CHAPTER – VI

SEXUAL HARASSMENT : JUDICIAL EXPOSITION – CRITICAL ANALYSIS OF JUDICIAL DECISIONS IN SEXUAL HARASSMENT CASES

The judiciary plays a significant role in the interpretation of the provisions of the law and bridging the lacunae in the existing law of the land as well as filling the void in the area hitherto left unattended by the legislatures. This is in consonance with the object to achieve social purpose. Thus, judicial decisions serve as the beacon light for the society and the judiciary through its constructive interpretation of statutes strengthens the determination of rule of law in a country. Therefore, independence of judiciary is an essential requirement of democratic set up because it acts as the custodian and guarantor of the rights of the people. The judicial decisions reflect the social conscience of the society because they reflect the conceptualization of the different provisions of law, socio-cultural considerations, the perceptions, belief, faith, temperament, attitude, likes, dislikes, social sensitisation and own life experiences of the judges.

In case of administration of criminal justice, depending on the judge’s perception of what is reasonable or unreasonable, an accused may be convicted/acquitted, his/her punishment reduced/increased. Thus reasonableness of the behavior of the accused and victims at and around the time of offence plays an important role in determining the guilt of the accused and the quantum of punishment. Sometimes the judges consider delay in reporting and sometimes expects the victim to take more time in reporting the matter in sexual assault cases to award lesser punishment to the


2 In State of Haryana v Prem Chand (1990) 1 SCC 249: 1990 SCC (Cri) 93, the judges gave less than the mandatory punishment because of the victim’s conduct in reporting the rape five days later.

3 In Bhanwari Devi case the Sessions Judge acquitted the accused on the ground that immediate report of the victim of the rape, straight to the police without first informing her in- laws was unnatural.
accused. The influence of reasonable man is so profound that even while dealing with offences against women, judges are inclined to fall back on this yardstick for evaluating the conduct of the victim and the accused. It becomes clear when one examines the question of determination of consent of a rape victim.\textsuperscript{4} Sometimes the sexuality of the victim is considered as responsible for the sexual assault\textsuperscript{5} and sometimes the past sexual history or character of the victim is taken into consideration for the determination of the guilt of the accused.

In India the judiciary has always been portrayed as a symbol of justice assuring the oppressed and the underprivileged in society of equality before law. But experience shows that this is not always true and that at times judges do discriminate between men and women and consciously and unconsciously reflect traditional and rigid attitudes towards them as they themselves are raised in male supremist tradition. Equally understood and defined in terms of women’s experience is absent in all thinking, including judicial adjudication. The conservative nature of judicial decision making in India uses customs and traditions constantly as an argument and more so in the case of a woman even when those same traditions and customs are violating legally defined rights of a woman.\textsuperscript{6} In cases of sexual assault relating to women, judgments reveal a deep rooted gender bias in the judiciary which has found expressions in many ways, with judges making harsh, disparaging and unwarranted remarks against women, believing the accused while disbelieving the victim and at times being more sympathetic to the accused than the victim\textsuperscript{7}. Therefore, gender sensitive judge can play a more proactive role in providing justice to the women by appreciating the evidence keeping in view the prevalent gender prejudices and stereotypes on the one hand and sensitivity of the victim on the other hand. The judicial attitude concerning women has not developed spontaneously but is a result of constant endeavour of the socially

\textsuperscript{4} K N Chandrasekharan Pillai, “Women and Criminal Procedure”, in supra note 1 at 161.

\textsuperscript{5} In Raju v. State of Karnataka (1995) I SCC 453: 1994 SCC(Cri) 538, The Supreme Court reduced the sentence from seven to three years by holding that the victim had agreed to sleep in the same room with the accused and the young accused were overpowered by lust during the course of the night. The victim was to be responsible not just for her own but for their sexuality as well.


\textsuperscript{7} Saroj Iyer, The Struggle To be Human- Women’s Human Rights, p. 75 (1999) Books for Change, Bangalore.
sensitised judges in remedying the injustices meted out to the women in the society. Initially the judiciary applied the statutory provisions concerning the plight of the women i.e. outraging or insulting the modesty of women, rape, obscenity etc. However, as extremely miniscule number of cases relating to sexual harassment of women at workplace have reached upto Supreme Court, inference can be drawn that this can be attributed to the lack of reporting at the initial level due to the ambiguities regarding the definition of sexual harassment and lack of societal awareness to perceive sexual harassment as grave violation of women’s human rights. An analysis of following decisions of the courts depicts the obstacles in the conceptualization, formulation and recognition of the ‘sexual assault’ as the ‘sexual harassment ’ and subsequent evolution of the concept of sexual harassment being not only an offence against the woman body but a systematized discrimination on the basis of sex.

In State of Punjab v. Major Singh\(^8\), the accused caused injury to the vagina of a female child of seven and half months by finger. The Sessions Judge and two of the three learned judges of the High Court who heard the appeal against the decision of the Sessions Judge opined that a child of seven and a half months old being incapable of having a developed sense of modesty, the offence was not punishable under Section 354 of IPC. The third Judge Gurdev Singh J, however, took a different view. He quoted the meaning of the word modesty given in the Oxford English Dictionary (1933 ed.) which is, womanly propriety of behavior, scrupulous chastity of thought, speech and conduct (in men or women), reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions and observed: “this obviously does not refer to a particular woman but to the accepted notions of womanly behavior and conduct, it is in this sense that the modesty appears to have been used in Section 354 of the IPC. The learned Judge then referred to Section 509 of the Penal Code which also uses the word modesty and said:

“the object of this provision seems to have been to protect women against indecent behaviour of others which is offensive to morality. The offences created by Section 354 and Section 509 of the IPC are as much in the interest of the woman

\(^8\) AIR 1967 SC 63
concerned as in the interest of public morality and decent behavior. These offences are not only offences against the individual but against public morals and society as well, and that object can be achieved only if the word modesty is considered to be an attribute of a human female irrespective of fact whether the female concerned has developed enough understanding as to appreciate the nature of the act or to realize that it is offensive to decent female behavior or sense of propriety concerning the relations of a female with others”.

S.B. Capoor J, one of the other two judges, on the other hand referred with approval to the following passage from the judgment of Jack, J in Soko v Emperor:

“Under Section 354 it must be shown that the assault was made intending to outrage or knowing it to be likely to outrage the modesty of the girl. It is urged for the petitioner that the conduct of the girl shows that in fact her modesty was not outraged. There is no suggestion that she had any hesitation in telling her mother exactly what had happened. In the circumstances, I think that it is, therefore, doubtful whether in fact the modesty of the girl was outraged”.

He also referred to two other decisions in Mt. Chanpa Pasin v. Emperor and Girdhar Gopal v. State and took the view that the authorities do not support the view that in construing Section 354 IPC it is irrelevant to consider the age, physical condition or the subjective element of the woman against whom the assault has been committed or the criminal force used.

The third judge Mehar Singh J, while referring the case to a larger bench, quoted the following passage from Dr. Gour’s Penal Law of India:

“Ordinarily, the women who are likely to be made victims of this offence are those who are young and who are old enough to feel the sense of modesty and the effect

9 Id. at p. 66 para 12 per Mudholkar, J
10 AIR 1933 Cal. 142
11 AIR 1928 Pat. 326
12 AIR 1953 Madh. Bh. 147
13 7th Ed. Vol. 3 p. 1744
of the acts directed against it. But it does not deprive others of the protection from the license of man, provided their sense of modesty is sufficiently developed”.

He also observed that the opinion of the learned author tends to agree with the dictum of Jack J, in Soko’s case. The majority of the judges in the High Court held that the words outrage her modesty showed that there must be a subjective element so far as the woman against whom criminal force was used is concerned. They were of the view that the offence could be said to have been committed only when the woman felt that her modesty had been outraged. Thus they opined that the test of outraging of modesty was the reaction of the woman concerned. These judges answered the question in negative in the view that the woman to whom the force was used was of too tender an age and was physically incapable of having any sense of modesty.

However, Sarkar, CJ of the Supreme Court said that the offence under Section 354 of IPC does not depend on the reaction of the woman subjected to the assault or use of criminal force. The words used in the Section are that the act has to be done intending to outrage or knowing it to be likely that he will thereby outrage her modesty. This intention or knowledge is the ingredient of the offence and not the woman’s feelings. It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise if the intention or knowledge was proved, the fact that the woman did not feel that her modesty has been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of course not the same; it varies from woman to woman. In many cases, the woman’s sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew that standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage her modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence in the opinion of Sarkar CJ, the reaction of the woman would be irrelevant.

14 AIR 1933 Cal. 142
15 State of Punjab v. Major Singh AIR 1967 SC 63 at p. 64 para 3 per A.K. Sarkar, CJ
16 Id. at pp. 64-65 para 4
Sarkar CJ, further said, “intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it. The question in each case must, in my opinion, be: will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman. The expression, outrage her modesty must be read with the words ‘intending to or knowing it to be likely that he will’. So read, it would appear that though the modesty to be considered is of the woman concerned, the word her was not used to indicate her reaction. Read all together, the words indicate an act done with the intention or knowledge that it was likely to outrage the woman’s modesty, the emphasis being on the intention and knowledge.”

Sarkar, CJ considered the view of Gurdev Singh, J as erroneous that modesty in Section 354 has to be understood as an attribute of a human female irrespective of the fact whether she has developed a sense of modesty or not. In the view of sarkar CJ, “in order that a reasonable man may think that an act was intended or must be taken to have been known likely to outrage modesty, he has to consider whether the woman concerned had developed a sense of modesty and also the standard of that modesty. Without an idea of these, he cannot decide whether the alleged offender intended to outrage the woman’s modesty or his act was likely to do so.” He did not agree with the view of Gurdev Singh J, that such a view would defeat the object of the Section. Referring to Gurdev Singh, J’s observation that modesty had to be judged by the prevalent notions of modesty, Sarkar CJ said, “if this is so, it will also have to be decided what the prevalent notions of modesty in the society are. As such notions

17 Id., at p. 65 para 5
concerning a child may be different from those concerning a woman of mature age, these notions have to be decided in each case separately. To say that every female of whatever age is possessed of modesty capable of being outraged seems to me to be laying down too rigid a rule which may be divorced from reality. There obviously is no universal standard of modesty.” Sarkar CJ, further said, “if my reading of the section is correct, the question that remains to be decided is, whether a reasonable man would think that the female child on whom the offence was committed had modesty which the respondent intended to outrage by his act or knew it to be the likely result of it.”

