Chapter V

Sexual Harassment At Work
Place: Judicial Response
SEXUAL HARASSMENT AT WORK PLACE: JUDICIAL RESPONSE

Women and their problems have acquired growing importance both in developed and under developed countries and it is recognized they have been victims of discrimination everywhere which is manifested in many spheres, political, social, economic and employment.

The beginning of the modern industrial era, consequent of industrial revolution witnessed a tremendous change in the character of work outside the household in order to augment the family income. In the early stages of industrial development women workers were victims of long hours, physical and mental tortures sexual abuse etc. Humiliation, harassment and exploitation of women is as old as the history of family life and it has become more widespread with industrialization.

Now women workers constitute an important component of Indian labour force. An increasing number of women are today compelled to leave the security of their homes and venture out in search of work depending upon the socio-economic status. Sharing of economic activity by women is neither a new phenomenon nor a new development, but the magnitude of their involvement is co-relative to socio-economic and political conditions prevalent in a country. With the change in the outlook, attitude and approach towards living, it has now become necessary by and large for the families with inadequate incomes to supplement their requirements through additional earnings. For this reasons, women have recorded impressive gains in employment from 1991 onwards as is evident from the economic survey.¹

As per the survey, total number of women employees was 36.44 lacks in 1990 that increased to 49.49 lacks in 2001 an impressive increase of 35.81

percent. The gain appears significant when seen in the face of declining number in overall employment especially since mid-nineties. That is, even in the face of tumbling total employment numbers, new women workers have joined the world of work, but these figures do not cover the unorganized sector, which constitute 92% of the total labour force and where in majority of them are women. It is quite pertinent that globalization has accelerated the way for women to enter the field of employment to lead a dignified life.

According to National Resource Centre for Women, Department of Women and Child Development, Government, of India the number of case of sexual harassment in India in 2002 was 10,155, an increase of 4.2 percent over the previous year (9,746). A survey by the National Women’s Commission in 2000 showed that 46.85% of women were sexually harassed in the work place. In 1991 statistics in India every 51 minutes a woman is sexually harassed and every 26 minute a women is sexually molested.

But the other side of the picture is that it has led to many evils, such as gender discrimination, physical and mental harassment and more specifically sexual harassment at work place. According to a report of the ILO, the women in industrial society are sexually harassed at work place. It has now become a global issue. It is considered to be a violation of human rights, discrimination and a safety and health issue. It offends the dignity and personal integrity of workers. It is a potential threat both to workers and to the enterprise. In India according to the statistics recorded by the National Crime Records Bureau, the number of cases recorded on sexual harassment in the year 2000 is 11024. There is 50% increase in cases of sexual harassment in 2000-01 over 1996-97.

This shows unlearning situation, which calls for immediate action to tackle it. Sexual harassment is deeply entrenched in cultural practices and is aggravated by power relations in the workplace. Incidents of sexual harassment are not just isolated incidents but involve a powerful formation governing relations of gender, and successfully constituting an entire section of the community as powerless in the face of molestation and harassment sexual harassment and use are act of violence and domination but can hardly contain the perception of sensuality and filtration.

**Defining sexual harassment**

It seems that the term sexual harassment came to be used in the public media from the year 1975 onwards. Till then no term existed to describe what is now universally called ‘sexual’ harassment in a legal sense seems to have been first coined in the United States of America and subsequently ‘exported’ from there to other industrialized countries including Australia, Canada, New Zealand Japan, and a number of Countries in Western Europe.

These countries had their first brush with the term sexual harassment in a formal legal sense only in 1980 or at the beginning of 1990. The term sexual harassment as a legal concept gained meaningful application in the United States only in the mid 1970s when the US court held it to be a form of sex discrimination prohibited under title VII of the Civil Right Act of 1964.

In India the term sexual harassment was first defined in a formal legal sense in the year 1997 by the Supreme Court in *Vishaka v. State of Rajasthan*. May reports on the working conditions of women also refer to “lie down or lay off” practices. However, it is the term ‘sexual harassment’ that has acquired the largest acceptance as it more fully denotes the malady than the other terms.

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Sexual harassment may take diverse and varied forms. It is not limited to demands for sexual favours made under threats of adverse job consequences should be recipient refuses to comply with such demands. Victim of sexual harassment need not establish that they were not hired, were denied a promotion or were dismissed from service as a result of their refusal to participate in sexual activity. This form of harassment, in which the victim suffers concrete economic loss for failing to submit to sexual demands, is simply one manifestation of sexual harassment albeit a particularly blatant and ugly one. Sexual harassment also encompasses situations in which sexual demands are imposed upon unwilling employees in which employees must endure sexual groping propositions, and in appropriate comments, but where no tangible economic rewards are attached to involvement in the behaviour.

Speaking generally sexual harassment is behaviour with a sexual connotation that is abusive, injurious and unwelcome. For the victim, sexual harassment has direct consequences for the maintenance or improvement of his or her living condition and/or places him or her in an atmosphere of intimidation, humiliation or hostility.

In India, in the absence of any statutory definition of the term sexual harassment it was left to the Supreme Court to do the needful. Relying on international convention and norms, particularly General Recommendation No 19 (January 1992) of the Committee on the Elimination of Discrimination Against Women (CEDAW) constituted by the United Nations, the Supreme Court defined the term sexual harassment for the first time in the years 1997 in *Vishaka v. state of Rajasthan*. The definition is almost in *Pari Materia* with the one proposed by the CEDAW, United Nations and reads:

Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implications) as-

(a) Physical contacts and advances,  
(b) A demand for sexual favours,  
(c) Sexual coloured remark,  
(d) Showing pronography  
(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  
victims of such conducts 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 women has reasonable ground to believe  
that her objection would dis-advantage her in connection with her employment  
or work including recruiting or promotion or when it creates a hostile work  
environment. Adverse consequence might be visited if the victim does not  
consent to the conduct in question or raises any objection there to.

The above definition of sexual harassment as provided by the Indian  
Supreme Court thus recognizes both forms of sexual harassment *viz quid pro  
quo* sexual harassment and hostile environment sexual harassment. "An  
analysis of the above definition," said Dr. A.S. Anand CJ in *Apparel Export  
Promotion Council v. A.K Chopra.*11 shows that sexual harassment is a form  
of sex discrimination projected through unwelcome sexual advances, request  
for sexual favour and other verbal or physical conduct with sexual overtones,  
whether directly or by implication, particularly when submission to or rejection  
of such a conduct by the female employee was capable of being used for

affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.

*Vishaka v. State of Rajasthan.* J.S. Verma CJ noted the hazards to which a working women may be exposed and the depravity to which sexual harassment can degenerate. Realizing the urgency for safeguard by an alternative mechanism in the absence of legislative measures or enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse more particularly against sexual harassment at work places the Supreme Court laid down certain guidelines and norms for due observance at all workplace or other institution, until a legislation is enacted for the purpose. The court did so in exercise of the power available under Article 32 of the constitution for enforcement of the fundamental rights and emphasized that this would be treated as the law declared by this court under Article 141 of the constitution the court also clarified that these guidelines would not prejudice any right available under the Protection of Human Rights Act, 1993. The court further made it clear that these guidelines and norms shall govern the behaviour of the employers and all others at the work places. So as “to curb this social evil” of sexual harassment at work.

As per the guidelines and norms laid down by the Supreme Court in Vishaka case. It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

The apex court prescribed the following preventive steps for the employers without prejudice to the generally of this obligation.

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13. This was a case of alleged brutal gang rape of a social worker in a village in Rajasthan.
(a) Express prohibition of sexual harassment as defined at the workplace should be notified, published and circulated in appropriate ways.

(b) The rule/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 order) 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 workplace and no women employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

The Supreme Court also directed to establish an effective complaint mechanism for dealing with complaints of sexual harassment.

**Complaint Mechanism**- An appropriate complaint mechanism should be erected in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatments of complaints.\(^\text{14}\)

**Complaint Committee**- The complaint mechanism referred to in above guideline should be adequate to provide, where necessary a complaints committee a special counselor or other support service, including the maintenance of confidentiality.\(^\text{15}\)

The complaint committee should be headed by a woman and not less than half of its member is woman. Further to prevent the possibility of any


\(^{15}\) Ibid.
undue pressure or influence from senior level, such complaint committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

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

The employers and the person in charge will also report the compliance with the aforesaid guidelines including on the reports of the complaints committee to the government department.

Complaint committee as envisaged by the Supreme Court in its Judgment will be deemed to be an inquiry authority for the purpose of central civil services (conduct) Rules 1964 and the report of the complaint committee shall be deemed to be an inquiry report under the central civil service Rules, thereafter the disciplinary authority will act on the report in accordance with the rules.

The Apex court has also laid down, 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. The employers are also duty bound to take appropriate disciplinary action against the perpetrators of sexual harassment. They have to set up an appropriate complaint mechanism for redress of the complaint made by the victim.

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines in a suitable manner. Further where sexual harassment occurs as a result of an act or omission by any third pantry 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 Supreme Court unambiguously and
unequivocally directed that the guidelines and norms should be strictly observed in all workplace for the preservation and enforcement of the right to gender equality of the working women.

Supreme Court held that it includes protection from sexual harassment and right to work with dignity which is a universally recognized basic Human Right. The common minimum requirement of this right has received global acceptance.

Referring to the incidents of sexual assault on working women the Supreme Court said that each such incident results in violation of the fundamental rights of Gender equality and the Right to life and liberty; it is a clear violation of the rights under Articles 14, 15, and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim’s fundamental right under Article 19 (1) (g) to practice any profession or to carry out any occupation trade or business. The fundamental right to carry on any occupation trade or profession depends in the availability of a safe working environment Right to Life means life with dignity.

The Supreme Court has also obligated the employers to initiate appropriate authority action in accordance with law by making a complaint with the appropriate if the harasser conduct amounts to a specific offence under the Indian Penal Code or under any other law.

The guidelines number 10 obligates the employers to take appropriate preventive and remedial action to prevent sexual harassment of their employees by non-employees.16

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

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16. *Vishaka v. state of Rajasthan* guideline no. 10
necessary and reasonable to assist the affected person in terms of support and preventive action.\footnote{17}

Apart from Article 32, 14, 19 (1) (g) and 21 of the Constitution of India, Supreme Court in Vishaka case also found the provisions of Articles 15, 42, 51-A, 51 and 253 relevant as they also envisage judicial intervention for eradication of this social evil. The court also held in the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all 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 Constitution and the safeguard 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.

The court has defined having regard to the definition of “Women Rights” in the section 2(d) of the protection of Human Right Act 1993, “sexual harassment” as including any unwelcome sexually determined behaviour (whether directly or by implications) like physical contact and advances, a demand or request for sexual favours, sexually coloured remark showing pornography and any other unwelcome physical verbal or non-verbal conduct of sexual nature.\footnote{18}

\textit{MRS. RUPAN DEOL BAJAJ AND ANOTHER, V. KANWAS PAL SINGH GILL AND ANOTHER}\footnote{19}

In this first case point before the court was to define the term ‘modesty’ as the word Modesty has not been defined in Indian Penal Code.

\footnotesize{\textit{\footnote{17} (1997) 6 SCC 241.\footnote{18} \textit{Ibid.}\footnote{19} (1995) 6 SCC 194.}}
The court relied on various definitions given in dictionaries. Fact of the case were in 1988 a senior lady officer of the Indian Administrative Service belonged to the Punjab cadre and working at the relevant time as the Special Secretary, Finance Lodge a complaint with the Inspector General of Police, Chandigarh that the accused who was Director General of Police Punjab has outraged her modesty at a dinner party. The accused slapped on the posterior. This was done in the full presence of the ladies and guests.

The complainant challenged the High Court's order before the Supreme Court where the moot point was whether the above allegations would constitute any or all of the offences for which the case was registered. In the absence of any definition of the word 'modesty' in the Indian Penal Code, the Supreme Court profitably looked into its dictionary meaning. According to Shorter Oxford English Dictionary (3rd Ed.) modesty is the quality of being modest and in relation to woman means womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct. The above dictionary defines the word 'modest' in relation to woman as decorous in manner and conduct; not lewd; shame fast. Webster's Third New International Dictionary of the English Language defines 'modesty' as freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct. In the Oxford English Dictionary the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. The Supreme Court also relied on its decision in State of Punjab v. Major Singh, in which Mudholkar, J who along with Bachawat, J spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind, that must fall within the mischief of Section 354 IPC. Bachawat, J

20. Ibid., 14
said that the essence of a woman’s modesty is her sex and from her very birth she possesses the modesty, which is the attribute of her sex. From the above dictionary meaning of ‘modesty’ and the interpretation given to that word by this Court in Major Singh case.

