to be questioned in a criminal investigation of his own conduct. In an array of developments, the White House has

taken on the crisis as Starr pursues perjury and obstruction of justice. If Clinton sticks to his January denial "I did not have sexual relations with that woman", it could mean another six months of investigation and uproar. If Clinton admits he lied, it could all end quickly. Monica Lewinsky may or may not have discussed in advance with Clinton what to say about their relationship. Some sources have revealed fractions of this story saying that she is ready to testify that she and Clinton talked about keeping the relationship quiet, but that he did not instruct her to lie about it under oath. Ms. Lewinsky had talked to a woman she had befriended in the Pentagon, Linda Tripp, who taped their conversation. On her tapes, Ms. Lewinsky is said to have talked a lot, about sex with the President. But she was also quoted saying, "I have lied my entire life". Meanwhile, new information emerged about the dark blue cocktail dress that Ms. Lewinsky told prosecutors was stained during a sexual encounter with Clinton. But Clinton has denied under oath that he had any such relationship.

Q. What legal consequences will the President face, if, he is found guilty of perjury or for obstructing justice?

Ans. Deliberate perjury can be the ground for consideration for impeachment. There is no consensus among legal and constitutional experts on whether a sitting President can be indicted on criminal charges during his term. Its the House of Representatives which under Article 1, Section 2 of the Constitution, enjoys the "sole power of impeachment". Many hold that an indictment of Clinton will have the effect of undoing the



peoples mandate he received in 1996 presidential election. Thus, the constitution has wisely entrusted such a step solely to the popularly elected House and Senate in impeachment proceedings.

Q. What role does public opinion play in cases of these kind? Is public opinion capable of changing a judge's decision?

Ans. Public opinion shapes the issues. It also influences judge's decision. For instance, as the events are unfolding, the first inklings of erosion in Clinton support is coming from public opinion polls. Although, approval of the job Clinton is doing in office remains solid. But, there is an increase in the percentage of Americans who think impeachment proceedings would be justified if he

lied under oath or obstructed justice.

Q14 What kind of a privacy is a public figure entitled to?

Ans. A distinction has to be drawn between the private and public life of the public figures also, though of course, the scope of private life is much narrowed in their case. ☐

**WARLAW's** contribution in research and documentation of women's rights infringements and the law was culminated in a book entitles Kali's Yug, edited by Ms. Rani Jethmalani. It was distributed at the Beijing Conference in 1995. It examines the evolving strategies to challenge the law, to make it empowering for women by reflecting their perceptions, values and concerns.

It is available for Rs. 250/- at :

**WARLAW OFFICE**  
or  
**Har Anand Publications**  
364A, Chirag Delhi - 110 017



## Interview with Mr. R.K. Maheshwari

Advocate, Supreme Court

by Rashmi Varshney

How do you look at the concept of sexual harassment. What are your views on it?

Ans. Many people believe that sexual harassment denotes sexuality, others believe it to be a result of unequal power at place of work. But I feel that women are "now breaking the non-assertive mould at work" and men may not be ready to accept this change. It may be termed as a battle between sexes, where one group dominates other and tries to exploit and harass the minority. Its important change the attitude of men, in particular that women are not inferior to them in any way.

Sexual harassment does take place but many blame the women organisations for exaggerating it. I think the definition of sexual harassment given by the Supreme Court in Vishaka's case is a good beginning but making laws to have them effectively enforced is essential. For the first time the concept of sexual harassment was defined by the Court. It says that following includes sexual harassment:

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

The Court laid down certain preventive steps like enabling all employers or persons at workplace take steps towards prevention of sexual harassment, expressly publish and circulate the prohibition of sexual harassment, to frame rules and regulations prohibiting such conduct and penalties when such matters

reported and offender found guilty, to lay down good and healthy conditions of work ensuring that there is no hostile environment.

In Vishaka's case the Court has also dealt in detail with criminal proceedings and other disciplinary action to be taken by the employer. It has envisaged the formation of a Complaints Committee which is to be headed by a woman and where not less than half of its members are to be women.

As far as the question of constitution of sexual harassment is concerned I think lewd remarks of a male boss or supervisor to a female worker or putting arms around the women's shoulder or touching her hair or asking her to go out for dinner etc. is sexual harassment existing all over the world. In India it is more extensive because women are less aware of it, may be because of cultural set up. But with the growth of women's organisations cases are being brought to public notice. From the judgment it appears that only women are made victims of such harassment but there are reported instances where sexual harassment by women against their subordinate male members in the workforce are also alleged.