He further opined that a reasonable man could not say that a female child of seven and a half months is possessed of womanly modesty. If she had not, there could be no question of the respondent having intended to outrage her modesty or having known that his act was likely to have that result, therefore, Sarkar CJ, answered the question in negative.  

Before the Supreme Court, instances of various types of women were mentioned such as imbecile woman, a sleeping woman who does not wake up, a woman under the influence of drink or anaesthesia, an old woman, and the like. While pointing out that in this case the Court was not concerned with any such woman, Sarkar CJ, found no difficulty in applying the test of the outrage of modesty that he had indicated to any of these cases. He further said, “if it is proved that criminal force was used on a sleeping woman with intent to outrage her modesty, then the fact that she does not wake up nor feel that her modesty had been outraged would be no defence to the person doing the act. The woman’s reaction would be irrelevant in deciding the question of guilt”.  

However, the other two judges of the Supreme Court held the respondent guilty of committing offence under Section 354 IPC. Mudholkar, J, said that Section 354 at

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18 Id., at p. 65 paras 7 & 8
19 Id., at pp. 65-66 para 9
20 Id., at p. 67 para 13 Mudholkar J. said, after comparing sec. 14 of the Sexual Offences Act, 1956 enacted by the British Parliament and sec. 354 of IPC.
first blush seems to require that the outrage must be felt by the victim herself. But such an interpretation would leave out of the purview of the Section, assaults, not only on girls of tender age but on even grown up women when such a woman is sleeping and did not wake up or is under anaesthesia or stupor or is an idiot or under certain circumstances, exclude a case where the woman is of depraved moral character. Mudholkar J, asked, “could it be said that the legislature intended that the doing of an act to or in the presence of any woman which according to the common notions of mankind is suggestive of sex, would be outside this Section unless the woman herself felt that it outraged her modesty ? Again, if the sole test to be applied were the woman’s reaction to a particular act, would it not be a variable test depending upon the sensitivity or the upbringing of the woman?” Mudholkar J, said, “these considerations impel me to reject the test of a woman’s individual reaction to the act of the accused, must, however, confess that it would not be easy to lay down a comprehensive test, but about this much I feel no difficulty. In my judgment 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 act must fall within the mischief of this Section.21 He declined to consider what other kind of acts would also fall within it, as this was not a matter for consideration in this case. Mudholkar J, was of the view that in this case the action of Major Singh in interfering with the vagina of the child was deliberate and must be deemed to have intended to outrage her modesty.22

Concurring with the order proposed by Mudholkar J, the third judge of the Supreme Court, Bachawat, J, expressed the view that the essence of woman’s modesty is her sex. He further said, “The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive as for example, when the accused with a corrupt mind stealthily touches

21 ibid.
22 Id., at p. 67 para 14 Madholkar J, allowed the appeal and altered the conviction of the respondent to one under section 354 IPC and awarded him rigorous imprisonment for a period of 2 years and a fine of Rs 1000/- and in default rigorous imprisonment for a period of 6 months and out of the fine Rs 500 to be paid as compensation to the child.
the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, and nevertheless, the offender is punishable under the Section.\textsuperscript{23}

Bachawat, J, further said, though a female of tender age stands on a somewhat different footing as her body is immature and sexual powers are dormant. In this case, the victim is a baby of seven and half months old and had not yet developed a sense of shame and had no awareness of sex. Nevertheless from her very birth she possessed the modesty which is attribute of her sex. Bachawat, J, concluded that the respondent outraged and intended to outrage whatever modesty the little victim was possessed of and as such was punishable for the offence under Section 354 of IPC.\textsuperscript{24}

The Court convicted the accused for outraging the modesty of the baby and punished him with rigorous imprisonment of 2 years and a fine of Rs. 1000 and in default rigorous imprisonment for a period of 6 months. The Court directed that out of the fine amount, Rs. 500 would be paid as compensation to the child.

In this case the opinion expressed by different judges reveals that judicial mind is also strongly influenced by the archaic definition of modesty, the conventional stereotype woman and the reasonable person standard in the determination of culpable intention on the part of the accused.

In State of Maharashtra v. Chandraprakash Kewalchand Jain\textsuperscript{25}, Mohmmad Shafi aged 25 years contracted a marriage through Kazi with Shamimbanu aged about 19 years at Bombay against the wishes of their parents. Then they returned to Nagpur, their

\textsuperscript{23} Id. at p. 68 para 16
\textsuperscript{24} Id. at p. 68 para 17 Bachawat J. found this to be a rare case where the respondent used criminal force to an infant girl for satisfying his lust. In this indecent posture the respondent gives vent to his unnatural lust and in the process ruptures the hymen and causes a tear \textquoteleft\textquoteleft\frac{3}{4}\textquoteright\textquoteright long inside her vagina and thus outraged and intended to outrage the modesty of little victim.
\textsuperscript{25} AIR 1990 SC 658
hometown and went to a lodge and occupied a room on 20\textsuperscript{th} August 1981. On next night between 21\textsuperscript{st} and 22\textsuperscript{nd} August 1981, the respondent accused Chandraprakash Kewalchand Jain, a Sub-Inspector of Police, entered the hotel, questioned them and asked them to accompany him to the police station. On reaching the police station, the respondent separated the couple, flirted with girl and slapped her when she refused to respond to his flirtation and demanded that she spend the night with him. On her refusing and protesting against his behavior, he threatened her with dire consequences. Mohammad Shafi was also subjected to beating by the constable. The parents of both boy and girl were called but they refused to take them back home. Then Mohammad Shafi was charged under Sections 110 and 117 of the Bombay Police Act, on the ground of misbehaving on a public street, uttering filthy abuses, and he was put up in the lock up. The girl was sent to another hotel along with constable. On 22\textsuperscript{nd} August 1981 the respondent accused committed rape on the girl twice. Then Mohammad Shafi after being produced in court was released on bail. Shamimbanu narrated the incident to Mohammad Shafi who lodged FIR in the police station. The trial court found the accused guilty of rape but the High Court acquitted the accused. The High Court took the view that except in the ‘rarest of rare cases’ where the testimony of the prosecutrix is found to be so trustworthy, truthful and reliable that no corroboration is necessary, the court should ordinarily look for corroboration. The Supreme Court reversed the decision of the Bombay High Court and held:

“A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to section 114 which requires it to look for corroboration. If for some reason the court is hesitant to
place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. The court further observed:

To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if the courts deal strictly with those who violate the society norms. The standard of proof to be expected by the court in such cases must be to take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available.

The Supreme Court expressed that when such a crime is committed by a person in authority, e.g. a police officer, the court’s approach should not be the same as in any other case involving a private citizen. A person in authority such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his

26   Id., p. 664 para 16
27   Id., pp. 664-65, para 17
victim. The court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. She suffers a tremendous sense of shame and the fear of being shunned by society and her near relatives, including her husband. Instead of treating her with compassion and understanding as one who is an injured victim of a crime, she is, more often than not treated as a sinner and shunned. It must, therefore, be realised that a woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight. The court must, therefore, evaluate her evidence in the above background. Thus the Supreme Court held that these cases require an exemplary punishment and so restored the punishment of five years’ rigorous imprisonment as provided by the trial court. The observation of the Supreme Court further reveals the hesitations of the women in reporting the matter and the trauma being faced when sexual assault is committed by the person in uniform. However, the attitude of the High Court in evaluating evidence shows how a gross injustice could be done by the judicial pronouncement. Thus, the Supreme Court expressed great concern regarding offences against women.

In State of Punjab v. Gurmit Singh, the prosecutrix, a young village girl below 16 years of age and a student of 10th class while going to the house of her maternal uncle after taking her examination was forcibly abducted by four persons in a car on 30th March 1984 at about 12.30 p.m. Driver of the car, after leaving the prosecutrix and the three accused persons at the tubewell of Ranjit Singh one of the accused, went away with the car. She was taken to the ‘kotha’ of the tubewell where Gurmit Sing, the accused compelled her to consume liquor and them committed rape on her. Then other two accused Jagjit Singh and Ranjit Singh also committed rape on her. They all subjected the prosecutrix to sexual intercourse once again during the night against her will. Then next day morning, they again left her in the same car near the boys High School Pakhowal near about the place from where she had been abducted. Then after taking her examination in the school, she reached her village at about noon time and narrated the entire story to her mother, who narrated the same to her father. Her father

28 Id., p. 665 para 18. The SC also put reliance on provision of sections 47(2), 53 & 160 of CrPC which reflect the concerns of the legislature to prevent harassment and exploitation of women and preserve their dignity.
29 AIR 1996 SC 1393
straightway contacted the ‘sarpanch’ who tried to affect a compromise on 1-4-1984 but since the ‘panchyat’ could not give any justice or relief to the prosecutrix, she along with her father went to the police station and lodged an FIR.