M.K. Mukherjee, J considered it appears to us that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. Applying this test to the facts in Rupan Deol Bajaj case.

M.K. Mukherjee, J further said, It cannot but be held that the alleged act of Mr. in slapping Mrs on her posterior amounted to ‘outraging of her modesty’ for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady ‘sexual overtones’ or not, notwithstanding.” M.K. Mukherjee, J also said that the common notions of mankind referred to by Mudholkar, J in Major Singh case has to be gauged by contemporary societal standards.

He must be attributed with such knowledge

The accused “strenuously” urged that even if it was assumed that he had outraged the modesty of the complainant, still no offence under Section 354, IPC could be said to have been committed by him for the other ingredient of the offence, namely, that he intended to do so was totally lacking. He urged that the culpable intention of the offender in committing the act is the crux of the matter and not the consequences thereof. While agreeing that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person, M.K. Mukherjee, J reminded that those ingredients being states of mind may not be proved by direct -evidence and may have to be inferred from the attending
circumstances of a given case.\textsuperscript{22} This case being only at the incipient stage, the Court had to ascertain, only prima facie, whether the accused by slapping the complainant on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC. From the sequence of events detailed earlier, the Supreme Court concluded that the slapping was the finale to the earlier overtures of the accused, which considered together, showed that he had the requisite culpable intention. Even if we had presumed he had no such intention, the Supreme Court held, he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society. Further, there was nothing in the FIR to indicate, even remotely, that the accused committed the indecent act, accidentally or by mistake or it was a slip. In the circumstances, the Supreme Court held that apart from the offence under Section 354 IPC, an offence under Section 509 IPC was also made out based on the allegations contained in the FIR, as the words used and gestures made by the accused were intended to insult the modesty of the complainant.

\textit{“Sagacity will be the first casualty”}

Having found that the allegations made in the FIR, prima facie, did disclose offences under Sections 354 and 509 IPC, the Supreme Court in this case adverted to the applicability of Section 95 IPC. In \textit{Veeda Menezes v. Yusuf Khan Haji Ibrahim Khan}\textsuperscript{23}: a three-Judge Bench of the Supreme Court explained that the object of framing Section 95 was to exclude from the operation of the Indian Penal Code those cases which from the imperfection of language may fall within the letter of the law but are not within its spirit and are considered, and for the most part dealt with by the courts, as

\begin{itemize}
\item \textsuperscript{22} \textit{Ibid.}, para 16
\item \textsuperscript{23} \textit{AIR 1966 SC 1773.}
\end{itemize}
innocent. In other words, the section is intended to prevent penalisation of negligible wrongs or of offences of trivial character. In interpreting the expression harm appearing in the section, the Supreme Court said that it is wide enough to include physical injury, as also injurious mental reaction. As to the applicability of the section in a given case, the Supreme Court observed as follows.\footnote{Ibid., para 20}

Whether an act which amounts to an offence is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention with which the offending act is done, and other related circumstances. There can be no absolute standard or degree of harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm. It cannot be judged solely by the measure of physical or other injury the act causes.

Relying upon the above principles, M.K. Mukherjee concluded that Section 95 of IPC could have no manner of application to the allegations made in the FIR of the complainant. On perusal of the FIR\footnote{Ibid., para 20}, the Judge said, we have found that the accused, the topmost official of the State Police, indecently behaved with the complainant, a senior lady IAS Officer, in the presence of a gentry and in spite of her raising objections continued with his such behaviour. If we are to hold, on the face of such allegations that, the ignominy and trauma to which she was subjected to were so slight that the complainant, as a person of ordinary sense and temper, would not complain about the same, sagacity will be the first casualty.

One of the reasons given by the High Court for quashing the FIR was:

In the present case there were 48 more persons present; 24 ladies and equal number of gentlemen. It sounds both unnatural and unconscionable that the petitioner (accused) would attempt or dare to outrage the modesty of the
author of the First Information Report in their very presence inside the residential house of Financial Commissioner (Home).

We are constrained to say, said the Supreme Court that in making the above observations the High Court has flagrantly disregarded unwittingly we presume the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. While agreeing that an FIR or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the Supreme Court pointed out that the High Court had not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. Holding that the High Court had committed a gross error of law in quashing the FIR and the complaint, the Supreme Court set aside the judgment of the High Court and dismissed the petition filed by the accused in the High Court under Section 482 Cr.PC. The court directed the Chief Judicial Magistrate to take cognizance of the offences under Sections 354 and 509 IPC.

**Accused convicted**

The Chief Judicial Magistrate, thereafter, framed the charges and, after a full-fledged trial, found the accused guilty of offences punishable under sections 354 and 509 IPC. The Magistrate sentenced the accused: (i) for the offence under Section 354 IPC to undergo imprisonment for a period of three months and pay a fine of Rs 500; and (ii) for the offence under Section 509 IPC, to undergo simple imprisonment for a period of two months and pay a fine of Rs 200. On appeal, the Sessions Judge confirmed the conviction, but altered the sentence and directed the accused to be released on probation in lieu of custodial sentence. However, the fine was enhanced to Rs 50,000 with a further
direction to pay half of it to the complainant. In revision, the High Court did not interfere with the conviction of the harasser under Sections 354 and 509. However, it enhanced the fine to Rs 2,00,000 and directed that the entire amount should be paid to the complainant. The High Court also imposed costs of Rs 25,000 on the accused.

The accused appealed to the Supreme Court against conviction and sentence. The complainant also appealed and sought enhancement of the punishment imposed on the accused.

K. G. Balakrishnan and B. N. Srikrishna, JJ gave short shift to the contention of the accused that the complaint was filed after three months from the date of the alleged incident. In the view of K. G. Balakrishnan, J the delay in filing the complaint before the Magistrate was by itself not sufficient to reject the complaint of the prosecutrix. The Judge took note in this regard that the prosecutrix recounted the entire incident immediately to the Chief Secretary and other officers and raised objections and also sought for stringent action against the accused. When she failed in all these attempts, she and her husband filed the criminal complaint before the Chief Judicial Magistrate.25

The Supreme Court also rejected the contention of the accused that no such incident happened and this was a part of a conspiracy to malign him as he had taken many serious actions to control the activities of the militants. Dismissing the appeal filed by the accused, K. G. Balakrishnan, J said,

There is nothing to suggest that the prosecutrix acted in connivance with some others and that she hatched a conspiracy to malign the accused. If the whole incident is viewed in correct perspective, it is clear that the behaviour of the accused on the date of the incident was not consistent with the high standard expected of a top-ranking police officer. The finding of the various courts is to the effect that the accused gently slapped on the posterior of the prosecutrix in

25. Ibid., para 18.
the presence of some guests. This act on the part of the accused would certainly constitute the ingredient of Section 354 IPC. It is proved that the accused used criminal force with intent to outrage the modesty of the complainant and that he knew fully well that gently slapping on the posterior of the prosecutrix in the presence of other guests would embarrass her. Knowledge can be attributed to the accused that he was fully aware that touching the body of the prosecutrix at that place and time would amount to outraging her modesty. Had it been without any culpable intention on the part of the accused, nobody would have taken notice of the incident. The prosecutrix made such a hue and cry immediately after the incident and the reaction of the prosecutrix is very much relevant to take note of the whole incident. The accused being a police officer of the highest rank should have been exceedingly careful and failure to do so and by touching the body of the complainant with culpable intention he committed the offence punishable under Sections 354 and 509 IPC. In view of the findings of fact recorded by the two courts and affirmed by the High Court in revision, the order of the High Court cannot be set aside on the mere assertion by the accused that the whole incident was falsely foisted on him with ulterior motives.

In her appeal the complainant contended that crimes against women were on the rise and the courts should have dealt with the matter severely and the accused should not have been released on probation. Noting that the incident happened in 1988 and the accused had completed the period of probation; and there was no occasion for any complaint or violation of any of the terms of the bond; the Supreme Court concluded that it would be unjust and improper to impose any other punishment. The Supreme Court, therefore, dismissed the complainant's appeal as well.

In the decision it was held that the act will amount to outraging her modesty and being a police officer of highest rank he had to be more
conscious about his behaviour and the Supreme Court also rejected the contention of the accrued that this was to malign him.

**APPAREL EXPORT PROMOTION COUNCIL V. A K CHOPRA**

In this case the Supreme Court case set aside the Judgment of the High Court and held that the accused acted in a unhealthy manner creating hostile environment as high Court over looked the ground realities and against moral sanctions.

Sexual harassment is not confined to unwelcome physical conduct on the part of the perpetrator. Therefore, physical contact of the perpetrator with the victim is not an essential ingredient of 'sexual harassment'. This was made clear by a Division Bench of the Indian Supreme Court. In this case the perpetrator worked as a Private Secretary to the Chairman of the Apparel Export Promotion Council, the appellant. The victim, a lady, was employed with the appellant as a clerk- cum-typist. She was not competent or trained to take dictation. The perpetrator, however, insisted that she go with him to the business centre of a hotel for taking dictation from the Chairman and type out the matter. Under the perpetrator's pressure she went to take dictation from the Chairman. While the victim was waiting for the Director, the perpetrator tried to sit too close to her and *despite her objection*, did not give up his objectionable behaviour. The victim later on took dictation from the Director. The perpetrator told her to type it at the Business Centre of the Hotel, which was located in the basement of the Hotel. He offered to help her so that the Director did not find fault with her typing. He volunteered to show her the Business Centre for getting the matter typed and, taking advantage of the isolated place, again tried to sit close to her and touch her despite her objection. After the Director corrected the draft-typed matter and asked the victim to retype it, the perpetrator again went with her to the Business Centre

and repeated his overtures. The victim told the perpetrator that she would leave the place if he continued to behave like that. However, the perpetrator did not stop. Though he went out from the Business Centre for a while, he again came back and resumed his objectionable acts.\(^{27}\)

The above definition of 'sexual harassment' as provided by the Indian 'Supreme Court, thus, recognizes both forms of sexual harassment, viz., quid pro quo sexual harassment and hostile environment sexual harassment. An analysis of the above definition, said Dr A.S. Anand, CJ shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directive or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.\(^{28}\)

The appellant Council dismissed the perpetrator for causing 'sexual harassment' to the victim. In the departmental enquiry that preceded the perpetrator's dismissal, the enquiry officer concluded that the perpetrator had 'molested' the victim and tried to touch her person with ulterior motives despite reprimands by her.

A Single Judge of the Delhi High Court, on the reasoning that the perpetrator had only tried to molest the victim, but did not in fact molest her, allowed the perpetrator's writ petition against his dismissal.

On appeal, a Division Bench of the Delhi High Court upheld the Single Judge's order. The Division Bench even reasoned that the perpetrator had "not

\(^{27}\) Id., para 4.
\(^{28}\) Ibid., para 26.
managed to make the slightest physical contact with the lady" and thus had not "actually" molested her. In fact, based on the evidence, the Division Bench even expressed its inability to agree that the perpetrator had even attempted to molest the victim as there had been no physical contact.

Setting aside the High Court's judgment, a Division Bench of the Supreme Court said that the perpetrator acted in a manner which demonstrated unwelcome sexual advances, both directly and by implication, and his actions "created an intimidating and hostile working environment" for the victim.