Q. What is the reason for rise in crime against women?

Ans. It is a complex question, I think crime against women has been going on since times immemorial but its only lately that they have started approaching organisations like yours and began agitating their grievances. I think Sociologists are the best persons to answer this. They may have various theories for this rise in

crime especially the role that media plays, the magazine -how they project women, the kind of clothes that women are made to wear, a larger work force, and exposure to International multi media may be some reasons for provocation. Further, lack of family control, and economic dependency, swirling change in cultural set up in urban surroundings, in metropolis in particular, may be some factors for such crimes against women.

Q. What is your opinion on the Paula Jones case of sexual harassment?

Ans. Press reports reveal that over 30 million dollars have been spent in the investigation of the cases of sexual harassment involving President Clinton. American people don't take this very kindly. 'Newsweek' reported that initially the popularity of the President Clinton fell drastically as far as Paula Jones case is concerned. However, the case was dismissed because she could not establish that she was assaulted or harassed by the then Governor Clinton in Arkansas in 1991. Judge Wright in her 30 page opinion held that Paula Jones did not have genuine issues at trial. Jones, however, acknowledged the fact that she was not threatened by Clinton, therefore there was no sexual assault under the Arkansas law. Two essentials constituting sexual harassment were also not established 'quid pro quo' and 'hostile environment'; the former is where the victim refuses to submit herself to the advances of the superior or harasser; and the latter means such an abusive work environment which prevents a victim from working efficiently. Since Paula Jones had not



suffered any work loss, demotion etc., the fact that she was promoted and there was an evaluation in her job indicated non existence of hostile environment. The Judge believed that "she did not make any complaint of the alleged incident nor did she tell her supervisor nor sought counselling." Therefore there was no hostile environment and hence no sexual assault. But recent news reports indicate that she wants to get the matter reinvestigated.

Q. After the dismissal of Paula Jones case, why do you think the President did not file a suit of defamation against her?

Ans. The President has right to sue her for defamation in his individual capacity. Perhaps the legal advisors of the President advised him not to institute proceedings and did not want the matter to remain open. The image of the President may have been bruised but its not damaged. In America Unified Federal Civil Procedure provides seven years as limitation for a Civil action in the Court of Law while in India limitation for such suit is three years. The President's ability to be the Head of the Executive is bound to be affected like in any other case. The initial reaction of the President was "I ought to have spend more time for the

fulfilment of my obligation than defend the case".

During my stay in the U.S. and watching election process I found that the President introduces his family, his policies etc. to the people which is questioned by Experts in Presidential Debates. Americans want to see their leader with a clean image and with clear enforceable policies. I think this is the reason why the candidate introduces his family to the citizens.

Q. Please elaborate on Monica Lewinsky case?

Ans. Monica was an intern at the White House when Bill Clinton emerged Victorious in 1996, after winning with a huge margin. Video clippings showed Clinton hugging Monica in public which by itself is insignificant. The conversation between Monica and Linda Tripp was taped which contained material evidence with regard to the lying of Monica in Paula Jones case. These tapes were given by Linda to Mr. Starr, Independent Counsel of the investigating agency. The President however, denied having any kind of sexual relations with Monica. The latest news reveal that Monica has decided to testify her relationship with the US President, in exchange for 'transactional immunity', the highest

kind of immunity she and her mother could get. Ms. Lewinsky is likely to give information relating to the possibility of obstruction of justice by the President. The President denied sexual relationship with Monica. Earlier Ms Lewinsky in an affidavit stated that she had no sexual relationship with the President. It was Linda Tripp's 'recorded cassettes' led to this further investigation. The recent news also reveals that Monica's dress, allegedly stained with Clinton's semen is to undergo-DNA testing by Independent Counsel.