The trial court acquitted all the accused persons. On appeal\textsuperscript{30} to the Supreme Court, a Division Bench of the Supreme Court comprising Dr. A.S. Anand and S.Saghir Ahmad JJ, expressed that the judgment of the trial court presents rather disquieting and a disturbing feature i.e. lack of sensitivity on the part of the trial court by casting unjustified stigmas on a prosecutrix aged below 16 years in rape case by overlooking human psychology and behavioural probabilities. The Supreme Court observed: “an intrinsically wrong approach while appreciating the testimonial potency of the evidence of the prosecutrix has resulted in miscarriage of Justice\textsuperscript{31}.” The Supreme Court expressed that the grounds on which the trial court disbelieved the version of the prosecutrix were not at all sound and its findings rebelled against realism and lost their sanctity and credibility. While appreciating the evidence, the trial court lost sight of the fact that the prosecutrix was a village girl and a student of tenth class. It was wholly irrelevant and immaterial that she was ignorant of the difference between a Fiat, an Ambassador, or a Master car. Further, merely because at the trial stage she did not remember the colour of the car, though she had given the colour of the car in the FIR, could not have material effect on the reliability of her testimony. No fault could also be found with the prosecution version on the ground that the prosecutrix had not raised an alarm while being abducted. The prosecutrix in her statement categorically asserted that as soon as she was pushed inside the car she was threatened by the accused to keep quiet and not to raise any alarm otherwise she would be killed. Under these circumstances, to discredit the prosecutrix for not raising an alarm while the car was passing through the Bus ‘adda’ is travesty of justice. The trial court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperated young men who were threatening her and preventing her from raising any alarm. Again if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver of the car, that could not be a

\textsuperscript{30} This appeal under section 14 of the Terrorist Affected Areas( Special Courts) Act, 1948 is directed against the judgment and order of additional judge, special court Ludhiana.

\textsuperscript{31} State of Punjab v. Gurmit Singh AIR 1996 SC 1393 at 1396 para 1
ground to discredit the testimony of the prosecutrix. The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix on the ground of delay in lodging the FIR. In the opinion of the Supreme Court, there was no such delay and if at all, there was some delay the same had been properly explained by the prosecution and was also natural. The courts cannot overlook the fact that in sexual offences, delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. The Supreme Court criticized the trial court for doubting the testimony of the victim on the ground that she did not complain to her lady teachers and friends whom she met after the incident and waited till she went home and narrated the incident to her mother. The conduct of the prosecutrix in this regard appears to the Supreme Court to be most natural. The trial court overlooked that a girl, in a tradition bound non permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from her reliability. In the normal course of human conduct this unmarried minor girl, would not like to give publicity to the traumatic experience she had under gone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy. Therefore, her informing her mother only on return to the parental house and none else prior thereto is in accord with the natural human conduct of a female.

32 Id. at 1399-1400 para 7
The Supreme Court further held:

The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating statement of her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw an otherwise reliable prosecution case. The inherent bashfulness of the female and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victims in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman, who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person’s
lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

Thus the Supreme Court held that the trial court not only erroneously disbelieved the prosecutrix, but quite uncharitably and unjustifiably even characterized her as a girl of ‘loose morals’ or ‘such type’ of a girl. What has shocked the judicial conscience of the Supreme Court all the more was the inference drawn by the trial court on no evidence and not even on a denied suggestion to the effect, “the more probability is that prosecutrix was a girl of loose character. She wanted to dupe her parents and that she resided for one right at the house of her maternal uncle, but for the reasons best known to her, she does not do so and she preferred to give company to some persons.” The Supreme Court further said:

“We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a judge. Such like stigmas have the potential of not only discouraging an even otherwise reluctant victim of sexual assault to bring forth complaint for trial of criminals, thereby making the society to suffer by letting the criminal escape even a trial. The courts are expected to use self restraint while recording such findings which have longer repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole -where the victim of crime is discouraged -the criminal encouraged and in turn crime gets rewarded. Even in cases,

33 Id. at 1400 para 7. The SC also referred the decision of the SC in State of Maharashtra v Chandraprakash Kewal Chand Jain AIR 1990 SC 658 at 664 para 16 to the effect that a prosecutrix of a sex offence cannot be put on per with an accomplice.
34 Id. at 1403 para 13
35 Id. para 14
unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of loose moral character is permissible to be drawn from that circumstance alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crimes who is on trial in the court. The Supreme Court further expressed:

……Crimes against women in general and rape in particular is on the increase. It is an irony that while we’re celebrating women’s rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes, we must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The court, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions of insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.

The Supreme Court also took note of criticism of treatment of the victims of sexual assault in the court during their cross-examination and observed, “the provisions of Evidence Act regarding relevancy of facts not withstanding some defence counsel

36 Id at para 15
37 Id at 1404 para 20
adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court therefore, should not sit as a silent spectator while the victim of crime is being cross examined by the defence. It must affectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross examination, the court must also ensure that cross examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of crime, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again in unfamiliar surroundings, what she had been subjected to, she may be too shamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as ‘discrepancies and contradictions’ in her evidence.”

Further the Supreme Court noted, “The alarming frequency of crimes against women led the Parliament to enact Criminal Law (Amendment) Act, 1983 (Act 43 of 1983) to make the law of rape more realistic. By the Amendment Act, Sections 375 and 376 were amended and certain more penal provisions were incorporated for punishing such custodians who molest a woman under their custody or care. Section 114 –A was also added in the Evidence Act for drawing a conclusive presumption as to the absence of consent in certain prosecutions for rape, involving such custodians. Section 327 of the Code of Criminal Procedure which deals with the right of an accused to an open trial was also amended by addition of sub sections (2) and (3) after renumbering the old section as sub section (1). The Supreme Court observed,

38 Id. at 1404-05 para 21
39 Id. at 1405 para 22; Section 327 sub section (2) and (3) provId.es as follows:
Section 327 court to be open -
(2) Notwithstanding anything contained in sub section (1), the inquiry into and trial of rape or an offence under section 376 section 376-A, section 376 B, section 376-C or section 776-D of the Indian Penal code shall be conducted in camera:
“These two provisions are in the nature of exception to the general rule of an open trial, inspite of the amendment, however, it is seen that trial courts either are not conscious of the amendment or do not realize its importance for hardly does one come across a case where the enquiry and trial of a rape case has been conducted by the court in camera. The expression that the inquiry into and trial of rape ‘shall be conducted in camera’ as occurring in sub section (2) of section 327 Cr. PC is not only significant but very important. It casts a duty on the court to conduct the trial of rape cases etc. invariably in camera. The courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr. PC and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of public. The improved quality of her evidence would assist the court in arriving at the truth and sifting truth from falsehood. The High Courts would therefore, be well advised to draw the attention of the trial courts to the amended provisions of Section 327 Cr.PC and impress upon the presiding officers to invariably hold the trial of rape cases in camera……. When trials are held in camera, it would not be lawful for any person to print or publish any matter in relation to the proceedings in the case, except with the previous permission of the court as envisaged by Section 327 (3) Cr.PC. This would save any further embarrassment being caused to the victim of sex crime. Wherever possible it may also be worth considering whether it would not be more desirable that the cases of sexual assault on the females are tried by lady judges, wherever available, so that the prosecutrix can make her statement with greater ease and

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(3) Where any proceedings are held under sub section (2) it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court.
assist the courts to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout …… Trial of rape cases in camera should be the rule and an open trial in such cases an exception.\textsuperscript{40} The Supreme Court imposed a meager punishment of 5 years RI and a fine of Rs. 5000/- in this case of gang rape although the prescribed mandatory minimum punishment is 10 years. The trial court in characterizing the victim of sexual assault as a girl of loose character has shocked the conscience of the society on the one hand and has the effect of discouraging the woman harassed from taking recourse to the legal remedies for redressal of their grievances. This may have far reaching effect on the safety and security of women in the society because when the accused get scot free due to such interpretations by the courts, the women victim of sexual assault get disheartened and dissuaded from approaching the law enforcement agencies. These cases require the deterrent punishment.

In Madan Lal v. State of J&K\textsuperscript{41} on 21-5-1986 at about 9 a.m., a young girl student of 13 years age alongwith two other girl students were sent by the head master of the school, the accused to his residence for cooking his meal as the accused was living without his family. Then the accused reached home between 10 a.m. and 11 a.m. and directed the other two students to leave the house and detained the prosecutrix with the understanding that she can leave the house after cleaning the utensils. Thereafter, the accused subjected her to sexual harassment as he attempted to commit rape on her.

The trial court acquitted the accused on the ground that the case hinges on the sole testimony of prosecutrix and statement of other two prosecution witnesses were brushed aside on the ground of animosity and partisan character. On appeal, the division

\textsuperscript{40} Id., at 1405-06 para 22.
\textsuperscript{41} AIR 1998 SC 386
bench of the High Court\textsuperscript{42} reversed the order of acquittal and convicted the accused under Section 376 read with Section 511, RPC for attempt to commit rape.

On appeal, the division bench of the Supreme Court held, “a young girl was subjected to sexual harassment by her own headmaster inside a close room of that headmaster and one can well imagine her trauma after being subjected to such sexual harassment …. It must be remembered that no woman of honour will accuse another of committing rape since she scarifies thereby what is dearest to her …. The learned Sessions Judge discarded the evidence of the mother of the prosecutrix on the ground that she was influenced by (two prosecution witnesses) who had an axe to grind against the accused. It is indeed unthinkable that the mother, just to oblige her friends like those witnesses would make serious allegations of sexual assault by the accused against her daughter.”\textsuperscript{43} Thus the Supreme Court upheld the High Court’s judgment that set aside the acquittal of the accused ordered by the trial court. This case reveals the situation prevailing in the society where the person in authority and custodian of the students i.e. teacher by misusing his authority diverts the attention of the taught by engaging them in personal household chores and then also exploiting them in order to fulfill his lust. The observation of the trial court reflects the social insensitivity of the judiciary which may lead to grave injustice to the women in society.