Dr A.S. Anand, CJ, said for the Supreme Court that the victim had used the expression "molestation" in her complaint in a general sense, which she had duly explained and elaborated in her evidence in the enquiry. Assuming for the sake of argument", said the Judge, "that the perpetrator did not manage to establish any 'physical contact' with the victim", even though one witness had deposed having seen the perpetrator put his hand on the hand of the victim, it did not mean that the perpetrator had not made any objectionable overtures with sexual overtones". The Supreme Court held the dictionary meaning of the word "molestation" or "physical assault" as irrelevant. The Court said, 'The entire episode reveals that the perpetrator had harassed, pestered and subjected the victim by a conduct which was against moral sanctions and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances." The Court held that the material on the record clearly established an unwelcome sexually-determined behaviour" on the part of the perpetrator against the victim, which was also an attempt to outrage her modesty. Such an action on the part of the perpetrator was squarely covered" by the term 'sexual harassment'. The Supreme Court said, "Any action or gesture, whether directly or by implication, *sic* aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual
harassment. The evidence on the record clearly established that the perpetrator caused sexual harassment to the victim, taking advantage of his superior position in the Council. Glossing over the observations of the High Court to the effect that the perpetrator did not "actually molest" the victim but only "tried to molest" her and, therefore, his removal from service was not warranted, the Supreme Court said.\(^\text{29}\)

The High Court's observations rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of the perpetrator did not cease to be outrageous for want of an actual assault or touch by the superior officer. The High Court overlooked the ground realities and ignored the fact that the conduct of the perpetrator against the junior female employee ... was wholly against moral sanctions, decency and was offensive to her modesty. The act of the perpetrator was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of the victim.

**International Covenant on Economic, Social and Cultural Rights**

The international covenant on Economic, Social and cultural rights contain several provisions particularly important for women. Article 7 recognize her right to fair conditions of work and reflect that women shall not be subjected to sexual harassment at the place of work with may vitiate the working environment.

Supreme Court has taken the view that in a case involving sexual harassment of a female employee by her male superior officer, resulting in an intimidating and hostile working environment for the victim, dismissal of the harasser from service would be the appropriate penalty. Castigating the High Court for quashing the harasser's dismissal on the purported ground that the harasser did not "actually molest" the victim but only tried to molest"

\(^{29}\) Ibid., para 23.
her, the Supreme Court said, "The High Court's observations rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of the harasser did not cease to be outrageous for want of an actual assault or touch by the superior officer."

Dr. A.S. Anand, CJ for the Supreme Court said, Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The Court also said that reduction of punishment in such a case is bound to have a demoralising effect on the women employees and is a retrograde step. Holding that there was no justification for the High Court to interfere with the punishment of dismissal, the Supreme Court observed, The Act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment and the punishment imposed was thus commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review.

Dr. A.S. Anand, CJ, held while the proceedings were nearing conclusion, the harasser's counsel submitted that the harasser was repentant of his actions and was tendering an unqualified apology. He also said that the harasser was also willing to go and apologise to the victim. "We are afraid," said the Court rejecting the purported apology, it is too late in the day to show any sympathy to the harasser in such a case. Any lenient action in such a case is bound to have a demoralising effect on working women. Sympathy in such cases is uncalled for and mercy is misplaced."

The Bench reiterated that fundamental rights guaranteed by our Constitution encompass all facets of gender equality and, hence, include protection from sexual harassment and abuse. The Bench also held that the

30. Ibid., para 27.
courts are "under a constitutional obligation to protect and preserve those fundamental rights."

An ILO publication recommends that while drafting legislation to provide explicit legal protection against sexual harassment, these elements should be addressed: Development and adoption of a nationally accepted explicit definition of sexual harassment; Delineate clearly the liability of the employer and the alleged harasser; provide affirmative duties to act towards the prevention of sexual harassment; ensure fair, clear and suitable procedures of due process for both accused and claimant covering filing and hearing of complaints, investigations, evidence, burden of proof, protection of confidentiality and privacy, protect against victimization; provide for a wide range of damages, remedies and sanctions that both punish and deter harassing conduct, supplement legislation with guidelines; and establish an administrative body or mechanism with resources and competence to handle complaints and promote application of the law.31

Dr A.S. Anand, CJ said for a Division Bench of the Supreme Court, there is no gainsaying that each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the Right to life and liberty the two most precious fundamental rights guaranteed by the Constitution of India. He noted that as early as in 1993, at the ILO Seminar held at Manila, it was recognized that sexual harassment of women at the workplace was a form of "gender discrimination against women". The judge further said, "the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be

31. Ibid., para 27.
eliminated and that there can be no compromise with such violations, admits of no debate.32

Supreme Court held each incident of sexual harassment amounts to violations of fundamental rights of equality and right to life with human dignity.

AVINASH NAGRA V. NAVODAYA VIDYALAYA SAMITI AND OTHERS.33

In this case, the alleged harasser worked as a postgraduate teacher in the respondent-institution, which was a co-educational institution. His service was terminated in terms of his appointment letter giving salary in lieu of notice on the ground of his improper conduct with a girl student. The High Court having dismissed his writ petition, the alleged harasser appellant approached the Supreme Court and contended that an enquiry ought to be held into the alleged misconduct. The Supreme Court directed the management to issue show-cause notice to the appellant, conduct an enquiry and submit the report within a specified time. In compliance with the Court's directions, the management issued a show-cause notice to the appellant and also supplied to him the statements of the girl victim, her room mates and one other witness, B. After receipt of the appellant's explanation and consideration of the entire record, the management drew up a report and submitted the same to the Supreme Court with the finding that the appellant was guilty of moral turpitude involving exhibition of immoral sexual behaviour towards the girl student.34

The appellant contended before the Supreme Court that the charges leveled against him impinged upon his character, conduct and career. Therefore, he should have been given an opportunity to cross-examine the girl student (victim) and her colleagues who had given their statements, and also to

32. Ibid., para 27.
34. Ibid., para 6.
examine himself. He, therefore, contended that the procedure adopted was in violation of the settled legal principles including the principle of *audi alteram partem*. He urged that the matter required remittance to the disciplinary authority for conducting a *de novo* enquiry in which he should be given opportunity to establish his innocence.

Point of issue before the Supreme Court important question, therefore, that arose for the consideration of the. Whether the dismissal of the appellant in terms of his letter of appointment was vitiated by any error of law and whether he was entitled to a full-fledged enquiry and opportunity to cross-examine the girl students who had given the statements against the appellant.

The provisions of CCS (CCA) Rules, 1965 of the Government of India were applicable to the employees of Navodaya Vidyalaya. The respondent was running nation-wide co-educational specialized and prestigious schools in which 1/3rd of the students were girls. In order to ensure safety and security of girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl students, etc. involving misconduct or moral turpitude, a resolution prescribing special summary procedure was proposed and published by a notification, after due approval of the Executive of the respondent-Samiti. The Minister of Human Resources and Development, Government of India was its Chairman. The notification enabled dispensing with regular enquiry under the Rules. In the case of a temporary employee whose integrity and conduct was doubtful but difficult to prove with sufficient documentary evidence to establish the charge and whose retention in service was prejudicial to the interest of the institution or whose grave misconduct and the enquiry under the Rules was likely to result in embarrassment to the class of employees or endanger the reputation of the institution, the appointing authority, for reasons to be recorded, was conferred power to terminate the employee's services in terms

of the letter of appointment. Though the order of termination need not contain any reasons, but the appointing authority had to obtain prior approval of the Deputy Director. Similarly, when the Director was satisfied, after summary enquiry, that there was a prima facie guilt of moral turpitude involving sexual harassment or exhibition of immoral behaviour towards any girl student, under the above notification, the Director could terminate the services of that employee by giving one month's or three months' pay and allowances in lieu thereof, depending upon whether the guilty employee was temporary or permanent. In such cases, procedure prescribed for holding enquiry for imposing major penalty under the Rules could be dispensed with provided that the Director was of the opinion that it was not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Director was obliged to record in writing the reasons due to which it was not reasonably practicable to hold such enquiry and also to keep the Chairman of the Samiti informed of the circumstances leading to such termination of services. Thus, in a given situation, instead of adopting the regular procedure under the Rules to terminate the services of an employee, the notification prescribed the procedure to dispense with such enquiry, subject to the conditions mentioned above.

The Supreme Court took note of, *inter alia*, the need for the education and the place of the teacher in that behalf.

The Supreme Court observed that the society has given a very high pedestal to a teacher. Therefore, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen. The quality, competence and character of the teacher are most significant to mould the caliber, character and capacity of the student for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to
fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children.\textsuperscript{36}

The Supreme Court also noted that the percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. It is only in the recent past that some middle-class people have been sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls.

Bench emphasized on greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher, who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like \textit{Rishi} and as \textit{loco parentis} and such is the duty, responsibility and charge expected of a teacher.\textsuperscript{37}

Testing the conduct of the appellant on the anvil of the lofty ideals stated above, the Court posed the question, whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him. Referring to the relevant Rules, the Court observed that they had been "wisely devised" to give the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he could dispense with the services of the appellant by giving

\textsuperscript{36} Ibid., para 12. 
\textsuperscript{37} Ibid., para 8.
pay in lieu of notice. Two safeguards had been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf.

Adverting to the material on record, the Court found that the appellant was given a warning for his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girls hostel at 10 p.m. in the night and asked the hostel helper to misguide the girl by telling her that "Bio-Chemistry Madam" was calling her. Believing the statement, the girl came out of the hostel. On admitted position, she was an active participant in cultural activities. Taking advantage thereof, the appellant misused his position and made sexual advances towards her. When she ran away from his presence, he pursued her to the room where she locked herself inside. He then banged the door. When her roommates informed him that she was asleep, he rebuked them and took the torch from the room and went away. The appellant admitted his going there. He also admitted his meeting with the girl. However, he gave a false explanation, which was not found acceptable to the Enquiry Officer. After conducting the enquiry, the Enquiry Officer submitted the report to the Director who having examined the report found the appellant not worthy to be a teacher in the institution. Under these circumstances, the short question that had to be answered was, "Whether the girl and her roommates should be exposed to the cross-examination and harassment and further publicity. Answering the question in the negative, the Supreme Court observed:

"In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation."
The Supreme Court ultimately held it is very hazardous to expose the young girls to *tardy* process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. In view of his admission that he went to the room in the night, though he shifted the timings from 10 p.m. to 8 p.m. which was not found acceptable to the respondents and that he took the torch from the room, do indicate that he went to the room. The misguiding statement sent through the hostel peon was corroborated by the statements of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a *loco parents* and, therefore, dispensing with regular enquiry under the rules and denial of cross examination are legal and not vitiated by violation of the principles of natural justice.

**VISHAKA V. STATE OF RAJASTHAN AND OTHERS.**

In India the term sexual harassment was first defined in a formal legal sense in the year 1997 by the Supreme Court in the above case.

A three judge Bench of the Supreme Court categorically held that each incident of sexual harassment or sexual assault at work results in violation of the fundamental rights of Gender equality and the Right to life and liberty, J.S. Verma, CJ further held for the Bench, It is a clear violation of the rights under Article 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 1990(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women." The Court reminded that the fundamental right to carry on any occupation, trade or

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profession depends on the availability of a "safe" working environment. Moreover, right to life means life with dignity.

Apart from Articles 32 and 14, 19(1)(g) and 21 of the Constitution of India, the Supreme Court also found the provisions of Articles 15, 42, 51-A, 51 and 253 relevant as they also envisage judicial intervention for eradication of this social evil. The Court also held, "In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all 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 (l) (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."

Thus, the power of this Court, said J S. Verma, CJ 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. He further categorically declared, 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.

India

In India, in the absence of any statutory definition of the term sexual harassment, it was left to the Supreme Court to do the needful. Relying on

41. Ibid., para 5
international conventions and norms, particularly General Recommendation of 19 January 1992 of the Committee on the Elimination of Discrimination against Women (CEDAW) constituted by the United Nations, the Supreme Court defined the term sexual harassment for the first time in the year 1997. The definition is almost in para materia with; the one proposed by the CEDAW, United Nations and reads:

Sexual 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' of 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.

'Sexual' Embraces a wide Range of Conduct'

The second element of the definition requires the conduct to be 'sexual' in nature. Courts, including Human Rights Tribunals, worldwide have recognized a broad scope of conduct that may fall under the definition of sexual harassment, depending on the circumstances. Such conduct may be physical, verbal or non-verbal. The ILO has identified the following "most common forms of sexual harassment" at the workplace:
Chapter V

(a) "Physical harassment kissing, patting, pinching or touching in a sexual manner.