Q. What procedure is prescribed in the American Constitution for the impeachment of the President?

Ans. Section 4 Article II of the U.S. Constitution provides that the President, Vice President and all Civil Officers of the United States, shall be removed from office on impeachment for and conviction. If the President is found guilty of telling a lie under oath or obstructing the administration of Justice, impeachment proceeding may commence but having sexual fling, even if proved, with Lewinsky may not attract impeachment proceedings. Let's see how Ms. Lewinsky and President give evidence before the grand jury. □



## COMBATING SEXUAL HARASSMENT

by Padmini Kumar

Women these days are growing weary to sexual harassment, cruelty, rape, assault etc. In India every 51 minutes a matter of sexual harassment of a woman is reported and in every 26 minutes she is molested. Many cases often go unregistered. A study conducted in 23 countries, undertaken by the International Labour Organisation in 1992 revealed that 15 to 30% working women are made victims of sexual harassment and one out of 12 is made to quit her job.<sup>1</sup> Keeping this current situation in view, the Supreme Court framed some guidelines in the case of Vishaka & Ors Vs State of Rajasthan & Ors<sup>2</sup> under Art. 32 of the Constitution of India which was with regard to Sexual Harassment at work places, which must be treated as "law declared under Art. 141". The Supreme Court stated, "In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at work places the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein."

Sexual harassment, eve teasing, assault, molestation were, many years ago, not so frequent in India as they are now. Many such incidents often go unregistered. The root cause behind this is the male psyche—they probably cannot accept women as their equals. It is through their physical power that they make women realise that no one can overpower them and that women are best as their subordinates. Men by such acts want

women to stay indoors or else experience the consequences of stepping out of their homes.<sup>3</sup>

Rupal Bajaj's incident of molestation by the State Police Chief, Punjab simply established that a fight against male chauvinism is quite difficult. Rupal Bajaj, a senior IAS Officer accused KPS Gill of sexually abusing her at a party. She lodged a complaint before the Chief Secretary, the Advisor to the Governor, to the Governor but all efforts went futile. The culprit was only reprimanded from attending parties in future. She finally filed an FIR for initiation of criminal proceedings against Mr Gill. Investigation commenced immediately. Mr Gill in return took advantage of the provision in the Penal Code which provides, "no action will be a criminal offence if the harm caused is so slight that no person of ordinary sense and temper will complain about the harm." The case was dismissed by High Court of Punjab and Haryana.<sup>4</sup>

There are provisions in the Indian Penal Code that deal with eve teasing and other forms of such practises with regard to women but proving them is not so easy. For instance, S. 509 provides that whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture or exhibits any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such a woman or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term extending to one year or fine or both.

Acts of sexual harassment and molestation, though difficult to prove in a court, are widely prevalent. Ela Choudhry's case is one which

requires mention here. In this case a commercial artist, in Government Directorate of Employment and Training was molested by her boss, she made a complaint before the Director General but all went futile. It was only after the retirement of the boss that she got some relief.

Most men performing such acts are often go unpunished because women generally ignore such behaviour as they are afraid of putting up a fight. To bring a person within the purview of sexual harassment it must be established that (1) the act was done intentionally, a song was sung, a gesture made or words uttered. (2) that such act was obscene (3) it was done at a public place and (4) it caused annoyance to the person concerned or to others who were present there.

In Rameshwar v State of Haryana (5) the accused pulled a woman and tried to open the string of her salwar so as to commit rape but he was held guilty u/s 354 and not under 376 IPC for he lacked the determination to have sexual inter course. But in I.T. Rao v State of A P<sup>6</sup> the accused was held guilty of sexual harassment when he caught the hand of a 16 year old girl but on her raising an alarm he fled away. No act is complete unless it has the essential ingredient of intention or knowledge that the act will outrage a woman's modesty. Thus it is important to establish in such cases (i) that the accused used criminal force on a woman (ii) that such was with the intention to outrage her modesty.

In cases of sexual harassment corroboration is needed but it is not a must. (7) About 177 cases of sexual harassment of girls was reported in 1990 but only a few could be challaned. The figure however rose to



203 in 1991.