In State of Rajasthan v. N.K\textsuperscript{44}, the prosecutrix aged 15 years was a married woman and was living with her parents according to a custom\textsuperscript{45} and was a virgin prior to crime. On 1.10.1993 at about 12’00 noon while she was alone in her hut busy washing clothes on a water pump, the accused N.K. forcibly pushed her to a secluded place and committed rape on her. The prosecutrix reached back her home and narrated

\begin{enumerate}
\item Id. at 388-389 para 4 and 6. The state contended before the High Court that the evidence of the prosecutrix has to be appreciated bearing in mind that a young girl has been molested and subjected to sexual assault by her own headmaster. In the absence of any animosity between the prosecutrix and the accused, it is unimaginable that a young girl would subject herself to the ignominy and embarrassment in the society by making such an allegation.
\item AIR 2000 SC 1812
\item Muklana ceremony is a rural custom prevalent in Rajasthan, where under the bride is left with the parents after marriage having been performed and is taken away by the husband and/ or the in laws to live with them only after a lapse of time. The origin of the custom owes its existence to performance of child marriages which are widely prevalent there.
\end{enumerate}
the entire incident to a woman and to her father. The victim accompanied by her father wanted to go to the police station and lodged the first information report of the incident but they were prevented from doing so by several village people belonging to the community of the accused who also proposed the matter being settled within the village by convening a ‘panchayat’. And also that the incident if publicized may have been an end of the marriage for the prosecutrix. However, the FIR was lodged on 5.10.1993 at 11.20 a.m. The trial court found the accused guilty of the offence of rape. However, in appeal, the High Court set aside the conviction of the accused for the offence of rape. In the opinion of the High Court, though the factum of the accused having committed sexual intercourse with the prosecutrix was proved, but the absence of injuries on the person of the prosecutrix was a material fact not excluding the possibility of the prosecutrix having been a consenting party. A three Judge Bench of the Supreme Court comprising Dr. A.S. Anand, R.C. Lahoti and S.N. Variava JJ, set aside the High Court’s judgment. The Supreme Court took note that because of the delay in lodging FIR (which was satisfactorily explained), there was delay in medical examination of the prosecutrix. Also the prosecutrix was in her teens; while the accused was an able bodied youth bustling with energy and determined to fulfill his lust armed with a knife in his hand and having succeeded in forcefully removing the victim to a secluded place where there was none around to help the prosecutrix in her defence. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the accused were abrasions or bruises which would heal up in the ordinary course of nature within 2 to 3 days of the incident. Thus the absence of visible marks of the injuries on the person of the prosecutrix on the date of her medical examination did not necessarily mean that she did not suffer any injuries or that she offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case. A Judge of facts shall have to apply a common sense rule while testing the reasonability of the prosecution case. The prosecutrix on account of age of infirmity or overpowered by fear or force may have been incapable of offering any resistance. She might have sustained injuries, but on account of lapse of time the injuries might have healed and marks vanished. The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless these is material available to draw
an inference as to her consent or else the testimony of prosecutrix is such as would be inherently improbable. Based upon these observations, the Supreme Court was of the opinion that the High Court has committed a clear error of law in interfering with the judgment of the trial court regarding proof of guilt of the accused. Thus the High Court gave benefit of doubt to the accused in such a heinous case of sexual assault on the person of the minor married girl. Although this is not a direct case on sexual harassment of women at workplace but the facts of the case reveal that how the societal pressures can prevent the woman harassed from reporting the matter and taking recourse to the legal remedy. Further, the attitudinal bias and gender insensitivity is reflected in the judgment of the High Court in this case.

In Rupan Deol Bajaj v. K.P.S. Gill\textsuperscript{46}, on 29\textsuperscript{th} July 1988 Mrs. Rupan Deol Bajaj, an officer of the Indian Administrative Service belonging to the Punjab cadre and then working as the Special Secretary, Finance lodged a complaint with the Inspector General of Police Chandigarh Union Territory alleging commission of offence under Sections 341, 342,352,354 and 509 of the IPC by Mr. K.P.S Gill, the then Director General of police, Punjab on July 18, 1988 at a dinner party. Treating that complaint as the first information report (FIR), a case was registered by the central police station, sector 17 Chandigarh and investigation was taken up. As per the FIR lodged, in the evening of July 18, 1988 Mrs. Bajaj accompanied by her husband has gone to the residence of Shri S.L.Kapur, a colleague of theirs, in response to an invitation for dinner. Reaching there at or about 9 pm they found 20 to 25 couples present including Mr. Gill who had come without his wife and some other senior Government officers (named in the FIR). The party was arranged in the lawn at the back of the house and as per tradition in Indian homes, the ladies were sitting segregated in a large semicircle and the gentlemen in another large semicircle with the groups facing each other. The complainant alleged:

“Around 10.00 p.m Dr. P.N. Chutani and shri K.P.S. Gill walked across to the circle of the ladies and joined them occupying the only two vacant chairs available,

\textsuperscript{46} AIR 1996 SC 309
almost on opposite sides of the semi circle. Shri K.P. S. Gill took a vacant chair about 5 to 6 chairs to the left of where I was sitting. Slowly, all the ladies sitting to the right and left of him, got up, and started leaving and going into the house. I was talking to Mrs. Bijlani and Mrs. K.P. Bhandari, sitting on my right, and did not notice or come to know, that those ladies were getting up and vacating their chairs because he had misbehaved with them.

Shri K.P.S. Gill called out to me where I was sitting and said “Mrs. Bajaj come and sit here, I want to talk to you about something.” I got up from my chair to go and sit vent to him. When I was about to sit down, he suddenly pulled the cane chair on which I was going to sit close to his chair and touching his chair. I felt a little surprised. I put the chair back at its original place and was about to sit down again when he repeated his action of pulling the chair close to his chair, I realized that something was very wrong and without sitting down I immediately left and went back and sat in my original place between the other ladies. Mrs. Bijlani and Mrs. K. P. Bhandari , Mrs. Paramjeet singh and Mrs. Shukla Mahajan were occupying seats on my right side and Mrs. Nehra was sitting to the left of me at that time.

After about 10 minutes shri K.P. S. Gill got up from his seat and come and stood directly in front of me, standing straight but so close that his legs were about four inches from my knees. He made an action with the crook of his finger asking me to stand and said: ‘You get up. You come alongwith me.’ I strongly objected to his behavior and told him: ‘Mr. Gill how dare you! You are behaving in an obnoxious manner, go away from here.’ Whereupon he repeated his words like a command, and said: ‘you get up! Get up immediately and come alongwith me.’ I looked to the other ladies, all the ladies looked shocked and speechless. I felt apprehensive and frightened, as he had blocked my way and I could not get up from my chair without my body touching his body , I then immediately drew my chair back about a foot and half and quickly got up and turned to get out of the circle through the space between mine and Mrs. Bijlani’s chair. Whereupon he slapped me on the posterior. This was done in the full presence of the ladies and guests.”

The complainant then made a complaint to the host and told him that the behavior of the accused was obnoxious and that he was not fit for decent company. The
accused was then gently removed from the place, the complainant made a complaint to the joint Director, Intelligence Bureau who was present there, she also narrated the incident to her husband who was also present there. The next day she met the Chief Secretary and recounted the entire incident to him and request him to take suitable action against the accused. She also met the Advisor to the Governor and gave a full and detailed account of the incident. She also met the Governor in this regard. On 29th July, 1988 she gave a written complaint to the police which was treated as the first Information Report and a case was registered but no further steps were taken. After about four months on Nov. 22, 1988 the complainant’s husband filed a complaint before the Chief Judicial Magistrate Chandigarh alleging commission of offences punishable under Sections 341,342,352,354 and 509 IPC.

The Chief Judicial Magistrate transferred the same to the Judicial Magistrate for disposal and the latter, in view of the fact that an investigation by the police was in progress in relation to the same offences called for a report from the investigation officer. In the meantime, on Dec. 16, 1988 Mr. Gill moved the High Court by filing a petition under Section 482 Cr.P.C. for quashing the FIR and the complaint. The High Court allowed the petition and quashed both the FIR and the complaint. The main reasons that weighed with the High Court were that the allegations made therein do not disclose any cognizable offence; the allegations were unnatural and improbable and the nature of harm allegedly caused to the complainant did not entitle her to complain about the same in view of Section 95, IPC.

The complainant challenged the order of the High Court before the Supreme Court where the moot point was whether the above allegations would constitute any or all for the offences for which the case was registered. The Supreme Court observed that as both sections 354 and 509 of IPC relate to modesty of woman and the word modesty has not been defined in the IPC so we may profitably look into its dictionary

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47 Report was called by the Judicial Magistrate from the investigating officer in accordance with Section 210 of the Cr.PC
48 Section 95 of the IPC provides as:

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense temper would complain of such harm.

49 Rupan Deol Bajaj v. K.P.S. Gill AIR 1996 SC 309 at p.313 para 14
meaning. According to Shorter Oxford English Dictionary (third edition) modesty is the quality of being modest and in relation to woman means “womanly propriety of behavior, 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 forward or lewd; shamefast.” 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(1933 ed.) the meaning of the word ‘modesty’ is given as “Womanly propriety of behavior; 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.” So the Supreme Court expressed that from the above dictionary meaning of the word modesty and the interpretation given to that word by this court in Major Singh’s case 50, “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 fact in Rupan Deol Bajaj case, M.K. Mukherjee J, concluded, “It cannot but be held that the alleged act of Mr. Gill in slapping Mrs. Bajaj 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 affront to the dignity of the lady -sexual overtones or not, notwithstanding 51. In this case, the accused strenuously urged that even if it was assured 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 expressing that it is undoubtedly correct that “if intention or knowledge is one of the ingredients of an offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being state of mind may not be proved by direct evidence and may have to

50 In state of Punjab v. Major Singh AIR 1967 SC 63, Mudolkar J who alongwith Bachawat J. spoke for the majority, held that when any act done to or in the presence of 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. observed that the essence of a women’s modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex.