(b) Verbal Harassment unwelcome comments about a person's sex or private life, jokes and insinuations, sexually explicit conversation, suggestive comments about a person's appearance or body.

(c) Gestural harassment sexually suggestive gestures, such as nods, winks, gestures with the hands, fingers, legs or arms.

(d) Written or graphic harassment sending pornographic pictures through e-mail, putting up pin-ups or addressing unwanted love letters to an employee.

(e) Emotional harassment behaviour which isolates, is discriminatory towards or excludes a person on the grounds of his or her sex.

Gender equality said J.S. Verma, Includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance.

In the words of Dr. A.S. Anand, CJ, said there is no gainsaying that each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty the two most precious fundamental rights guaranteed by the Constitution of India. That principle finds fuller expression in relation to women in the Convention on the Elimination of All forms of Discrimination against women. India reified the Convention on 25-6-1993 with some reservations, which are however, not relevant in the present context.

SUPREME COURT RELIED ON, 'Convention on the Elimination of all forms of Discrimination against Women.'
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

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

The general recommendations of CEDAW in this context in respect of Article 11 are, violence and equality in employment.

Article 22. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.42

Article 23. Sexual harassment includes such unwelcome sexually-determined behaviour as physical contacts and advances, sexually-coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds

42. Ibid., para 12.
to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints, procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace.\textsuperscript{43}

Supreme Court referred to the incidents of sexual assault on working women, each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) to practice any profession or to carry out any occupation, trade or business. 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.

Article 42 of the Constitution of India provides 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 of the Constitution may also be referred to it. It provides Fundamental Duties. It shall be the duty of every citizen of India.\textsuperscript{44}

(a) To abide by the Constitution and respect its ideals and institutions.

\textsuperscript{43} Ibid., para 13.
\textsuperscript{44} Ibid., para 5.
(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.

The definition of sexual harassment provided by the Indian Supreme Court in employs the test of reasonableness:

“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.

While the legislature and the executive have the primary responsibility to ensure a safe working environment through suitable legislation and the creation of a mechanism for its enforcement employers, employees and trade unions should also take necessary steps to combat sexual harassment at work. The Supreme Court of India has laid down certain guidelines in this regard.

45. Ibid., para 13.
Sexual harassment continues to be a major obstacle to equality of opportunity and treatment for women. Therefore, employers are under increased pressure to tackle this problem. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against violations of the fundamental rights of working women. Resentment towards incidents of sexual harassment is also increasing.

Underlining the need for employers to take all necessary steps to combat the menace of sexual harassment at work.

J.S. Verma, CJ said. "It shall be the duty of the employer or other responsible persons in workplaces 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."^{46}

The present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces. Apprehending, and rightly so, that enactment of such legislation would take considerable time, the Supreme Court in Vishaka case thought it necessary and expedient to lay down certain guidelines for observance by employers and other responsible persons in workplaces or other institutions so as to ensure the prevention of sexual harassment of women and to protect their fundamental rights. The Court issued these guidelines in exercise of the power available under Article 32 of the Constitution, so as 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. Declaring that these guidelines and norms shall be duly observed at all workplaces or other institutions until legislation is enacted for the purpose, the Apex Court made it absolutely clear, this would be treated as the

^{46} Ibid., para 16.
law declared by this Court under Article 141 of the Constitution. The Court also clarified that these guidelines would not prejudice any rights available under the Protection of Human Rights Act, 1993.47

J.S. Verma, CJ, for the Supreme Court whether in the public or private sector should take appropriate steps to prevent sexual harassment. The Apex Court prescribed the following preventive steps for the employers without prejudice to the generality of this obligation.

(a) Express prohibition of sexual harassment as defined in this decision at the workplace should be notified, published and circulated in appropriate ways.

(b) The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules and 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.48

Communication Must-

Merely having a policy on sexual harassment is not sufficient. The employer should take necessary steps to circulate and disseminate the policy as well amongst all employees. Unless the policy is effectively disseminated, the

47. Ibid., para 16 guideline no. 12.
48. Ibid., para 16 preventive step (d).
employees would not even know of its existence. Communication and circulation of the policy would serve to spread awareness of the types of conduct that may fall within the mischief of sexual harassment. It would also make the employees aware of their rights and duties in case of commission of sexual harassment. Unless the policy is properly disseminated, victims of sexually harassing conduct would not even know whom and how to complain and have their grievances redressed. Nor would perpetrators or potential perpetrators of such conduct realize or appreciate the inappropriateness of their conduct, or its consequences, both for them as well as for the victims. Courts, adjudicators, arbitrators, academic and legal commentators and international and other bodies worldwide have, therefore, laid great stress on the requirement of effective dissemination of the sexual harassment policy. Supreme Court also underscored this requirement when it said Express prohibition of sexual harassment at the workplace should be notified, published and circulated in appropriate ways. The Court also said, "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." 49

Disciplinary Offence

The Supreme Court directed that all employers, whether in the private or government or public sector, should clearly provide in their conduct and discipline rules or standing orders where the Standing Orders Act is applicable, that commission of an act constituting sexual harassment would be treated as a disciplinary offence. The disciplinary rules should expressly prohibit commission of such acts and also provide for appropriate penalties for the offenders. The European Communities Commission has also recommended in its "Code of practice on measures to combat sexual harassment".

Supreme Court has also directed, "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."

Training

Well conceived and implemented training strategies at the establishment level would go a long way to making the employees more gender sensitive, besides making them aware of what is inappropriate behaviour at work. Such training would definitely help create [a] awareness of the rights of female employees, as envisaged by the guidelines laid down by the Supreme Court.

Guidelines laid down by the Supreme Court of India

Guidelines 6 and 7 lay down by the Supreme Court deal with the employers' obligations to establish an effective complaint-mechanism for dealing with complaints of sexual harassment. These are reproduced below:

Complain mechanism\(^{50}\) — An appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

Complaints Committee\(^{51}\) — 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.

\(^{50}\) Ibid., para 16 guideline no. 6.
\(^{51}\) Ibid., para 16 guideline no. 7
The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body 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 employer 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.  

The Supreme Court has said that the complaint committee should be headed by a woman and not less than half of its members should be woman. The Court has also recommended preventing the possibility of any under pressure or influencing from senior level, such. Complaints committee should involve. A third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Supreme Court has not laid down any embargo against the participation of any insider that is to say an employee of the employer, in the complaint committee.

Transfer of one Party

The Supreme Court has said, “The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.” Unilaterally transferring the victim may send a wrong message to the staff members that the employer has adjudged the victim to be at fault and is, therefore, punishing or victimizing the victim. This would discourage other victims from reporting acts of sexual harassment and, thus, defeat the entire purpose of having a policy on combating sexual harassment.

52. Ibid. para 16 guideline no. 7  
53. Ibid., para 16 guideline no. 4.
Protection form Victimization or Retaliation

Supreme Court has also made it clear, the employer should particularly ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. If the harasser victimizes or retaliates against the victim or victim's witnesses or POTC, the employer should initiate appropriate disciplinary action against the harasser. The employer's written policy on sexual harassment should unambiguously declare that any act of the harasser in victimizing or retaliating against the victim, etc. shall be dealt with very seriously by the employer and such acts would constitute a gross misconduct and, as such, entail appropriate disciplinary action.

Criminal Proceedings

The Supreme Court also obligated the employers to initiate appropriate action in accordance with law by making a complaint with the appropriate authority if the harasser's conduct amounts to a specific offence under the Indian Penal Code or under any other law.

The guidelines laid down by the Supreme Court oblige the employers to take appropriate preventive and remedial action to prevent sexual harassment of their employees by non-employees. Guideline No. 10 says, "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." Therefore, a harasser's status as a non-employee would not give a valid ground of defence to the employer in a legal action initiated by an employee who was a victim of sexual harassment by a third party, if the employer failed to fake appropriate corrective action despite being aware of the harassment.\(^{54}\)

\(^{54}\) Ibid.
Employer-policies on sexual harassment should assure employees that should any employee face sexually harassing behaviour at work from a third party, such as a client or customer of the employer, the employer would take appropriate corrective or remedial action. The policy should emphasise the need on the part of the employees to promptly report such harassment to the employer or the designated officers so as to enable the employer to take appropriate action. Unless the recipient reports the harassment to the employer, the latter should not be held responsible or liable in this regard unless, of course the employer knew or ought to have known about such harassment and still failed to take appropriate corrective action. Employers should also notify the patrons, customers, independent contractors and others that employers shall not tolerate sexual harassment of employees by such third parties. According to a report by ILO, many employers extend the coverage of their workplace policies by permitting third parties to make a complaint against harassment perpetrated by the employer's workers.

The Court has further obligated the employers and person incharge to report on the compliance with the (Supreme Courts) guidelines including on the reports of the complaints committee to periodically review evaluate their police on combating sexual harassment.

Role of Employees, Trade Unions and Collective Braining

Both trade unions and the individual employees have a definite role to play in ensuring that the employment remains free form gender discrimination in general and sexual harassment in particular. Specifically noting this, J.S. Verma, CJ said for the Supreme court of India, 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.
The victim came from Bangladesh. She arrived at Howrah Railway Station to avail Jodhpur Express for paying a visit to Ajmer Sharif. She had a waitlisted ticket. Therefore, she approached a Train Ticket Examiner at the station for confirmation of berth against her ticket. The Train Ticket Examiner asked her to wait in the Ladies' Waiting Room. She accordingly came to the Ladies' Waiting Room and rested there. About 5 p.m., two persons later identified as one AS, a tout who posed as a very influential person of the Railways and SR, a railway ticket broker having good acquaintance with some of the railway staff of (Howrah Station) approached her, took her ticket and returned the same after confirming reservation. About 8:00 p.m. SR came again to her with a boy K and told her to accompany the boy to a restaurant if she wanted to have food for the night. Accordingly, about 9:00 p.m. she went to a nearby eating-house with K and had her meal there. Soon after she had taken her meal, she vomited and came back to the Ladies' Waiting Room. About 11:00 p.m. AS along with RA, a Parcel Supervisor at Howrah Station came to the Ladies' Waiting Room. The victim appeared to have some doubt initially, but on being certified by the lady attendants engaged on duty at the Ladies' Waiting Room about their credentials she accompanied them to Yatri Niwas. S, a khalasi of Electric Department of Howrah Station, joined them on the way to Yatri Niwas. She was taken to a room on the first floor of Yatri Niwas. The room was booked in the name of AS against Railway Card Pass. In the room two other persons viz. one L, Parcel Clerk of Howrah Railway Station and A, Parcel Clearing Agent were waiting. The victim suspected something amiss when AS forced her into the room. AS bolted the room from outside and stood on guard outside the room. The remaining four persons took liquor inside the room and also forcibly compelled her to consume liquor. All the four persons who were

present inside the room brutally violated the victim. Somehow, at a subsequent point of time, she managed to escape from the room of Yatri Niwas and came back to the platform where again she met SR and found him talking to AS. Seeing her plight SR pretended to be her saviour and also abused and slapped AS. Since it was well past midnight and the Jodhpur Express had already departed, SR requested the victim to accompany him to his residence to rest for the night with his wife and children. He assured to help her to board another train on the following morning. Thereafter, SR, accompanied by his friend took her to a flat where both of them raped her and when she protested and resisted violently, they gagged her mouth and nostrils intending to kill her. As a result, she bled profusely. On being informed by the landlord of the building following the hue and cry raised by her. She was rescued by Jorabagan Police.\textsuperscript{56}

Mrs. Chandrima Das a practicing advocate of the Calcutta High Court, filed a petition under Article 226 of the Constitution against the Chairman, Railway Board and some other officers of the Eastern Railway, besides the State of West Bengal and Senior Police Officers and the Deputy High Commissioner, Republic of Bangladesh. She claimed compensation for the victim. The petitioner also sought a direction to the respondents to eradicate anti-social and criminal activities at Howrah Railway Station. The Calcutta High Court awarded a sum of Rs 10 lakhs as compensation for the victim as the High Court was of the opinion that the rape was committed at the building (Rail Yatri belonging to the Railways and was perpetrated by railway employees.