Regarding sexual harassment it was remarked that "it is almost an occupational hazard" by Kaveri Mukerji, when she made a complaint against the Managing Director, Oberoi Hotel for the remarks and passes he made on her while she was an employee.<sup>8</sup>

Mukti Datta, Secretary of the Jan Jagran Samiti, accused Z.R. Ansari, a former Union Minister of Environment and Forests for pushing her forcibly on couch. She filed an FIR against the culprit and he was later arrested however by grant of bail he was released. The contention of the Minister was different. He held that Datta after a hot argument over the environmental issue left the room and threatened that she would teach him a lesson. This according to him was done so that he could be denied a ticket for elections. When the matter reached the court it ended in a compromise in March 1992.<sup>9</sup> There was yet another case in which the speaker of Goa Assembly allegedly propositioned a 19 year old employee. According to the victim he lost all shame. Although the accused denied everything, the people of Goa were extremely enraged over his act. The party on the contrary ignored all his ill doings and selected him as their candidate for Lok Sabha.<sup>10</sup>

Maitreyi working in a small news paper was made to do extra work so that she could be detained for a long time. The editor subjected her to sexually suggestive talk, to escape the ordeal, she left the job.<sup>11</sup>

Similar was the story of Rukmani who worked in a reputed Middle Eastern Airlines but had to leave her job because of the attitude of the senior manager who demanded a lot of sexual attention from her.<sup>12</sup>

The arrest of Amarjyot Shyam Swami in a sex scandal in the town of Ahmedabad proved that the present day swamis are more men than gods. Another religious head of the Radha

Vallabh temple-Vaishnavacharya Goswami, was accused of unholy acts of godmen. It was alleged by the victim that the Swami told her that her husband would divorce her within a year. To avoid this she was told to perform some religious ceremonies. After a year the Swami told her that he was her husband in the previous birth and if she married him she would attain moksha and her husband will not leave her. He married the victim before the idol of Lord Krishna and gradually his other followers came to know that he was a married man and had two children. Thus he married many women through this mode. There have been many cases in which women followers have been sexually abused.

The Western scenario regarding sexual harassment is no better. In the US it was only after the enactment of the Civil Rights Act 1991 that a victim of sexual harassment could claim punitive and compensatory damages. Judicial treatment to such cases have recognised two kinds of sexual harassment-Quid pro quo and the hostile environment. The former occurs when the supervisor changes job conditions in exchange for sexual favours. And the latter occurs when an employee is subjected to sexual advances which are severe and pervasive and hence create an unpleasant working environment. Case laws and literature deal with the rights of victims and the liabilities of employers, but attention has also been drawn towards employment rights of alleged harasser. There are two conflicting views regarding sexual harassment. One is that such a working environment must be provided which is free from gender bias. The other view is that there must not be any government interference in places of work because elimination of such bias and discrimination is absolutely impossible.

Winsor v Hinckley Dodge, Inc.<sup>13</sup>

was a case before the United States court of Appeals for the Tenth Circuit which defined the concept of sexual harassment pertaining to Title VII arising from hostile work environment.<sup>14</sup>

In Winsor's case, although the court affirmed the judgment of district court favouring the defendant but one thing was established certainly that the plaintiff was made a target of sexual harassment. The Winsor court focussed on treatment of plaintiff and overruled the district court's analysis as being one motivated by gender neutral factors. For the plaintiff to claim entitlement to relief it was essential that she prove that she was constructively discharged because the suit was placed before the Civil Rights Act of 1991 which amended Title VII.<sup>15</sup>

The brief facts were that the plaintiff, Igner Winsor was appointed by the defendant, Hinckley Dodge in 1991 as a sales person. Being good at work she soon became a top sales person but had difficulty with her co workers. Right from the beginning she faced verbal and physical abuses. There was some dispute over sales commission between Winsor and a salesman, the latter pushed her against a wall putting her knees between her legs and warned her not to speak to his clients. Another salesman who pushed her in the presence of his customers was however fired. Winsor received some photographs with insulting words during the second year of her employment. One of the salesman blocked her entrance keeping her away from her clients. While on another occasion, a sales man added a grain alcohol into soda as a result she was hospitalised. There were other instances when she was physically harmed.

In November 1990, a newly appointed Manager addressed Winsor as "honey" and "baby" and despite her protests he did not stop. Finally in December or January



resigned from her job over a dispute regarding work hours between her and the new manager. In 1991, Winsor filed a complaint against Hinckley Dodge. He in turn contended that Winsor had problems other than her gender. It was testified through witnesses that she was a needy and aggressive person. As a result the District Court held that sexual harassment was not established. The Court was of the opinion that she had her own personal reasons and thus Winsor led to mitigate her damages. However an appeal was preferred before the Tenth Circuit Court of Appeals.