51 Rupan Deol Bajaj v. KPS Gill AIR 1996 SC 309 at p 313 para 15, M.K. Mukherjee J also said, that the common notions of mankind referred to by Mudolkar J. Major Singh case have to be gauged by contemporary societal standards.
be inferred from the attending circumstances of a given case.” The court concluded that “From the sequence of events detailed earlier, 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 that he had no such intention 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 indecent act was committed by the accused, accidentally or by mistake or it was slip. Based upon the aforesaid reasons, the Supreme Court held that apart from the offence under Section 354, an offence under Section 509 IPC has been made out on the allegations contained in the FRI as the words used and gestures made by the accused were intended to insult the modesty of the complainant.

Regarding Section 95 of IPC, the court adverted to its applicability. Relying upon the principle laid down in Veeda Menezas case, M.K. Mukherjee J, concluded in Rupan Deol Bajaj case that “Section 95 of IPC has no manner of application to the allegations made in the FIR. On perusal of the FIR 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 inspite of her raising objections continued with his such behavior. If we are to hold, on the face of such allegations that, the ignominy and trauma to which she was subjected to was 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.”

The reason 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

52 Id. at pp. 313-14, paras 16 and 17
53 In Veeda Menezes v. Yusuf Khan AIR 1966 SC 1773 at p. 1775 para 5, the Supreme Court observed as follows: “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, 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.”
54 In Rupan Deol Bajaj KPS Gill AIR 1996 SC 309 pp 314-15 para 21 wherein the Supreme Court found no need to delve into or decline the contention of the complainant that section 95 IPC cannot have any manner of application to an offence relating to modesty of women as under no circumstances can it be trivial.
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).”

The Supreme Court in Rupan Deol Bajaj case said: “we are constrained to say 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 complaint may be quashed if the allegations made therein are so absurd and inherently importable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so.”

For the aforesaid reasons, the Supreme Court held that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, the Supreme Court set aside impugned Judgment of the High Court and dismissed the petition filed by the accused in the High Court under Section 482 Cr.PC. Further, the court directed the Chief Judicial Magistrate to take cognizance of the offences under Sections 354 and 509 IPC.

The Chief Judicial Magistrate therefore, framed charges and after a full fledged trial found the accused guilty of the offences punishable under Sections 354 and 509 IPC. The accused was sentenced to undergo imprisonment for a period of three months and a fine of Rs. 500 for the offence under Section 354 and for the offence under Section 509 IPC, punishment of simple imprisonment for a period of two months and fine of Rs. 200 was imposed. In the appeal preferred by the accused, the Sessions Judge confirmed the conviction, but altered the sentence and the accused was directed to be released on probation in lieu of custodial sentence. 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 accused under Sections 354 and 509. However, it enhanced the fine to Rs 2,00,000 and directed that the entire amount should

55 Id. at p. 315 para 23, the Supreme Court relied upon the decision of the Supreme Court in State of Haryana v Bhajan Lal AIR 1992 SC 604.
be paid to the prosecutrix. An amount of Rs 25,000 was also imposed as costs on the accused.

The judgement of the High Court was challenged by the accused as well as the complainant. The Division Bench of the Supreme Court comprising K.G. Balakrishna and B.N Srikrishna JJ\textsuperscript{56}, gave short shift to the contention of the accused that the complaint was filed after three months from the date of the alleged incident. According to K.G. Balakrishna, 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. 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 actions to control the activities of the militants. Dismissing the appeal filed by the accused. K.G Balakrishna J held:

"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 behavior of the accused on the date of the incident was not consistent with the high standard of top ranking police officer. The finding of the various courts is to the affect that the accused gently slapped on the posterior of the prosecutrix in 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

\textsuperscript{56} Kanwar Pal Singh Gill v. State (Admn. UT Chandigarh) with Rupan Deol Bajaj V. Kanwar Pal Singh Gill (2005) 6 SCC 161
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 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."\(^{57}\)

In appeal, the complainant contended that crimes against women are 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, thus the Supreme Court dismissed the complainant’s appeal also.

The facts of the case reveal that the patriarchal ideology has such great impact on the people in the society that even if the woman rises to the height of acquiring senior administrative position, the male members still do not want to liberate them from the chains of bondage and subordination. More so, the attitude of the High Court in trivializing the act of slapping of the woman reflect the traditional biases and gender insensitivity of the judiciary. However, the response of the apex court in rectifying this gross error and considering this act as offensive to human dignity is commendable. It may not be out of place to mention here that the Supreme Court reached the conclusion after gleaning through the definition of the word modesty from a number of dictionaries in the absence of its exact definition in the IPC.

In Vishaka v. State of Rajasthan\(^{58}\), the writ petition\(^{59}\) was filed as a class action by certain social activists and NGOs for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the

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57 Id., at p. 164-65 para 4.
58 AIR 1997 SC 3011.
59 The immediate cause for filing of this writ petition is an incident of alleged brutal gang rape of a social worker involved in a Government project working against child marriage in a village of Rajasthan.
prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations; and the resentment towards incidents of sexual harassment is also necessary. The present petition was filed with the aim of focussing attention towards this societal aberration and assisting in finding suitable methods for realization of the true concept of gender equality, and to prevent sexual harassment of working women in all workplaces through judicial process, to fill the vacuum in existing legislation. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfill this felt and urgent social need.

J.S. Verma CJI, for the Supreme Court held,

Each such incident results in violation of the fundamental rights of ‘gender equality’ and the ‘right to life and liberty’ It is as 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 practise any profession or to carry on any occupation, trade or business. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women…….. The fundamental right to carry on any occupation, trade or profession depends on the availability of a ‘safe’ working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 ……. an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.60 In the absence of domestic law occupying the filed, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international Convention and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15,19 (1) (g) and 21 of the Constitution and the safeguards

against sexual harassment implicit therein. Any international Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51 (c) and the enabling power of the Parliament to enact laws for implementing the international Conventions and norms by virtue of Article 253 read with entry 14 of the Union list in Seventh Schedule of the Constitution….61

Thus the Supreme Court expressed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our Constitutional scheme. The international Conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international Conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic laws.62

Thus the Supreme Court put reliance on the Beijing Conference of 199563 and the Convention on the Elimination of All Forms of Discrimination Against Women64 and definition of human rights in the Protection of Human Rights Act.65 The Supreme

61 Id. at pp. 3013-14 para 7. The court expressed that Article 73 is also relevant which provides that the executive power of the union shall extend to the matters with respect to which parliament has power to make laws. The executive power of the union is, therefore, available till the parliament exacts legislation to expressly provide measures need to curb the evil.

62 Id. at p. 3015 para 14. The court also referred that the High Court of Australia in Minister for Immigration and Ethnic Affairs v. Teoh, 128 ALR 353, has recognized the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in constitution of Australia.

63 Id. at p. 3014 para 11. The Beijing statement of principles of the independent of the judiciary were accepted by the chief Justices of Asia and the Pacific at Beijing 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary.

64 Id. at pp. 3014-15 paras 12 and 13. Articles 11, 22, 23 and 24 of the convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) were take into consideration by the Supreme Court in order to define sexual harassment of women at workplace and requiring the state parties to ensure compliance with the previous of convention in order to prevent this evil.

65 Id. at p. 3015 para 16. The definition of human rights in section 2(d) of the Protection of the Human Rights Act, 1993 was taken into consideration by the Supreme Court.
Court held that “Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time, it is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines issued by the Supreme Court in exercise of the power under Article 32 of the Constitution to ensure the prevention of sexual harassment of women. The guidelines and norms prescribed herein are as under:

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

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behavior (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 whereunder the victim of such conduct has a reasonable apprehension that in relation to the victims employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise, such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.
3. Preventive steps: All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

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

b. The Rules/Regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

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 employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victim, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action: Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.
6. Complaint Mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer’s organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee: The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a complaints committee, a special counsellor or other support service including the maintenance of confidentiality. The complaints committee should be headed by a woman and not less than half of its 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 employers and persons in charge will also report on the compliance with the aforesaid guidelines including on the reports of the complaints committee to the government department.

8. Workers Initiative: Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer- Employee meetings

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislations when enacted on the subject) in a suitable manner.

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

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

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

Accordingly, the Supreme Court directed that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and treated as the law declared by this court under Article 141 of the Constitution until suitable legislation is enacted to occupy the field. The Supreme Court of India for the first time recognized that gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common requirement of this right has received global acceptance.

Thus for the first time, focus of violence against women has been shifted from a criminal wrong to systematic discriminatory conduct and responsibility has been shifted to a larger civil society to eliminate the same. However, nothing is mentioned in the guidelines as to whether its members should be elected or selected even though the composition of complaint committee has a strong bearing on the redressal of the grievances of the sexual harassment of women at workplace.

66 Id. at 3015-17 para 16
67 Id. at 3014 para 10
In Apparel Export Promotion Council v. A.K. Chopra, the respondent was working as a private secretary to the chairman of the Apparel Export Promotion Council, the appellant. On 12-8-1988, the respondent tried to molest a woman employee of the Council, Miss X who was at the relevant time working as a clerk—cum-typist. She was not competent or trained to take dictation. The respondent, however, insisted that she go with him to the business centre at Taj Palace hotel for taking dictations from the chairman and type out the matter. Under the pressure of the respondent, she went to take the dictation from the chairman. While Miss X was waiting for the Director in the room, the respondent tried to sit too close to her and despite her objection did not give up his objectionable behavior. She later on took dictation from the Director. The respondent told her to type it at the business centre of the Taj Palace hotel, which is located in the basement of the hotel. He offered her his assistance so that her typing was not found fault with by the Director. He volunteered to show her the business centre for getting the matter typed and taking advantage of the isolated place, again tried to sit close to her and touch her despite her objections. The draft typed matter was corrected by Director (Finance) who asked Miss X to retype the same. The respondent again went with her to the business centre and repeated his overtures. Miss X told the respondent that she would leave the place if he continued to behave like that. The respondent did not stop. Though he went out from the business centre for a while, he again came back and resumed his objectionable acts. According to Miss X, the respondent had tried to molest her physically in the lift also while coming to the basement but she saved herself by pressing the emergency button, which made the door of the lift to open. On the next day, that is on 16th August 1988, Miss X was unable to meet the Director (Personnel) for lodging her complaint against the respondent as he was busy, she succeeded in meeting him only on 17th August 1988 and apart from narrating the whole incident to him orally, submitted a written complaint also. The respondent was placed under suspension vide an order dated 18th August 1988. A charge sheet was served on him to which he gave a reply defying the allegations and asserting that the allegations were imaginary and motivated. Sh JD Giri, a Director of the council was appointed as an Enquiry officer to enquiry into the charges framed against the respondent. The enquiry officer after considering the documentary and oral
evidence and circumstances of the case arrived at the conclusion that the respondent had acted against moral sanctions and that his acts against Miss X did not withstand the test of decency and modesty as he tried to touch her person in the business centre with ulterior motives despite reprimands by her. Hence the charges against him proved. Agreeing with the report of the enquiry officer, the Disciplinary Authority imposed the penalty of removing him from service with immediate effect on 28\textsuperscript{th} June 1989.