The Supreme Court rejected the contention that proceedings under Article 226 of the Constitution could not have been legally initiated for claiming damages from the Railways for the offence of rape committed on the victim or that the victim herself should have approached the civil court for damages in

\textsuperscript{56} Ibid., para 3.
the realm of Private Law so that all the questions of fact could have been considered on the basis of the evidence adduced by the parties to record a finding whether all the ingredients of the commission of “tort” against the victim were made out. The Court also rejected the contention challenging the *locus Standi* of the petitioner to legally institute the proceedings, “Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement, of public duties,” said S. Saghir Ahmed J, “the remedy would still be available under the Public law notwithstanding that a suit could be filed for damages under Private law.”

There has, thus been said S. Saghir Ahmed, J "a spectacular expansion of the concept of locus Standi. The concept is much wider and it takes in its stride anyone who is not a mere 'busybody'. Having regard to the nature of the petition filed by the respondent and the relief claimed therein, S. Saghir Ahmed, J concluded that the petition was filed in public interest, which could legally be filed by the respondent.

Supreme Court relied on human rights jurisprudence based on the Universal Declaration of Human Rights, 1948 has acquired recognition as the "Moral Code of Conduct", having been adopted by the General Assembly of the United Nations. Before adverting to domestic jurisprudence, it would therefore be pertinent to consider the principles and objects behind the Universal Declaration of Human Rights as adopted and proclaimed by the United Nations General Assembly by its resolution dated 10 December 1948. The Preamble, *inter alia*, sets out as under:

"Whereas recognition of the INHERENT DIGNITY and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

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Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential to promote the development of friendly relations between nations.

Whereas the people of the United Nations have in the Charter affirmed their faith in fundamental human rights, IN THE DIGNITY AND WORTH OF THE HUMAN PERSON AND IN THE EQUAL RIGHTS OF MEN AND WOMEN and have determined to promote social progress and better standards of life in larger freedom.

Whereas member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge." Thereafter, the Declaration provides, inter alia, in various Articles,\(^60\) of Universal Declaration of Human Rights are.

Article 1, All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2, Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, NATIONAL OR SOCIAL

\(^60\) *Ibid.*
ORIGIN, PROPERTY, BIRTH OR OTHER STATUS. Furthermore, NO
DISTINCTION SHALL BE MADE ON THE BASIS OF THE POLITICAL,
JURIS DICTIONAL OR INTERNATIONAL STATUS OF THE COUNTRY
OR TERRITORY to which a person belongs, whether it be independent, trust,
non-self-governing or under any other limitation of sovereignty.

Article 3, everyone has the right to life, liberty and security of person.

Article 5, No one shall be subjected to torture or to cruel, inhuman or
degrading treatment or punishment.

Article 7, all are equal before the law and are entitled without any
discrimination to equal protection of the law. All are entitled to equal
protection against any discrimination in violation of this Declaration and against
any incitement to such discrimination.

Article 9, No one shall be subjected to arbitrary arrest, detention or
exile.”^1

Declaration on the Elimination of Violence against Women

The General Assembly also adopted the Declaration on the Elimination
of Violence against Women, by its resolution dated 20.12.1993. It provides in
Article 1 that violence against women' means any act of gender-based
violence that results in, or is likely to result in, physical, sexual or,
psychological harm or suffering to women, including threats of such acts,
coercion or arbitrary deprivation of liberty, whether occurring in public or in
private life". Article 2 of the Declaration it was specified that violence against
women shall be understood to encompass, but not be limited to.62

(a) Physical, sexual and psychological violence occurring in the family

61. Ibid, para 21.
62. Ibid, para 22.
including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3, of the Above Declaration Provides

Women are entitled to the equal enjoyment and protection of all human rights, which would include, inter alia.

(a) The right to life.
(b) The right to equality and
(c) The right to liberty and security of person.63

Constitution guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948, to its citizens and other persons. The chapter dealing with fundamental rights is contained in Part III of the Constitution.64 Fundamental rights are available to all "citizens" of the country. However, a few of them are also available to "persons". While Article 14, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to a "person" which would also include the "citizen" of the country and "non-citizen", both, Article 15 speaks only of "citizen" and it is specifically provided therein that there shall be no discrimination against any "citizen" on the ground only of religion, race, caste,
sex, place of birth or any of them, nor shall any citizen be subjected to any
disability, liability, restriction or condition with regard to access to shops,
public restaurants, hotels and places of public entertainment, or the use of
wells, tanks, bathing ghats, roads and places of public resort on the
aforesaid grounds. Fundamental right guaranteed under Article 15 is,
therefore, restricted to "citizens". So also, Article 16 which guarantees
equality of opportunity in matters of public employment is applicable only to
"citizens". The fundamental rights contained in Article 19, which contains
the right to "basic freedoms", namely, freedom of speech and expression;
freedom to assemble peaceably and without arms; freedom to form
associations or unions; freedom to move freely throughout the territory of
India; freedom to reside and settle in any part of the territory of India and
freedom to practice any profession, or to carry on any occupation, trade or
business, are available only to "citizens" of the country.65

The rights under Articles 20, 21 and 22 are available not only to
"citizens" but also to "persons", which would include "non-citizens". Article 20 guarantees right to protection in respect of conviction for offences.
Article 21 guarantees right to life and personal liberty, while Article 22
guarantees right to protection against arbitrary arrest and detention. "These
are wholly in consonance with Article 3, Article 7 and Article 9 of the
Universal Declaration of Human Rights, 1948."66

The word "LIFE" has been used prominently in the Universal
Declaration of Human Rights, 1948. The fundamental rights guaranteed by the
Indian Constitution "are almost in consonance with the rights contained in
the Universal Declaration of Human Rights as also the Declaration and the
Covenants of Civil and Political Rights and the Covenants of Economic, Social
and Cultural Rights, to which India is a party, having ratified them." Since

65. Ibid., para 29.
66. Ibid., para 32.
"LIFE" is recognized as a basic human right, both in the Indian Constitution and in the Universal Declaration of Human Rights, 1948.

Supreme Court has assigned the word as used in the Declaration the same meaning and interpretation as placed on that word by the Court in its various decisions relating to Article 21 of the Indian Constitution.\(^{67}\)

As seen above, right to LIFE in terms of the language used in Article 21 is available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity would be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to "life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of persons who are not citizens.

It may also be noted that initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie. However, the law underwent a change by subsequent decisions and it was held that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The Public Law remedies have been extended to the realm of tort. The Supreme Court has entertained petitions under Article 32 of the Constitution on a number of occasions and awarded compensation to persons who suffered personal injuries at the hands of the officers of the Government.

Being aggrieved by the High Court's judgment, the Railways appealed to the Supreme Court. The only question argued before the Supreme Court was that the Railways were not liable to pay compensation to the victim who was

\(^{67}\) Ibid., para 37.
a foreigner and was not an Indian national; and that the Railways or the Union of India was in no case liable to pay compensation to the victim for the offence. The specific contention was that since it was the individual act of those persons, they alone could be prosecuted and on being found guilty could be punished and may also be liable to pay fine or compensation; but on the facts of this case the Railways or the Union of India would not even be vicariously liable. It was also contended that for claiming damages for the offence perpetrated on the victim, the remedy lay in the domain of private law and not under public law and, as such, the High Court could not have legally awarded any compensation under Article 226 of the Constitution and, that too, at the instance of a practicing advocate who in no way, was concerned or connected with the victim.

The Supreme Court also rejected the contention that the victim being a foreign national was not entitled to any relief under Public Law. This contention was based on the reasoning that the Fundamental Rights in Part III of the Indian Constitution are available only to citizens of India and since the victim was a Bangladeshi national, she could not complain of violation of Fundamental Rights and, as such, could not be granted any relief on that basis. In rejecting the above contention, the Supreme Court relied upon both the "Domestic Jurisprudence based on Constitutional provisions" as well as "Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948, which has international recognition as the 'Moral Code of Conduct' having been adopted by the General Assembly of the United Nations." The Court also relied upon the Declaration on the Elimination of Violence against Women, adopted by the General Assembly of the United Nations. 68

C.S. USHA, V. MADRAS REFINERIES LTD, CHENNAI AND OTHERS. 69

The petitioner-appellant-complainant, a female, worked with the first respondent, a public sector undertaking as an officer. She was last

68. Ibid., para 19.
promoted in 1992 as Deputy Manager. She alleged that the second respondent sexually harassed her by means of sexual advances and propositions. She suffered the problem silently and did not complain to anyone officially at that time. The second respondent refused to fill up performance appraisal for the year 1994-95 and she was not given her promotion due in the latter half of 1995, as one of the members, who was a close friend of the second respondent, saw to it that she was not promoted. She also alleged that she got her admission to Ph.D. and applied for grant of study leave with pay in January, 1996, but got no response from the Management. The complainant alleged that she was denied her pay from February 1996 and only the second respondent was the root cause behind the Company's denial of her salary, promotion and study leave. Subsequently, the first respondent issued a charge-sheet alleging that the complainant was absent without leave. She sent her reply denying the charges. Even then her dues were not released and her salary from February 1996 was stopped. At this stage, she caused a lawyer's notice to be issued in April, 1998 to the first respondent alleging sexual harassment by the second respondent and also the denial of promotion, salary, leave and medical benefits. She also called upon the first respondent to take disciplinary action against the second respondent. Subsequently, she received a letter from the first respondent/company informing that a Complaints Committee had been formed to look into the allegations set out in her lawyer's notice. Thereafter, the Committee sent a notice to the complainant asking her to appear before it.\(^7\)

The complainant, thereafter, filed a writ petition before the Madras High Court, praying to quash the charge-sheet and to grant the benefits of revision of salary with arrears of pay, promotion and for the grant of study leave with pay. She also filed a separate writ petition for quashing the order constituting the Complaint Committee and for constituting "an independent Complaint Mechanism after framing proper rules".

\(^7\) Ibid., para 2.
The Complaints Committee consisted of three members. All of them were outsiders. The majority of members, namely, two were women. The Chairperson of the Committee was also a woman. The credentials of the Chairperson were absolutely without blemish. The complainant-appellant could not specify any particular objection regarding the qualifications of the Chairperson. One of the members against whom the appellant made allegations of attitudinal bias, subsequently resigned. As per the directions of the Single Judge, the first respondent company appointed another experienced bureaucrat in the place of the member who had resigned. The appellant alleged nothing against this new member. In the circumstances, the Division Bench of the Madras High Court dismissed the objections made by the appellant regarding the composition of the Committee. The Bench categorically rejected the appellant’s contention that the company should not at all be involved or should not have a say in the constitution of the Committee. The Court also rejected the appellant’s demand that the company should appoint the particular person chosen by her as the Chairperson of the Complaints Committee, We are of the opinion, said N.K. Jain, CJ, "that if a Complaint Committee is constituted according to the whims and fancies of the appellant, the administration will get stuck. Enough safeguards were provided by the Supreme Court. The appellant's counsel cannot be allowed to interpret in her own way to suit the convenience of the appellant." However, in view of the appellant's submission that she had suffered "enormous mental agony and pain" and her plea for being allowed assistance, by her chosen representative at the enquiry, the Division Bench directed the Complaints Committee "to consider allowing the appellant to face the enquiry with the assistance of (her chosen representative)."

Division Bench of the Madras High Court rejected the contention that the Complaint Committee should consist of outside agency only. We are of the considered opinion, said N.K. Jain, CJ, for the Bench, maintained that the
constitution of Complaints Committee is only for finding out the truth or otherwise of the facts and also to award compensation. Then it has to be followed by domestic enquiry. It is seen that the Complaints Committee should be headed by a woman and not less than half of its members should be women. It has to be ensured that there is no undue pressure or influence from senior levels. To achieve this, the Supreme Court has suggested that the Complaints Committee should involve a third party, either a Non-Government Organization or other body who is familiar with the issue of sexual harassment.\textsuperscript{71}

**Duty of Complainant to Substantiate Complaint**

Women work at workplaces with more strain laws therefore, including our Constitution and the Supreme Court's decisions, provide various safeguards to women, particularly to the women at workplaces, so as to enable them to work with human dignity. While there can be no two opinions, therefore, that wrongdoers should not be allowed to go scot-free, but at the same time, the employer, who is supposed to keep a vigilant eye on the victim and the delinquent, is not expected to allow the women to use the shield so presented by the Supreme Court as a weapon to wreak vengeance. Therefore, when in view of complaints of sexual harassment made by a female employee the employer constitutes a complaint committee to enquire into the allegations, the complainant cannot be permitted to seek any relief or directions in her favour without participating in the enquiry and substantiating her allegations. Merely because a female employee has made allegations of sexual harassment against a male co-employee or officer, there does not arise any presumption for the complainant or against the

\textsuperscript{71} Ibid., para 27.
respondent. The complainant, therefore, cannot shirk from her duty to substantiate her allegations.