A suit filed under Title VII of the Civil Rights Act of 1964 extends protection to employees from discrimination at places of work. There are two theories regarding Title VII (i) quid pro quo (ii) hostile work environment sexual harassment. (16) A hostile work environment once established, the court in such cases must decide whether the employer can be held liable for it. In *Hirschfeld v New Mexico Corrections Department* (17) it was pointed out by court that if the employee has been harassed then employer must take immediate action as to avoid liability. Before the passing of the Civil Rights Acts of 1991, the victim of sexual harassment had a very limited scope of recovery. Relief could be claimed only once she proved that the act affected her employment status in a manner such as lower pay, no chances of promotion etc. The 1991 Amendment to Title VII however allowed the plaintiff to remedies like compensatory or punitive damages.

If Winsor's case had been decided under the post 1991 law she could have gained compensatory and punitive damages under the remedies expanded. The theory of hostile work environment was accepted by Winsor

court and the court defined it (sexual harassment) as "sufficiently severe or pervasive to alter the conditions of the victims employment and create an abusive working environment." The Winsor Court concluded that if harassment is not because of victim's gender then it cannot be called sexual harassment, irrespective of its gravity. It was accepted by the Winsor court that the finding of the District Court as no sexual harassment was erroneous. The reason for arriving at this decision according to the court was attributable to gender neutral reasons. The Winsor court accepted the attitude of salesmen as one of sexual nature thus indicative of sexual harassment. It was pointed out that the use of the word 'honey' and 'baby' to a particular female did amount to sexual harassment. However the use of such name could amount to a hostile work environment. No action except the termination of one salesman was taken by Hinckley Dodge, when a complaint was made of a hostile behaviour to the employer by the plaintiff. Thus the court concluded that Hinckley's action did not solve matters. The contention and decision of the District Court was held erroneous.

#### **SEXUAL HARASSMENT OF STUDENTS BY TEACHERS**

Whether the school is to bear liability for students' harassment caused by teachers, is an issue which the court must decide once it is established that the student has been sexually harassed. Many in such cases are of the opinion that the teacher is to be held liable but a different opinion emerges with regard to liability of school which employs them. Harasser is not always a male it can be a female and the student male. Regarding the liability of school for the accountability of teacher's misconduct Title IX of the Education Amendments of 1971

holds that no Educational Institution shall discriminate on the basis of sex. Sex based discrimination may be making sexual comments, touching a student, making offensive advances towards the student in extreme cases even rape the student. A student by virtue of Title IX is empowered to bring a legal action against the school for teacher's misconduct but no standard has been fixed for assessing such liability. The standard that is required for assessing such liability is inadequate. Schools lack the monitoring machinery and remedies to control or stop harassment of students. To hold a school liable under Title IX, certain level of knowledge is extremely essential so as to hold the teacher liable for causing harassment. Knowledge in the first place implies that the school not only knew but participated in causing harassment. The student in such cases does not get any protection or relief. Second phase is where the school knows that such is going on but does not curtail it. This is one like Title VII of the Civil Rights Act of 1964 where the employee can sue the employer for sexual harassment. This provides some relief to the victim. Finally comes that phase where a student is given relief. It ensures that abused students are given appropriate relief and that schools are discouraged from further abusing them. Title VII deals with sexual harassment, Title VI covers educational sphere and goals prescribed by some other standards. Thus Courts often have a doubt regarding the application of standard so as to determine institutional liability under Title IX.

Harassment caused by a teacher to a student is different from one caused by employer to his employee because the environment of school is different from working place. Title IX extends more protection to a harassed student. Title VII imposes a greater liability upon a school, with



regard to teacher-student sexual harassment. For instance, in *Franklin v Gwinnett County Public School*<sup>18</sup> a student alleged that her coach subjected her to coercive sexual intercourse on many occasions. In *Oova R.S.v Santa Rossa City School*<sup>19</sup> a student held that her teacher fondled her buttocks while she was on the playground. Both cases were of hostile environment because no one had any benefit or detriment on its receipt or refusal. If such an act had been accompanied by a detriment or benefit, it was to be termed as quid pro quo and the school was to be held liable. Bringing an act within the definition of "hostile environment" means leaving the school from liability for the teachers misconduct. However the school can only be held liable if the plaintiff proves that the school "knew or should have known" of the harassment yet did not take any preventive action. A school which knows of the teacher's behaviour but takes no action means that it has closed its eyes so as to avoid liability. Thus a school should not ordinarily be held liable for teacher's misconduct unless it aides the tort.<sup>20</sup>

A national survey of 1600 students between the 8th and 11th grade revealed that about 80% students felt that they had some kind of a sexual encounter, which ranged from harassment by peers to harassment caused by teachers. Thus Title IX gives protection to students so as to claim some relief if subjected to misconduct or misbehaviour from their teacher.<sup>21</sup>

Title IX provides "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under only education, program or activity receiving Federal financial assistance....."