Aggrieved by the order, the respondent filed departmental appeal before the staff committee of the appellant. The staff committee also concluded that the order of removal dated 28\textsuperscript{th} June 1989 was legal, proper, and valid. The respondent then challenged this order before the High Court. The learned single judge opined, “That….. the petitioner tried to molest and not that the petitioner had in fact molested the complainant.” The learned single judge, therefore, disposed of the writ petition with a direction that “the respondent be reinstated in service but that he would not be entitled to receive any back wages. The appellant was directed to consider the period between the date of the removal of the respondent from the service and the date of reinstatement as the period spent on duty and to give him consequential promotion and all other benefits. It was however, directed that the respondent be posted in any other office outside Delhi, at least for a period of two years.”\textsuperscript{69}

Aggrieved by the order, both appellant and respondent filed letters patent appeal before the Division Bench of the High Court.

The Division Bench of the High Court agreed with the learned single judge that the respondent had ‘tried’ to molest and that he had not actually molested Miss X and that he had not managed to make the slightest physical contact with the lady so there cannot be any attempt to molest but only tried to molest and went on to hold that such an act of the respondent was not a sufficient ground for his dismissal from service.

Aggrieved by the judgment, the appellant filed special leave petition before the Supreme Court. The questions before the Supreme Court were:

\textsuperscript{69} Id. at pp. 628-29 para 9
“Does an action of the superior against a female employee which is against moral sanctions and does not withstand the test of decency and modesty not amount to sexual harassment? Is physical contact with the female employee an essential ingredient of such a charge? Does the allegation that the superior tried to molest a female employee at the place of work not constitute an act unbecoming of good conduct and behavior expected from the superior?”

Setting aside the High Court judgment a Division Bench of the Supreme Court said that respondent acted in manner which demonstrated unwelcome sexual advances, both directly and by implication, and his actions created an intimidating and hostile working environment for the victim. The Supreme Court expressed that the High Court gave meaning to the expression molestation as if it was dealing with a finding in a criminal trial. Miss X 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 that the respondent did not manage to establish any physical contact with the victim, (even though one witness had deposed having seen the respondent put his hand on the hand of the victim), it did not mean that the respondent had not made any objectionable overtures with sexual overtones. The Supreme Court observed that the dictionary meaning of the word molestation or physical assault are irrelevant. The entire episode reveals that the respondent 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. Such an action on the part of the respondent would be squarely covered by the term ‘sexual harassment’. The material on the record clearly established an unwelcome sexually determined behavior on the part of the respondent against the victim which was also an attempt to outrage her modesty. Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee must fall under the general couple of the definition of sexual harassment. The evidence on the record clearly established that the

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70 Id. at p. 627 para 2. These are some of the questions besId.es the nature of approach expected from the Law courts to cases involving sexual harassment which come to the forefront and require consideration of the Supreme Court.
respondent caused sexual harassment to victim, taking advantage of his superior position in the council.\textsuperscript{71}

Expressing dissatisfaction over the observation of the High Court, the Supreme Court expressed:

“the observations made by the High Court to the effect that since the respondent did not actually molest the victim but only tried to molest her and therefore, his removal from service was not warranted rebel against realism and lost their sanctity and credibility. In the instant case, the behavior of respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression molestation. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaces and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against the junior female employee, Miss X (the Victim) was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have demoralizing effect on the women employees and is a retrograde step ….. The act of the respondent was unbecoming of good conduct and behavior expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X (the victim) and the punishment imposed by the appellant, was thus commensurate with the gravity of his objectionable behavior and did not warrant any interference by the High Court in exercise of its power of judicial review.”\textsuperscript{72}

The Supreme Court analyzed the definition of sexual harassment as laid down in vishaka’s case and held,

\textsuperscript{71} Id. at pp. 632-33 para 23,24
\textsuperscript{72} Id. at pp. 634-35 para 2
...... sexual harassment is a form of sex discriminations 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 effecting 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. 73

The Supreme Court further expressed, “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 most precious fundamental rights guaranteed by the Constitution of India. 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 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 eliminated and that there can be no compromise with such violations, admits of no debate.” 74

While making reference to the Convention on the Elimination of All Forms of Discrimination against women, Beijing Declaration 75 and the International Covenant on Economic, Social and Cultural Rights 76, the Supreme Court expressed,

73 Id. at p. 633 para 26
74 Id. at p. 634 para 27
75 Ibid., Convention on the Elimination of All Forms of Discrimination Against Women, 1997 (CEDAW) and the Beijing Declaration directs all state parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women.
76 Ibid., Article 7 of the International Convent on Economic, Social and Cultural Rights, 1966 recognizes her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment.
“These international instruments cast an obligation on the Indian State to gender sensitize its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. The courts are under an obligation to give due regard to international Conventions and norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law.”

Taking note of the error of the High Court in ignoring the intent and content of the international Conventions and norms while dealing with this case, the Supreme Court held that in cases involving violation of human rights, the courts must for ever remain alive to the international instruments and Conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. While upholding the punishment as imposed by disciplinary authority and upheld by departmental appellate authority regarding the removal of the respondent from service, the Supreme Court concluded,

“… Any lenient action in such a case is bound to have demoralizing effect on working women. Sympathy in such cases is uncalled for and mercy is misplaced.”

This is the specific case of the hostile working environment harassment, however, the observation of the High Court in perceiving the situation only in the light of obsolete and outmoded concept of modesty reflects the lack of awareness and gender insensitivity on their part even two years after the pronouncement of the landmark guidelines in Vishaka’s case by the apex court.

In Saudi Arabian Airlines, Mumbai v. Shehnaz Mudbhatkal, the victim, a lady, was employed with the Saudi Arabian Airlines as Secretary to the Station Manager. One B, a male, subsequently took charge as Station Manager (Airport). The said B made "repeated attempts to transgress the limits of healthy working relationship"
with the victim who was his subordinate. B used to make persistent demands to the victim that she should come out with him for lunches and dinners, which she politely declined. Then he started making indecent and objectionable personal remarks, like, for example, asking her the details of the method of family planning followed by her. Now, this was a purely personal matter with which neither he nor any other superior officer could have any concern. The victim protested vigorously against such offensive, unwelcome personal remarks. She also told B politely, but in unmistakable terms, that she had no interest in having any personal relationship with him as it offended her moral values. However, this polite rebuff evidently offended the ego of B and he then started systematically harassing her. The victim was denied the promotion due to her. Instead, her junior was promoted. B's improper requests and unwelcome sexual advances, however, continued during the day-to-day working. When a second vacancy for the promotion post for the victim arose, she made a representation requesting for being promoted. Soon thereafter B telephoned to her residence around midnight and asked her to visit his residence right away to discuss the issue of her promotion. The victim considered the suggestion extremely offensive, expressed her displeasure at the conduct of B and reported the matter to the Petitioner's Country Manager (India), who assured her that suitable action would be taken against B. The Country Manager also requested her “not to make a big issue” of B's conduct by officially making a written complaint of the incident, as it would harm her job and reputation as well as the prestige of the petitioner Airlines. The Country Manager, without putting anything on record, pulled up B and this led to B adopting a vindictive attitude towards the victim. Her representation was totally ignored and the promotion was given to someone else who was her junior and in fact had been trained by her on several job functions. The constant harassment at work led to continued mental tension and anxiety for the victim and resulted in her sickness and applying for leave as approved by the petitioner's doctor. Even after she resumed work, B continued to sexually harass and humiliate her by issuing her false memos on untrue and trumped up allegations of negligence in work. Her request for a vacation was rejected. She was denied training facilities. Though serious mistakes of other staff were overlooked, but she was promptly given warning letters on petty and, on occasions, non-existent grounds. She was even forced to carry out typing work which was not part of her regular job.
The continued harassment meted out to the victim constrained her to complain to her Supervisor, seeking his intervention in the matter. When the Supervisor sought clarifications from B, the latter immediately sent the victim on leave, though earlier he had rejected such leave. However, when the victim attempted to resume duty on the expiry of her leave, she was not allowed to do so for four days, nor was she allowed to sign the muster-roll or perform any other duties despite her going to the office every day. During this period of four days, B threatened her that she would be dismissed from work and that he would make sure that the job of her husband in Saudi Arabia would be put in danger.

During that period the victim was living alone in Mumbai with two small children. Her husband was employed in Saudi Arabia. The pressure tactics of B resulted in creating an acute state of mental anxiety on the part of the victim and enabled B to extract an apology letter from her, after which she was taken back on duty. While taking the said apology letter, B assured the victim that it would not be used for official purpose. Contrary to this assurance, B got her suspended without wages for five days. When the victim resumed her duty and told B that the suspension was illegal and that she would take up the matter with the Head Office of the Petitioner in Saudi Arabia, B complained to the Country Manager who summoned the victim to his office and threatened her that, with the help of the Consul General of Saudi Arabia, he would ensure that her husband lost his job in Saudi Arabia if she attempted to challenge the suspension order. Left with no recourse, the victim succumbed to this threat and endured the punishment, though it was based on false grounds and was without basis.