A Single Judge of the Madras High Court found that the petitioner was not entitled to study leave with pay and, therefore, the action of the first respondent/Company in refusing study leave with pay was in accordance with law. The Single Judge also concluded that qualified persons excluding the second respondent had duty considered the appellant's claim for promotion. Since she did not secure sufficient marks to get selected to the post of Manager, which was a selection post, she was not selected. The Single Judge held that depending on the outcome of the enquiry, the first respondent Company would settle the non-payment of arrears of pay, if there was anything due. As regards allegations of sexual harassment, the Single Judge found that the appellant had no cause for complaint and the Committee had been properly constituted in accordance with the directions of the Supreme Court.

Being aggrieved with the judgments of the Single Judge, the petitioner-appellant appealed against them. The appellant contended that without first deciding the allegation of sexual harassment against the second respondent and the complicity of the Company in it, the charge-sheet against the appellant could not be proceeded with. She also contended that she had joined the Doctorate course not only to acquire better qualifications and knowledge, but also to be away from the uncomfortable and hostile atmosphere at work created by the second respondent.

Dismissing the appeals, a Division Bench of the Madras High Court made it absolutely clear that the charge-sheet could not be quashed, nor could the complainant be held entitled to revision of salary, without appearing before the Complaints Committee. "It is true", said N.K. Jain, CJ for the Division Bench, "that we are bound by the directions of the Apex Court (made in Vishaka case), but that does not mean that they can be allowed to be interpreted
to suit the convenience of the woman like the petitioner, for personal gain." Strongly depreciating the entire approach adopted by the complainant-petitioner (appellant), the Division Bench said:

"The Court must be careful to ensure that the process of the Court is not sought to be abused by woman like the petitioner, who desires to persist with the point of view, almost carrying it to the point of obstinacy. Keeping all these aspects, in mind, we are of the considered opinion that what the Supreme Court has held in Vishaka case (supra) has to be construed as a double edged weapon to shield the women at working place from sexual harassment. At the same time, it should not be taken that all complaints by women should be presumed to be correct without referring to the Committee. If it is presumed so before investigation, then the very object will be defeated. Mere averment will not carry much weight. Averment should be supported and supplemented by impassable proof, both oral and documentary. Complaints of harassment that too sexual harassment to working women have to be dealt with instantly. So, the employer, by taking more care and caution, has to weigh the truth and falsehood of the complaint so made, taking all the pros and cons into account. Here it is not the case that the complaint of alleged sexual harassment is not considered by the Committee. But merely on the basis of averments, as stated above, it cannot be presumed and no direction can be issued or the other enquiry can be stayed till the Committee decides the complaint relating to sexual harassment."^^

The Division Bench noted that while according to the complainant-appellant she had been subjected to sexual harassment by the second respondent from 1992 and even before, but even "a cursory perusal of the correspondence which took place in the various letters and communications made by the appellant with the Company and also with the Petroleum Ministry regarding her request for study leave with pay and the refusal by the respondent clearly

72. Ibid., para 23.
reveal that not even a whisper was made by her about the alleged sexual harassment alleged to have been done by the second respondent." Her complaint of sexual harassment by the second respondent surfaced only in the lawyer's notice issued in 1998 for the first time. Declining to accept the "new case" sought to be put forward by the complainant during her arguments that she intended prosecuting her Ph.D. not only to acquire further qualification but also to keep herself away from the alleged advances of the second respondent, the Division Bench commented.

The petitioner/appellant before us is not an ordinary working woman, instead she was carrying on the Research by joining the Ph.D. course. Had there been any harassment much less a sexual harassment, a woman like her would not have kept quiet for a period of about six years. She was not able to convince us, by reliable materials, as to what prevented her from making a complaint for all these years prior to the issuance of the lawyer's notice.

N.K, Jain, CJ said for the Bench that any more resistance on the part of the appellant to get on with the enquiries would cast serious doubts about her bona fides. It is up to her to face the charges against her and satisfy the Committee enquiring into the charges against her that she was entitled to study leave with pay and that she was justified in staying away. She should not be dragging her feet. The enquiry into charges against her need not await the decision of the Complaints Committee. Both can proceed simultaneously and independently. The proceedings in one need not impinge on the proceedings in the other.

The Division Bench of the Madras High Court categorically rejected the appellant's contention that till such time the Complaints Committee decided her allegation of sexual harassment, the other enquiry regarding her alleged unauthorized absence, etc. should not be proceeded with. The Division Bench said, "The two enquiries are not related to each other. One relates to the
appellant absenting herself without leave and, her entitlement to arrears, pay, promotion, etc. and the other relates to sexual harassment. The appellant is not at all justified in contending that till such time the enquiry pertaining to sexual harassment is over the charges against her should not be enquired into. It is well settled that a person who seeks equity must come with clean hands. In such a factual situation as mentioned above, we cannot brush aside the arguments of ... Respondents 1 and 2 that only because of the refusal of promotion, study leave with pay, etc. the appellant had come out with a complaint with vengeance."

Advising the appellant to cooperate and have the enquiries concluded.

**ASMA PARVEEN, V. ALIGARH MUSLIM UNIVERSITY. 73**

The petitioner was a lady lecturer in the department of Psychology in the Women's College, Aligarh Muslim University, Aligarh. Both she and the victim resided in the premises of Abdullah Hall, The petitioner was issued a charge sheet alleging that on a particular date she illegally confined the victim in her residence with the active connivance of a male Ph.D. student, B. The victim was a student of B.A. and was preparing for her examination. She had offered psychology as one of her subjects. Her allegation was that she used to take help of the petitioner. On a particular date, the petitioner asked the victim to come to her room, as she wanted to give her some important teaching material. The victim, therefore, went to the petitioner's residence. When she reached there, she found the petitioner in the company of B to whom she had earlier been introduced by the petitioner. After some time the petitioner left the room on the pretext of doing some important work with a promise to return within a short while. Soon, thereafter, B started talking to the victim in indecent language and even tried to outrage her modesty. The victim, whose name was not disclosed but was indicated by Miss K tried to flee from the room but found that the door was locked from outside and she had been put to illegal confinement. However, when B

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73. (2001) LIC 3121 All.
went inside the bathroom, Miss K had the presence of mind to lock the
bathroom from outside. The petitioner returned to the room after about an
hour. She opened the room and found that the bathroom was locked from
outside by Miss K. The petitioner opened the bathroom. B came out of the
bathroom in a furious mood, caught hold of Miss K by her hair and tried to
molest her in the petitioner's presence. Miss K then slapped B due to which
the grip on her became loose and she ran out of the room. On complaint
being made by her, the matter was probed by the Provost and Assistant
Proctor, Abdullah Hall, and by the Principal of the Women's College.
The petitioner was suspended and directed to vacate the accommodation
provided to her in Abdullah Hall. The charge sheet directed the petitioner not
to reveal the name of the victim at any stage, as the victim was well known to
her, and also not to publicize the document in order to save the honour and
dignity of Abdullah Hall.74

Rejecting the petitioner's contention that unless the name of the girl was
disclosed it was difficult for her to submit her defence, the Division Bench of
the Allahabad High Court concluded from the material on record that it could
not be said that the petitioner did not know the girl. The Bench also noted that
before the Enquiry Authority the petitioner made a statement. "I wanted to
bring the girl concerned and Mr B as my defence witnesses but because I have
been banned to visit Abdullah Hall Campus and Mr [B] for whom the
University campus has been banned, therefore, I could not contact them and
produce them." The Bench inferred from this statement that the petitioner
knew the girl concerned. The Bench also concluded that the respondents
did not disclose the name of the girl to save the honour and dignity of the girl
and the reputation of Abdullah Hall where many girls resided. The Bench
perused the record relating to the enquiry proceedings, which included a
sealed envelope. The envelope was opened and it disclosed the name of the

74. Ibid., para 2.
girl. The Bench held that the non-disclosure of the name of the girl did not prejudice the petitioner in any manner.\textsuperscript{75}

Though the victim was not produced in the enquiry, the Division Bench of the Allahabad High Court found that there was material evidence to support the charges against the petitioner. The provost, the assistant proctor and the principal to whom the victim had narrated the incident duly deposed about the incident as told to them separately by the victim. These witnesses were respectable persons. There was nothing to show that their statements were concocted. The petitioner was permitted to cross-examine them. However, she refused to cross-examine them. She was also given opportunity to make her own statement and produce witnesses. Once again, she declined to produce any evidence. She did not even examine herself.

The Division Bench also rejected the petitioner's contention that she could not get assistance of Defence Assistant. The Enquiry authority gave two days notice to the petitioner asking her to appear for hearing along with her Defense; Assistant. However, on the date fixed, she wanted further time to engage a Defense Assistant. This was rejected. Refusing to find any fault with the procedure, the Bench observed: The complainant girl was under the constant threat and taking into consideration the entire circumstances it was advisable that the enquiry should be conducted expeditiously.

In her brief statement of defence the petitioner denied that any event, as stated in charge sheet, took place. She also contended. The so called reason for not revealing the name of the girl is unjustified and is bad in law since it deprives me of the identity of the complainant and therefore, hampers the preparation of my statement of defence. I, therefore, in view of the above lack of evidence claim that the entire matter is concocted and reeks of mala fides.

\textsuperscript{75} Ibid., para 9.
Division Bench of the Allahabad High Court comprising, Sudhir Narain and Krishna Kumar, JJ. Concluded that the non-disclosure of the name of the victim, who was a girl student, did not prejudice the case of the petitioner. Discountenancing the plea of violation of the principles of natural justice, the Bench refused to interfere with the action of dismissal taken against the petitioner. The Bench also rejected the contention that as the victim-girl student was not examined at the enquiry, the charges could not be held to be established against the petitioner.

**NARENDRA KUMAR KHASE V. S. GOPALKRISHNAN AND OTHERS.** 76

The petitioner was a very senior officer in the Bank of India. He was promoted as Deputy General Manager and transferred to Tokyo as Chief Executive of the Bank of India, Japan Branches. While posted in Japan, it was alleged that he misbehaved in the office premises with two female employees and also raped one of them at his residence in the evening hours when she was purportedly called to his residence for teaching him the Japanese language. The Foreign Bank Employees Union leaders took up the matter with the Bank, and a complaint was lodged against the petitioner. Subsequently, the Attorney-in-law for the alleged victims submitted a report to the Bank alleging sexual harassment of the two female employees, and calling upon the Bank to take appropriate action in the matter. The Bank deputed an officer to investigate into the alleged episodes, who submitted a report, finding that the complaint against the petitioner was vague and concocted. The two female employees thereafter filed a suit in the District Court at Tokyo alleging that the petitioner had caused sexual harassment to them, and claimed compensation against him as well as the Bank, who were imp leaded as defendants in the suit. The petitioner as well as the Bank appeared in the suit proceeding, and the Bank sanctioned the necessary amount for legal expenses. In the suit, both the female employees were examined and cross-examined. The petitioner was

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76. (2000) 3CLR 556.
also examined and cross-examined in the proceeding, and he also examined one defence witness. Though a Single Judge initially tried the suit, it was thereafter referred to a Collegiate Court of three Judges. Thereafter the plaintiffs led additional evidence. The Court decreed the suit, awarded 33,00,000 yen as damages and compensation to one female employee and 700,000 yen as damages and compensation to the other, apart from costs and interest at the rate of 5% per annum.77

The Bank was not inclined to appeal against the judgment of the Japanese Court. It accordingly informed the petitioner that if he wished to prefer an appeal, he might do so in his individual capacity. The petitioner was also called upon to deposit the amount to be paid to the plaintiffs by way of compensation. The petitioner wrote to the Bank stating that he was not interested in preferring appeal in his individual capacity. The Bank thereafter issued two notices to the petitioner. The first notice was issued under the Bank's Regulations. It referred to the suit filed by the above female employees and the judgment passed therein. The notice further referred to the fact that the damages were awarded not only against the petitioner but also against the Bank. There was, therefore, a judicial finding by a competent Court of law that he had committed the acts of sexual molestation of two female employees of the Bank, and rape of one of the female employees. The notice further stated that by his conduct, the petitioner brought the Bank to ignominy and financial loss; that he did not act with integrity and honesty, and committed a grave act, which was highly unbecoming of a Bank's Officer; and that he did not maintain good conduct and discipline, and instead of showing courtesy and attention to employees of the Bank, he took advantage of his position and committed grave and reprehensible acts. Therefore, the notice stated that the Bank had come to the conclusion that the petitioner had committed various acts of misconduct, which justified imposition of a major penalty under the Regulations. The attention of the petitioner was drawn to the Special Procedure

77. Ibid., para 3.
provided in the Regulations, which waived the detailed procedure for disciplinary action where, *inter alia*, the Disciplinary Authority decided to take action on the strength of facts and conclusions arrived at by a Judicial Tribunal. Such a special procedure was applicable to the case of the petitioner as well. A Court of competent jurisdiction had tried the petitioner, and found him guilty of rape and sexual harassment after giving him full opportunity to put forward his defence.\(^7\)

The charges proved were so grave that they justified imposition of major penalty of dismissal. The petitioner was called upon to submit his representation within 30 days of the receipt of the communication.