In spite of this provision Sisters

Jane and Janet Doe, in a school at Texas experienced instances of verbal and physical abuse, in a school bus. Their parents spoke to the concerned Authorities and the school suspended one male student for 3 days but the suspension did not bring any improvement, until the girl left travelling by bus. The mother of the girl sued the school under Title IX on her daughter's behalf. According to the District court for southern district of Texas, the mother's claim failed under Title IX because she could not establish through evidence that the school made a discrimination against the student on the basis of sex. The judgment was however affirmed by the Fifth Circuit by 2 - 1 vote. Judge Smith writing for the majority laid down three factors under which liability under Title IX could be interpreted for acts of grant receipts.

First the scope of Title IX was analysed by the majority. Judge Smith was of the opinion that grant recipients have little control over the acts of third parties who violate the prohibition of Title IX, therefore imposition<sup>22</sup> which gives a right to claim damages to a female student for hostile environment sexual harassment caused by an employee of the school. Title VII prohibits discrimination in work place and the Franklin Court cited an employment discrimination case, *Meritor Savings Bank, FSB v Vinson*, which served an example for its one interpretation of Title IX. Judge Dennis held that the court had an intention to include Title VII hostile environment standard to the Meritor case regarding Title IX claims. He was of the opinion that the school authorities could be held liable for "peer sexual harassment" if it had the knowledge of such act but failed to take any action.

Thus the Fifth Circuit affirmed the

decision of the District Court in *Rowinsky's* case but could not explain the reason for its refusal in applying Title IX to third party sexual harassment. Relying on the interpretation of Title IX gives rise to two false assumptions. First, the conclusion reached by the majority that holding the school liable for the acts of the students would prevent schools from accepting grants means that despite all good efforts peer sexual harassment will be inevitable. The other flawed assumption of the majority was that if Title IX did impose a liability for peer sexual harassment on schools it would automatically mean strict liability. Thus the majority's reliance on the Congress debate regarding Title IX ignored the Supreme Court's instruction that Title IX must be read broadly so as to have a remedial purpose. In numerous other cases the Supreme Court in its decision indicated that Title IX should not be constrained by Congressional debates, it must be given a broader meaning. The Court in later years held that one can even claim monetary damages under Title IX. The OCR (Office of Civil Rights) clearly under Title IX imposes liability on schools for peer sexual harassment. Thus the justification given by the Fifth Circuit concludes that liability under Title IX should extend to third parties, because it must be given a broader interpretation and also the OCR supports the Title IX liability for acts done by third parties.<sup>23</sup>

#### FOOTNOTES:

- 1 Sexual Harassment, by Swati Choudhuri, Indian Journal of Gender Studies, 5:1 (1998).
- 2 (1997 (6) SCC 241)
- 3 Crimes against women and protective laws Shobha Sexana 1995 Ed.
- 4 Times of India, July 20, 1988, page 5.
- 5 1984, Cr.L.J. 786 (Punj).
- 6 1984 Cr. L.J. 1254 (A.P.O)
- 7 *Bondelal Vs. State of M.P.* Cr. L.J. 607.



Indian Express Sunday Magazine, Sec. I, Oct. 27, 1991, pg. 1

Times of India, Oct. 21, 1989, pg. 3

Indian Express, "Controversy takes a New Turn" Sept. 2, 1989, pg. 5.

Indian Express "The 9 to 5 Menace" Oct. 27, 1991, pg. 1.

Ibid

79F 3d 996 10th cir. 1996.

Title VII refers to Title VII of the Civil Rights Act of 1964. Section 703 (a) of Title VII of the Civil Rights Act is codified at 42 USC (2000 e-2(a) and states the following: "it shall be an unlawful employment practise for an employer (i) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, colour, religion, sex or national origin (ii) to limit segregate or classify his employees or applicants for employment in any way which could deprive or tend to deprive any individual of

employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, colour, religion, sex or national origin.