Subsequently, the victim was assigned the job of typing, which was not her regular job. In fact, the practice in the petitioner Company was that professional typists would be hired on temporary basis for typing jobs. Even though professional typists were available, the victim was called upon to do heavy typing work every day. This resulted in her developing severe pain in her chest and she was constrained to take medical leave for a month. The victim then decided to put an end to the continuous sexual harassment by taking up the matter with the higher authorities of the petitioner Company at its Head office in Jeddah, Saudi Arabia. She followed it up, meeting very senior officers of the petitioner, who assured her that necessary steps would be taken.
When the victim returned to Mumbai and reported for work, she was once again not allowed to resume duties. Later, she received a letter terminating her service, which appeared predated and intended to render ineffective her representation to the higher authorities at Jeddah. The ostensible reason given in the letter for termination of her service was that she was guilty of wilful insubordination and acts of negligence.

The Labour Court, Mumbai, concluded that the victim had been sexually harassed by B and also victimised for not yielding to B’s improper sexual advances by dismissal from service on false and trumped up allegations. The Labour Court, therefore, directed reinstatement of the victim with full back wages and continuity of service and all attendant benefits.

Refusing to interfere with the Labour Court's award, and awarding costs of Rs 10,000 to the victim, a Single Judge of the Mumbai High Court said:

"An overall view of the case ... brings out that (the victim), a lady, was subjected to continuous sexual harassment by her official superior (B) .... (The victim) has been victimised for her refusing to submit herself to the sexual demands of her superior. The conduct of (B) would squarely fit in with the concept of 'sexual harassment' as defined by the Supreme Court in the case of Vishaka v. State of Rajasthan."

In appeal, the Division Bench of the Mumbai High Court declined to interfere with the judgment of the Single Judge and concurred with the observation of the Single Judge that B's conduct constituted 'sexual harassment' in terms of the Supreme Court's decision in Vishaka v. State of Rajasthan. While dismissing the Letters Patent appeal, the Division Bench also imposed costs of Rs 10,000 on the Appellant Company.

The facts of the case reveal the quid pro quo and hostile environment sexual harassment as the victim was asked to submit herself to sexual favours and then also harassed by creating the hostile environment for her. The attitude of the employer i.e. country manager was also discouraging as instead of getting the matter enquired from complaint committee, he made every effort to hush up the matter stating that it would

82 Ibid.
SEXUAL HARASSMENT: JUDICIAL EXPOSITION—CRITICAL ANALYSIS OF JUDICIAL DECISIONS IN SEXUAL HARASSMENT CASES

affect her job and reputation as well as the prestige of the company. Not only this, she was even suspended from the service and was also threatened that her husband would also loose job if she attempted to challenge the suspension order. This is a bone chilling case of sexual harassment which illustrates how a victim of sexual harassment is dissuaded from registering the complaint and further victimised for complaining the matter and can be compelled to withdraw the complaint. The attitude of the judiciary in recognising this typical type of sexual harassment is commendable. However, the cost of Rs10,000/- is too less for such a serious kind of sexual harassment of the female employee as it gives a wrong signal of trivialising the offence which should be amenable to exemplary punishment.

In Juli John v. Raman\textsuperscript{83}, the petitioner was doing her M. Phil course in Botany at the Centre for Advanced Studies, Gundy campus, University of Madras and Dr. N. Raman was the lecturer in the Botany Department and he was her guide. As per her complaint, Dr. Raman misbehaved with her by catching hold of her arms when she went to his room in connection with her research work. After she got herself released, she warned him stating that she did not like such things and asked him not to do it anymore. Then Dr. Raman wanted her to come on the next day for completion of the discussion. Next day again when she went to his room, after offering her a seat and discussing seminar matters, Dr. Raman caught hold of her hand. The petitioner immediately pushed off his hand, released herself from his grip and ran out of the room leaving her slippers in the room itself. Outside the room she met a research student and informed him about the incident. Then on his advice, she met a lady professor Dr. Indira and told her everything. Based on the complaint made by the petitioner to the Director, an enquiry was conducted. Since according to the petitioner the enquiry was not conducted properly, she lodged a complaint with the police against Dr. Raman and consequently the police registered a case against him.

The trial court acquitted Dr. Raman on the ground that the offence was not proved beyond reasonable doubt. However, in revision, the Madras High Court found that the Magistrate erred in holding that the petitioner gave a false complaint against Dr. Raman at the instance of pw7, a reader in the Botany Department. There was no

\textsuperscript{83} (1999) 105 Cri LJ 2174(Mad.)
admissible material based on which court could draw such an inference. The trial court fully relied upon the enquiry report submitted by the enquiry officer of the university. Though this voluminous report was marked through an official of the university, the contents of the report were not spoken to by any witness. Moreover, neither the enquiry officer nor the witnesses on the side of the university were examined. In these circumstances, the single judge of the High Court said that it was highly unfortunate for the trial court to rely upon the enquiry report to hastily hold that the petitioner’s complaint might not be true one. One of the grounds given by the trial court for acquitting Dr. Raman was that even as per the petitioner, Dr. Raman had only touched her hands; thus, there was no material to show that he misbehaved with her. M. Karpagavinayagan J. of the Madras High Court termed this observation of the trial court as quite unfortunate.

The single judge of the Madras High Court also observed that the petitioner in her evidence before the trial court fully substantiated her complaint, other witnesses also deposed that she came out of the room without slippers. She was weeping at that time and told them as to what had happened inside the room. So there was no reason to disbelieve the version of the petitioner. No doubt, there was no other evidence to corroborate her version as to what happened inside the room. Because, when the said incident took place inside the room, nobody else was available. Therefore, the court was required to analyze the credibility of the petitioner alone. However, since nearly 9 years had elapsed after the occurrence and the petitioner since got married and was settled at a distant place after finishing her studies, the High Court did not deem it appropriate to remand the matter to the trial court for fresh consideration.

This case depicts the kind of sexual harassment faced by the students/scholars in the educational institutions. When women suffer this type of behavior and that too from teachers/supervisors, they are shattered to such an extent that it becomes difficult for them to concentrate on their studies and produce the desired results. The approach of the trial court shows that the incident of such type are not taken seriously.
In Ajaya Kumar Das v. State of Orissa, the accused was caught red-handed by the victim and her husband when he moved his hands on the private parts of the victim while they were witnessing a ‘mela’. The trial court found the accused guilty under Section 354 IPC and punished him with rigorous imprisonment for eight months. The single judge of the Orissa High Court did not interfere with the judgment of lower Court and maintained conviction of the accused under Section 354 of IPC by observing that a person should not be so careless as to allow his hand to touch the private part of a woman moving near him. At the same time, he also concluded that the matter was a very trifling one as it could not be said with conviction that while moving in a ‘mela’ crowded with people, one’s hand would not touch the person of others. The courts below did not keep this aspect in mind, nor discussed in their judgment whether the accused had intentionally touched the private part of the victim. Thus, the single judge held that ends of justice and equity would be better served if the conviction of the accused was maintained but the punishment of rigorous imprisonment for 8 months was modified and instead a fine of Rs 3000/- was imposed on him out of which a sum of Rs 2000/- was to be paid to the victim and in default, the accused was to undergo rigorous imprisonment for 8 months. The judgment of the court reveals a very confusing state of mind because on the one hand the single judge considered sexual harassment of women at crowded places as very trifling matter but on the other hand, considers that ends of justice can be meted out by the imposition of exemplary fine. However, the court’s idea of exemplary fine was a sum of Rs 3000 only. This type of attitude of the judiciary can shatter the confidence of the women victim of sexual harassment in the society.

In State of Maharashtra v. Satyandra Dayal Khare, the complainant, a probationer of the Indian Customs and Central Exercise Service, Group A, was undergoing training while attached to the Bombay custom House. As part of her training she was required to write an assignment and, for that purpose, she was stationed at the Sahar Airport collectorate. According to her complaint, since she had completed her training, she wanted to say her goodbyes. Accordingly on 21-3-92 at about 3.05 p.m she went to the office of the collector of customs, Sahar Airport and met (Mr. Khare) the accused who showed concern about her training and enquired about her

84 2003 Cr. L.J. 2651 Ori., per A.S. Naldu, J.
85 2004 Cri. LJ 3399 Bom.
assignment and other such matters. The accused told the complainant that he was going
to his office at the Sahar Airport complex and asked her to accompany him to learn
about the particular topic (the Revenue Drive). The complainant expressed her inability
to accompany the accused as she had to meet the additional collector Rajendra Prasad
and other officers to thank them for their help since it was her last day of work at Sahar
Airport. Just then Rajendra Prasad entered the office and the accused told Rajendra
Prasad that the complainant was on her way to see him. Rajendra Prasad asked the
complainant to wait in his office, accordingly the complainant left and waited in the
office of Rajendra Prasad. Within a short while, Rajendra Prasad came in. After some
discussion, Rajendra Prasad told the complainant that the accused had asked him to
arrange for a vehicle to take her to Air Cargo complex. The complainant accordingly
went to the Air Cargo complex in the car provided by Rajendra Prasad and met the
accused in his office. After some time, the complainant sought permission from the
accused to leave. It was about 5.30 pm, but the accused told the complainant that he
wanted to show her some files at his Sahar Airport office and insisted that she
accompany him there to learn about a particular topic. Accordingly the complainant
accompanied the accused in his official car to Sahar Airport office. On reaching there
the accused appeared to be pre-occupied with work and did not pay any attention to the
complainant nor did he show her the relevant files. At about 6 p.m the complainant
again requested the accused to allow her to leave as she had to go all the way to her
hostel. However, the accused insisted that she should stay on and go through the files as
she would not have another opportunity to do so. The accused then showed her some
files. Shortly thereafter, he got up and went towards the ‘ante room’ and asked her to
follow him to see a particular case the complainant followed the accused into the ‘ante
room’ where the accused switched on the video on a particular case. After the short clip
was over, the complainant got up and told the accused that she was leaving as it was
getting late and she was worried about reaching the hostel. The accused, however,
captured the complainant’s wrist and told her to sit down to watch another cassette
and also told her that he would drop her at her hostel. The complainant protested and
tried to get up to leave. However, the accused snatched her handbag, caught hold of her
shoulder, and pushed her down into the sofa saying “seeing a naughty movie will put
you in mood.” Then the accused also got on the sofa and started behaving in a manner
that shocked the complainant, without releasing his grip on her arm, the accused pulled
the complainant closer and brought his arm around her shoulders and kept her pinned
SEXUAL HARASSMENT: JUDICIAL EXPOSITION—CRITICAL ANALYSIS OF JUDICIAL DECISIONS IN SEXUAL HARASSMENT CASES