By the second notice, the Bank informed the petitioner that the Court had directed him and the bank to pay compensation, which came to Indian Rs 18, 62,024.80. Since the Court's decision had become final, no appeal having been preferred against it, the Bank had incurred heavy financial loss to the extent of Rs 18 lacs and odd. This amount, said the Bank, was recoverable from the petitioner as reimbursement of financial loss and as contribution for satisfaction of the judgment of the Japanese Court. The Bank informed the petitioner that the financial loss caused to it would be recovered from him both on grounds of reimbursement and contribution; and the Bank would also exercise its right of general lien and set off in respect of any amount lying with the bank in the petitioner's name.

There was some exchange of correspondence between the petitioner and the Bank thereafter. Ultimately, the petitioner filed a writ petition before the Bombay High Court. The petitioner sought a declaration that the relevant regulation entitling the Bank to dispense with the requirement of holding enquiry before imposing punishment was unconstitutional, inoperative, void and illegal. He also sought directions for holding and declaring the Bank's action in

\(^7\) Ibid., para 4.
freezing the account of the petitioner as "wholly without any authority, illegal and bad in law".\textsuperscript{79}

The impugned regulation of the Bank read as follows:

Special procedure in certain cases, Notwithstanding anything contained in Regulation, the Disciplinary Authority may impose any of the penalties if the officer employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial. Provided that the officer employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made." While not seriously pressing his objection to the constitutionality and validity of the above regulation, the petitioner made, inter alia, the following contentions,

The judgment of the Japanese Court was not conclusive (he relied upon Section 13 of the Code of Civil Procedure in this regard).

1. No disciplinary proceeding was held. At the same time, the order did not proceed on the basis that it was not practicable to hold an enquiry. In the absence of a conviction recorded in a criminal trial, the bank could not dismiss the petitioner from service on the basis of findings recorded in a civil suit in a foreign country.

2. Merely because the petitioner did not prefer an appeal did not mean that he accepted the judgment of the Japanese Court as final.

3. There was no debt due to the Bank from the petitioner, and there was no adjudication by a Court of law. The decree had been passed against the Bank as well as the petitioner, and, therefore, the Bank could not claim reimbursement from the petitioner. Further, the Bank had no right of reimbursement against the petitioner for recovery of loss and damages in the absence of adjudication by a Court of competent jurisdiction. In

\textsuperscript{79} Ibid., para 4.
any event, the joint accounts, which he held with his wife and daughter, could not be frozen, and the amounts therein could not be adjusted against the amount claimed by the Bank by way of reimbursement and contribution for satisfaction of the decree.

4. The procedure adopted by the Japanese Court was not exactly the same procedure as is adopted by the Courts in India. Initially a Single Judge was hearing the matter, but later, the Court was converted to a Collegiate Court of three Judges after the defence had examined its witnesses. Even after the petitioner had examined himself as a defendant, and even after his witness was examined, the plaintiffs were allowed to examine witnesses. In fact, one plaintiff was again examined and cross-examined after the defence had closed its case.\(^{80}\)

The Bank submitted, *inter alia*, as follows-

1. Though the facts established would justify the petitioner's conviction on a criminal charge, since the female employees concerned did not lodge a prosecution, but took recourse to a civil proceeding, while awarding damages and/or compensation the Court had recorded findings of fact holding the petitioner guilty of raping one of the female employees, and subjecting both the female employees to sexual harassment. The bank had, therefore, issued notice to the petitioner to show cause why he should not be dismissed from service. This notice proceeded on the strength of facts or conclusion arrived at by a judicial Tribunal.

2. In view of the findings recorded by the Japanese Court, there was no need to hold an enquiry, since the Bank proceeded on the strength of facts and conclusions arrived at by a Court of competent jurisdiction. The fact that the petitioner was not convicted in a criminal trial made no difference whatsoever.

3. A fair trial was conducted by the Japanese Court, in which the

petitioner had full opportunity of defending himself against the accusations made against him. The Court, after considering the evidence on record, by a reasoned judgment, found the petitioner guilty of misconduct, and awarded damages against him as well as the Bank, which was a co-defendant. In the circumstances, the Bank was justified in acting under its Regulations, and calling upon the petitioner to reimburse the Bank, and contribute for the satisfaction of the judgment of the Japanese Court.

4. Since the petitioner did not prefer an appeal, the judgment attained finality, and therefore, there was no option for the petitioner and the Bank but to satisfy the judgment and decree passed by the Japanese Court. The Bank suffered financial loss on account of the misconduct of the petitioner. Therefore, it was entitled to recover from him the said amount, and for doing so, it could proceed against the account held by the petitioner either singly or jointly.

Upholding the regulation entitling the bank to dispense with a disciplinary enquiry, and declining to interfere with the show-cause notice calling upon the petitioner to show why he should not be dismissed from service.

B.P Singh, J. said for the Bombay High Court. In service jurisprudence, it is well known that the rules may provide that the Disciplinary Authority may, on the basis of a finding recorded by a Court of law, take action against an employee. What is of essence is the finding recorded by a Court of competent jurisdiction. If a disciplinary proceeding is necessary only to test the charge that the concerned employee is guilty of misconduct, law does not consider it necessary to conduct such a disciplinary proceeding if the same matter has been the subject-matter of a judicial proceeding and has been gone into by a Court of competent jurisdiction, which has pronounced its judgment in the matter on merits. It cannot, therefore be said that if the Disciplinary Authority acts on the strength of findings recorded in such a
judgment, its action is either arbitrary, irrational or unreasonable. The Regulation expressly provides for disciplinary action against an employee if he has been convicted of a criminal charge or on the strength of facts or conclusion arrived at by a judicial trial. The findings recorded by the Court against the petitioner, though in a civil suit, in reality, relate to his criminal conduct of sexual harassment of female employees and rape of one of the female employees. The proviso to the relevant Regulation however mandates that the employee should be given an opportunity of making representation on the penalty proposed to be imposed. These respondents have complied by issuing the notice.

We are satisfied that the relevant Regulation is neither unconstitutional nor void and that the Respondents are justified in taking action against the Petitioner under the Regulation.

Dealing with the contention that no proceeding was conducted against the petitioner, and there was no finding that it was not practicable to hold a disciplinary proceeding, the High Court said that in a case covered by the above Regulation, it was not necessary to hold a disciplinary proceeding. The Court also agreed with the Bank that it would be wholly impracticable to summon witnesses from Japan to enable them to depose in a disciplinary proceeding. At the same time, the Court chose not to express any opinion on this aspect, since it found that the above Regulation itself, in given circumstances, justified the imposition of punishment without insisting upon holding of a disciplinary proceeding.81

As to the decision of the Japanese Court, the Bombay High Court declined to hold that the trial was not a fair or that it was held in breach of principles of natural justice. "It may be", the Court said that the procedure followed by Courts in Japan is not exactly the same as in this country. It is

81. Ibid., para 10.
not the requirement of Section 13 of the CPC that the procedure followed by the foreign Court, who has rendered the judgment, must be identical to the procedure followed in this country. It has not been submitted before us that the Court who tried the suit, and gave judgment, was not a Court of competent jurisdiction. It has also not been contended that the judgment is not on the merits of the case. There also appears to be nothing on the face of the proceeding to show that the judgment was founded on an incorrect view of the international law or a refusal to recognize the law of India in cases in which such law is applicable.

Refusing to hold that the procedure followed by the Japanese Court was in breach of the principles of natural justice, and rejecting the submission based on Section 13 of the CPC, the Bombay High Court pointed out that the parties examined their witnesses, and they were permitted to be cross-examined. The Japanese Court gave full opportunity to the defendants to defend themselves. No grievance, moreover, was made before the High Court that the defendants were not permitted to effectively defend themselves in the suit. The High Court said, The mere difference in procedure, which appears to us to be insignificant, does not justify the criticism that the procedure followed by the Court, or the judgment rendered by it, was opposed to natural justice, On a fair reading of the judgment of the Japanese Court, we are satisfied that the procedure followed by the Court was fair, and the judgment rendered by the Court is a well-reasoned judgment discussing all aspects of the matters, and the conclusions reached are justified by the evidence on record.82

The Bombay High Court, however, gave partial relief to the petitioner on the issue whether the Bank was justified in freezing the accounts of the petitioner. The Bank had frozen three such accounts, which were in Tokyo, Hong Kong and Jersey Islands, According to the petitioner, the account in Tokyo was his own account operated by him. However, the account in the Hong

82. Ibid. para 9.
Kong Branch was the account of his wife who was the first signatory, while the petitioner was the second signatory. Similarly, the account at Jersey Islands was the account of his daughter jointly with the Petitioner's wife and the petitioner. However, the petitioner was a third signatory in this account. He, therefore, submitted that, in any event, the Bank had no right whatsoever to freeze the accounts of his wife and daughter. This was without prejudice to his contention that the Bank could not, without taking recourse to legal proceedings, take a decision to appropriate the amounts lying in the aforesaid accounts for adjustment against the loss said to have been suffered by the Bank.\(^3\)

As regards the question whether the Bank could exercise its right of general lien and set off in respect of any amount lying with the Bank in the petitioner's name, the High Court said that it might not be possible for the Court, in exercise of writ jurisdiction, to express any opinion in the matter. The petitioner denied his liability to make good the loss said to have been suffered by the Bank as a result of the judgment of a foreign Court in which the bank was a co-defendant. The Bank claimed to recover from the petitioner the loss suffered by it even in the absence of adjudication by a Court of competent jurisdiction. In these circumstances, the High Court left the parties to work out their rights in accordance with law" and "to take appropriate legal proceedings, if so advised.

The remaining two accounts, however, the High Court said, stood on a different footing as those were, *prima facie*, joint accounts. It is well known that for the sake of convenience, joint accounts are opened, even though the amounts deposited in such account may really belong to only one of the holders, who is, usually, the first signatory. Though the amounts were lying in the aforesaid two accounts that were joint the High Court said that it was difficult to say, on the basis of material on record, that the amounts, really, belonged to the petitioner. This being a disputed question of fact, the High Court expressed its inability to

\(^3\) Ibid., para 13.
decide the same. Nevertheless, the Court did observe that no rule or regulation had been shown to them under which the Bank might proceed against the account of the petitioner or his wife or daughter. Admittedly, the Bank had not initiated any proceeding before a Court of competent jurisdiction enabling it to proceed against the aforesaid two accounts for the recovery of loss caused to the Bank by the misconduct of the petitioner. Therefore, the Court said, "there appears to be no justification for the Bank to proceed against the aforesaid two accounts for the recovery of loss allegedly caused by the misconduct of the petitioner." The High Court, therefore, directed the Bank to withdraw the order freezing these two accounts.\(^\text{84}\) The Court, however, clarified that the Bank would be at liberty to seek remedy before a Court of competent jurisdiction to proceed against the accounts. Similarly, the petitioner would also be free to seek remedy before the appropriate forum if he denied his liability to make good the loss said to have been incurred by the Bank on account of the misconduct of the petitioner.