15. Winsor, 79F 3d at 1002. Before the 1991 amendments, a plaintiff who proved sexual harassment could only recover monetary damages if the plaintiff could show that the harassment had a tangible effect. Id. (citing Landgraf, 211 US at 254). It was necessary to show, for example, that the plaintiff was terminated, paid less or denied promotions in order to recover money damages. Id. (citing Landgraf, 211 US at 254). To meet this requirement, Winsor alleged that she was constructively discharged. Id. In defining constructively discharge, the court in *Derr v Gulf oil corp.*, reaffirmed the Tenth Circuit's definition and stated "(a) finding of constructive discharge depends upon whether a reasonable person would view the working condition as intolerable, not upon the subjective view of the employee claimant."

16. Quid pro quo sexual harassment takes place when decisions in the workplace are made based on an individual's consent to or refusal of sexual advances. A hostile work environment sexual harassment exists when unwelcome conduct of a sexual nature "unreasonably (interferes) with an individual's job performance" or creates an environment "which is intimidating, hostile or offensive"
17. Hirschfeld, 916 F 2d at 577-78,
18. 503 US 60, 63 1992
19. 890 F. Supp. 1452, 1466 ND Cal. 1995
20. Restatement (second) of Agency S 219(2)(d) 1957.
21. "Seeking a superior institutional liability standard under Title IX for teacher student sexual harassment, Nerra Rellan Stacy, New York University Law Review, Vol 71, Nov '96, No. 5
22. 503 US 60 1992
23. *Rowinsky v Bryan Independent School District*, 80 F 3d 1006 5th Circuit Vol 110 Jan 1997, No. 3 Harvard Law Review.



## STATUTE ON INTERNATIONAL CRIMINAL COURT *Adopted at UN Conference in Rome*

*Credit: 25th July 1998, Vol. 53,  
No. 30. UN Newsletter's Editor*

The proposed statute on the establishment of an international criminal court to prosecute war crimes was adopted in Rome on 17 July after lengthy negotiations.

The statute was adopted by a vote of 120 in favour and seven against, with 21 absentions. The agreement was reached after weeks of intensive debate on the scope and powers that would be accorded to the court. In the last days of debate, the relationship of the Security Council and the court had become a matter of protracted negotiations.

Under the statute approved on 17th July, if the Security Council refers a case to the court, jurisdiction would be automatic. But if the Council's fifteen members decide to block the Court's jurisdiction they can do so through a resolution.

Another provision guarantees that States would have seven years after the treaty's entry into force to opt out of the agreement. They could do so by declaring that they do not accept the court's jurisdiction if a crime is allegedly committed by one of their nationals or on their territory.

Much debate focussed on the term "forced pregnancy", which is listed with other forms of sexual

violence, including rape, as a crime against humanity.

The final wording states that forced pregnancy "means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law." The definition does not affect national laws related to pregnancy.

While the statute grants the Court jurisdiction over four types of crime-genocide, crimes against humanity, war crimes and aggression- one provision states that jurisdiction over the crime of aggression is delayed under an agreement can be reached on its definition.

United Nations Secretary-General Kofi Annan described the historic treaty setting up the permanent international criminal court as a 'gift of hope to future generations'. The signing of the conference's Final Act took place at Rome's Capitoline Hill after weeks of intensive talks and wrangling. The Secretary-General interrupted his Latin-American tour to fly to Rome on 17 July in order to attend the ceremony commemorating the adoption of the Statute of the International Criminal Court.\* The

establishment of the Court is still a gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law," the Secretary General said. "It is an achievement which, only a few years ago, nobody would have thought possible".

Mr. Annan said that the decision (to establish the court) had special significance for the United Nations. "We never forget that our Organisations has its origins in a global struggle against regimes which were guilty of mass murder on a horrendous scale. And unhappily, we have had to deal all too recently... with new crimes of the same appalling nature, if not quite of the same magnitude, the Secretary-General added.

The Statute which was opened for signature on 17 July has already been signed by 26 States. It must be signed and ratified by sixty nations to come into affect. The international criminal court will come into effect one month after the sixtieth ratification. It will remain in Rome until October 17, then deposited with the Secretary-General in New York where it will stay open for signature until December 31, 2000.

□