Division Bench of the Bombay High Court held that it was open to the management to take disciplinary action against the alleged harasser based on facts and conclusions arrived at by a foreign Court of competent jurisdiction, without holding a departmental enquiry, which could be dispensed with under the applicable Regulations.

**R.B.S. CHAUHAN V. RESERVE BANK OF INDIA.**\(^\text{85}\)

The harasser, the petitioner in this case, worked as Assistant Treasurer in the cash department of the RBI, Kanpur. The complainant was a female who worked as Manager in the said Department, on a post higher than that of the petitioner. Both these officers were deputed to visit Agra for inspection of currency chest. The complainant subsequently gave a written complaint to the management alleging that the petitioner had sexually harassed her at Agra

\(^{84}\) *Ibid.*, para 15.

\(^{85}\) (2003) 2LLJ 634 (ALL D B).
during the official visit. As per the complaint, the petitioner and the complainant had stayed in the same Hotel, but in different rooms. On the particular date, about 9.00 p.m. the petitioner rang the bell of the complainant's room. When she opened the door, the petitioner said that he wanted to talk to her urgently. Thereafter, he came into the room of the complainant and said that he wanted to have dinner. She gave him dinner but after dinner he refused to go back to his own room and said, I am alone, you are alone, we can enjoy”. The complainant was horrified at this 'disgusting immoral remark' and asked him to leave the room. The following day he called up the complainant over the intercom and said to her, Please do not put the receiver down. Have you pardoned me or not? Please pardon me. I know not what happened to me yesterday. “The complainant immediately put the receiver down and on the same day after inspection of the currency chest she telephoned the General Manager saying that she was not feeling comfortable and wanted to come back. Thereafter she returned to Kanpur and informed the General Manager about the incident. She alleged that she was in a mental shock, tension and grief due to the act of the petitioner, which was unpardonable.

The matter was referred to the Sexual Harassment Committee of the Bank and the Committee conducted an enquiry in which the petitioner participated. The Committee gave opportunity of hearing to the petitioner. Based on the report submitted by the committee, and on examining the entire service record of the petitioner, the bank passed orders compulsorily retiring him in terms of the relevant rules. The petitioner was 55 l/2 years of age at that time. In this case a Division Bench of the Allahabad High Court declined to interfere with the order of compulsory retirement of the harasser, based on the report of the employer's Complaint Committee. In this case a full-fledged enquiry was not held into the charges leveled against the harasser. Nevertheless, the 'Complaint Committee' did hold a fact-finding enquiry in

86. Ibid., para 6.
87. Ibid., para 2.
A female, was employed with the appellant defendant company as a Junior Executive. She made a complaint to the Company's Chairman against Defendants 1 and 2 who were male officers working with the company. The plaintiff leveled very serious charges of sexual harassment against them that also constituted offence of outraging her modesty, According to the plaintiff, on particular dates during a product launch in a hotel, Defendant 1 committed acts amounting to sexual harassment against her. Since the highest authority of the company did not extend his help and co-operation, the plaintiff filed a formal complaint with the police. Based on her complaint, the Police initiated a criminal case under Section 509 of the Indian Penal Code. Defendant 2, however, instituted a domestic enquiry against the plaintiff and for that purpose appointed an Enquiry Officer. According to the defendant company, the plaintiff had grossly misbehaved with Defendant 1 during the product launch in the hotel, and for which Defendant 1 had also lodged a written complaint. Defendant 2 refused to make the complaints of sexual harassment and outraging her modesty as made by the plaintiff the subject-matter of the enquiry on the plea that that issue was "unconnected" with the charge sheet. The plaintiff, however, insisted that if the background of the incident was not allowed to be brought on record the very object of the domestic enquiry would be frustrated and she would be denied justice. The plaintiff instituted a suit against the defendants seeking, inter alia, a decree (i) of declaration that the domestic enquiry was illegal as it was instituted by Defendants 1 and 2 as a measure of retaliation after becoming unsuccessful in fulfilling their ill-desire of sexual harassment; (ii) of declaration that the defence of the plaintiff would be disclosed before the domestic enquiry which would affect the criminal case leading in turn to the exoneration of Defendants 1 and 2 who

were accused in the criminal case; and (iii) restraining the defendants from conducting the domestic enquiry until disposal of the criminal case and a temporary injunction in that regard.\textsuperscript{89}

While agreeing that the criminal and disciplinary proceedings were not initiated on the same set of facts, the Division Bench refused to interfere with the order of interim injunction passed by the trial court chiefly because:

(1) The notice of domestic enquiry was issued by the company to the plaintiff after she lodged her written complaint with the Police,

(2) As per the plaintiff's case, the disciplinary proceeding was initiated against her out of grudge or ill motive because of lodging of the written complaint by her with the Police based on which the criminal proceeding was started. In the view of the Court, unless the defendants were restrained by an order of temporary injunction from proceeding with the departmental enquiry till disposal of the suit, the plaintiff would suffer irreparable loss and injury.

(3) In terms of the guidelines formulated by the Supreme Court in the company was obliged to constitute an appropriate complaint mechanism such as a complaint committee for redress of complaints made by victims of sexual harassment, in a time-bound manner. However, the company formed no such complaint committee or any other appropriate complaint mechanism for that purpose. Further, instead of endeavoring to redress the complaints of the plaintiff, the Executive Director of the company informed the plaintiff that the allegations of gender harassment, besides being baseless, were unrelated to the enquiry and totally uncalled for. 'It is really surprising', the Bench remarked, that without making any enquiry into allegations of gender harassment made by the plaintiff-respondent before the appropriate authority such allegations were said to be baseless and no reason whatsoever has been assigned to

\textsuperscript{89} Ibid., para 2.
indicate why such allegations were baseless. Thus, even without enquiring into the allegations of sexual harassment made by the plaintiff and without giving her any opportunity, the company had already concluded that her complaint was baseless.90

The Division Bench of the Calcutta High Court concurred with the trial Judge in holding that the plaintiff was able to establish a prima facie case and balance of convenience was in her favour. At the same time, the Bench clarified that legality of the departmental proceeding challenged by the plaintiff was "a vital issue involved in the suit and such question [could] only be decided at appropriate stage of trial on evidence”.

Division Bench of the Calcutta High Court, comprising Asit Kumar Bisi and Sameresh Banerjea, JJ. Refused to interfere with the order of temporary injunction passed by the City Civil Court under Order 39 Rules 1 and 2 of the Code of Civil Procedure restraining the defendants from proceeding with the departmental proceedings initiated against the plaintiff till disposal of the suit filed by the plaintiff

CONCLUSION

Law alone is not chough to root out this social evil, society has to change its attitude. So that women can come out and participate in public life without feeling threatened. A woman’s dress and appearance are often cited as reasons why women are sexually harassed. However, this does not explain why women who are suitably covered as per community norm and standard are also targeted.

Moreover, it does not clarify why some men harass, while others do not. Many women are aware that they will be automatically blamed for having provoked sexual harassment and stigma that is placed on women who report

90. Ibid., para 16.
harassment is therefore a major deterrent for many victims. Lack of support from family, colleagues or peers also inhibits a victim from seeking redress. The view that women ask for it is so deeply entrenched in some cultural contexts and communities that victims of sexual harassment are cinematized for the rest of their lives what needs to be inculcated is a serve of mutual respect between women and men. There is divinity in each of us; the recognition of which will automatically bring forth mutual respect and that alone will be the base of liberation and empowerment of women.

Women have been tremendously praised in the literature and religion of our country. Women are placed on a very high pedestal in Indian mythology. Women have been called ‘Devi’ and ‘Shakti’. However a woman’s actual position becomes evident at the time when she goes out of the house alone.

It is indeed unfortunate to mention here that country which once importing knowledge to the world in religious philosophy and used to be quoted by cultural pollution and moral degradation that is visible in contemporary society. Historically, sexual harassment of women employees has been ignored, denied made to seem trivial, condoned and even implicitly supported with women themselves being blamed for it.

The case of sexual harassment of women at workplace are increasing alarmingly because of several reasons, inter alia, poor status of women, increasing number of human relations and values, poor law and order position in the society and no adequate provisions of law to deal with the problem effectively. By and large, sexual harassment is not only women’s issues; it is a human right issue, a human resource management issue, a safety and health issue at workplace.

While given judgment in Vishaka Supreme Court has given due importance to the international conventions and norms, more particularly CEDAW which is ratified by our government and which is also to date, the
most comprehensive international instrument specifically prohibiting sexual harassment, A woman employee who object to sexist behaviour at the workplace and demands that standard of decency be observed is often dismissed as hypersensitive, nervous, out wrought. Beside the working capacity of woman is conversably reduced on being regularly harassed sexually, it virtually drains the self confidence of the woman employee due to this she feels uncomfortable at the workplace and becomes sick.

Since there is no specific legislation in India till date that deals with sexual harassment at the workplace, the existing remedies whatever available are in Indian penal code 1860 that does not specifically contain any chapter either on crimes against women or a ‘sexual harassment’ or a ‘sexual harassment at workplace’. The provisions which are available are unable to effectively combat the ever increasing problem of sexual harassment at workplace.

For combating sexual harassment at the workplace Supreme Court has been quite proactive and has laid down exhaustive guidelines in Vishaka case. Till such date a separate law on the protection of women against sexual harassment at the workplace comes into being, these guidelines will be law of the land as per Article 141 of the Constitution which are to be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the women employees but they are continued to be ignored by many State Governments. Above and beyond these representatives of civil society, the NGOs have also not made noteworthy efforts as they should have to ensure effectual implementation of the said guidelines.

These guidelines are meaningless for the unorganized sector, where low skilled and ill paid women are the most insecure.

The guidelines even if strictly observed and circulated in all workplaces can not protect a woman from sexual harassment because it overlooks the
ground reality that in most cases it is the employer who is responsible for the harassment. The Court has presumed the employer to be innocent and not actively engaged in sexual harassment and placed a duty upon him to prevent or deter the commission of acts of sexual harassment.

Article 39(A) of the Constitution of India, 1950 embodies that the State shall secure that the operation of the legal systems promotes justice, on a basis of equal opportunity, and shall, in particular, provides free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities.

Therefore, extensive efforts should be made to make women employees aware of free legal aid available to them under the legal services authority Act 1986, need to be advertised at the grass root level in every nook and corner of the country in order to increase legal literacy. Their ignorance and poverty should not be an impediment in the way of their obtaining justice from the Courts. At once fell swoop, the legal services Authority Act should provide round the clock legal clinics, educate NGOs and voluntary agencies on women employees issues.

Where the women employees are themselves victims of sexual harassment they should inform the offender that the behaviour is unwanted and unacceptable. If the behaviour nonetheless persists, the women employees should inform management and or the employee representative through the appropriate channels and require assistance in stopping the menace.

Much more importantly, ‘prevention’ is a more effective and economical strategy that post harassment legal redress. It involves, the taking of affirmative steps at the national, employers, trade Unions, voluntary organizations especially NGOs and women employees level. Sexual harassment at the workplace is a world wide phenomenon requiring a change in
the social mindset to recognize women employees as equal partners it truth to be hold, the most effective way to stop the sexual harassment at the workplace is to get the root of the problems.

Sexual harassment needs to be openly discussed as a workplace issue of legitimate concern to men and women. Ultimately an end to sexual harassment at the workplace necessitates that men and women reach social and economic equality and full integration in all occupations and places of work. The issue of sexual harassment needs understanding, assessment, sensitivity and commitment from all quarters for effective prevention of sexual harassment at workplace.

It is imperative that a safe and gender friendly workplace environment must be provided which discourages sexual intimidation and unwelcome sexual conduct while promoting a cozy, collegial and conductive working environmental where the dignity of a woman employee is respected by everyone. There is a urgent need to protect women employees in all vistas of the society, not only in the interest of women but also for the progress of the country.