down and started groping her and misbehaving with her and at the same time telling her that he found her irresistible and wanted to possess her ever since he first saw her. He also told her that he found her to be a mixture of innocence and seriousness and having too much dignity. All this while, the accused continued to misbehave with the complainant who struggled and pleaded with the accused to let her go. The complainant started shaking and sobbing uncontrollably. The accused asked her why she was being so difficult while other lady officers (whose names the complainant did not disclose), were so ‘dynamic’ and ‘obliging’, the accused offered to give her any foreign goods from the disposal section. The accused further told the complainant the he thought that she would know the name of the ‘game’ and further said that he knew that she would not resist him as he knew women from Bangkok to San Francisco. When the complainant became upset and started demanding that the accused let her go, he told her that was sick of her. He gripped her shoulders and shook her. This made her to vomit. The accused told her to say ‘yes’ or ‘no’. The complainant said no and moved to the door to get away. She went out of the door and reached the bottom of the stairs to the exit, the accused followed her, at that time the official car was already at the exit gate. The complainant tried to get a taxi but the accused insisted on her getting into the car and almost propelled her into the car. The complainant told the accused that she wanted to get out of the car, but before she could do so the car was already in motion, suddenly, the accused changed appearance and became mild and curtly tried to assuage her feelings. He told her that he would be dropped first at Madh Island and then she would be dropped at ‘Bhandup’. She protested and told the accused to stop the car. By that time the car had reached Lela Kempinski Intersection at which point the driver asked which way he should go and the complainant told him to stop the car and drop her at that spot itself. However, the accused told the driver to proceed to ‘Ghatkopar’. Within 15 minutes the car reached ‘Ghatkopar’ station. All the while the accused tried to hold complainant’s hand and explained his behavior. When she quietly brushed aside his hands, the accused told her that his ego had been hurt, but being a persuasive man he would not give up and would not take no for an answer. When the car reached ‘Ghatkopar’ station, the complainant immediately opened the door to get down, but was held back by the accused. He told her that she must give him a reply whether yes or no by the next day and he would come personally or send his private vehicle to pick her up from the hostel. He also told her to sleep it over and that she would be in a more accessible mood the next day. The accused tried to cajole her stating that he was not an
ordinary collector and would see how far she could go in her career in the department. The complainant freed her hand and rushed to the railway station and caught the first train for ‘Bhandup’ where she alighted and almost ran all the way to her hostel. On reaching the hostel building, the complainant rushed into the room of her colleague Surjit Bhujbal. It was about 8.45 pm., she was shaking and shivering and too shocked to speak. She vomited in her colleague’s room. Surjit tried to cool her down and repeatedly asked her what had happened. After some time she blurted out that the collector had molested her in his office and described the incident. Surjit advised calling her husband. Accordingly the complainant accompanied Surjit to a PCO from where she made a telephone call to complainant’s husband at Hyderabad. The complainant was too overwhelmed and broke down when her husband came on the line. Thereupon, Surjit took over and asked the complainant’s husband to come to Bombay immediately. Thereafter, they returned to the hostel. The next morning, the complainant’s husband arrived from Hyderabad. He contacted the Director General of customs at his residence in Delhi on telephone. The complainant narrated the incident to him. Thereafter, the complainant and her husband contacted other senior officers and narrated the incident to them. Then, they decided on filing a police complaint. Next day, they met the commissioner of police and gave a written complaint written by the complainant. The police, thereafter recorded the statements of the complainant, her husband and others including her colleague Surjit and Rajendra Prasad, Additional collector of customs. After completion of the investigation, charge sheet was filed against the accused under Sections 341, 342 and 354 IPC. The defence of the accused was that he was falsely implicated by the complainant at the instance of a strong lobby of custom officers. This lobby was envious of his posting. The accused gave different colour to the whole incident and pleaded that on the day of the incident he went to Sahar Airport cargo complex in connection with his work. In the evening about 5.30 pm while he was busy discussing official matters with his officers, he saw the complainant entering his room in the cargo office. After his work was over about 6. Pm, while returning to his Sahar Airport office in his official car he gave lift to the complainant and returned to his office. His peon and sepoy served tea and cold drink to both of them. He was busy in attending his work. He had some discussions with the complainant who requested him to drop her at her hostel. He expressed his inability to arrange for a vehicle and asked her to make her own arrangement. But the complainant insisted on getting a lift in the official car and stated that she was ready to wait till he finished his work. The complainant also requested the
accused that she be dropped first at her place, but accused told her that he wanted to get dropped first as his wife would be waiting for him for dinner, to which she did not raise any objection. The accused then called his steno and gave him some instructions. During all this time the complainant was examining the artefacts placed in the room. She peeped into the antechamber where she came across one cassette and expressed her desire to watch the said cassette. Accordingly, she viewed the cassette while the accused disposed of his work. Thereafter, he went outside the office followed by the complainant. His driver was waiting outside the chamber, he was asked to bring the car. At that time the complainant requested the accused that she should be dropped first at Ghatkopar Railway Station. There was heavy traffic when they were going along Ghatkopar Railway Station. At the suggestion of the complainant she was dropped near Ghatkopur Railway Station from where she was to get a train for Bhandup. The complainant got down from the car, thanked the accused and walked away from the car towards the station. The trial court observed that from the statement of Rajendra Prasad recorded by the police, it appears that it was not the accused who insisted on the complainant going the cargo complex, but it was the desire of the complainant herself to go to the Sahar cargo complex and on the pretext of getting some clarification, she went to the office of the additional collector of customs, Rajendra Prasad, who made arrangement for her transport to the cargo complex. The trial court concluded that the prosecution deliberately did not examine Rajendra Prasad to deprive the defence of the benefit of his evidence which would be favourable to the accused. Hence, the trial court drew an adverse inference and gave benefit of doubt to the accused.86

On appeal to the Bombay High Court, the single Judge disagreed with the trial court’s conclusions and pointed out that the testimony of Rajendra Prasad could be of assistance only on the point whether the complainant visited the cargo complex at the instance of the accused or of her own volition. This was not a part of the basic prosecution story viz the charge of molestation that took place in the ‘ante chamber’ of the office of the accused. What transpired at the cargo complex or the reason why the complainant went to the cargo complex was not material for unfolding the prosecution case of what actually transpired in the ‘antechamber ‘of the accused. The evidence of

86 Id., at 3407 para 21.
Rajendra Prasad could at the most be material only for the purpose of corroborating in an indirect way the defence case that it was the complainant who wanted to be seen in the company of the accused so that she could implicate him later on in a false case. Whether the complainant went to the office of the accused at Sahar Airport for the purpose stated by her, or that she went to the cargo complex of her own volition or at the instance of accused could be of no assistance in corroborating or demolishing the prosecution case of molestation of complainant by accused in the ‘antechamber’ of his office at the Sahar Airport.

On the charge of molestation, which allegedly took place in the ‘antechamber’ of the office of the accused, the trial court found that the substantive evidence of the complainant before the court is not corroborated by the FIR and observed that the FIR was totally silent on the material aspects and details as given by the complainant in her evidence before the court. The trial court referred to the FIR where the complainant stated, “without releasing the grip he pulled me close and brought his arm around me and started misbehaving, the details of which I cannot bring myself to mention now.” The trial court observed that the complainant was silent on the basic and most important details constituting the offence under Section 354, IPC. The details of the actual molestation were not given in the FIR and there was no corroboration from the FIR on this material aspect of criminal assault by the accused on the complainant. The trial court further observed that the defence was deprived of an opportunity of pointing out any contradictions in the prosecution story before the court since no details of the molestation are given in the FIR on the basis of which the nature of the molestation could have been ascertained. However, the Bombay High Court held that, to say the least, the reasoning of the trial court is specious if not perverse. It proceeds on an assumption that if the complainant had given details in the FIR of the acts constituting the molestation them this would, as a matter of fact, have resulted in contradictions in the statement made in the FIR and complainant’s testimony before the court. The High Court observed that all the facts stated in the evidence of the complainant might not appear in the FIR. Nevertheless the gist of the actual incident was set out in the FIR. It must not be forgotten that the complaint was filed by the complainant after consultation with her husband and the complaint is in the handwriting of the complainant who would naturally have felt embarrassed to place the lurid details of the assault on her by the accused in writing. From a perusal of the FIR it would be clear that the complainant was
overwhelmed with a sense of shame. Clearly she did not want to embarrass herself or her husband any further. Even in her testimony before the court the complainant has avoided giving any embarrassing details of the molestation though she has in her testimony given a more graphic account of how the incident took place than as set out in the FIR. This by no stretch of imagination can be said to be an improvement made after obtaining legal advice and deliberation. It must not be forgotten that the complaint itself was lodged after consultation and obtaining legal advice. The reason given by the Magistrate for rejecting the evidence of the complainant is wholly unwarranted. The trial court also reasoned that the complainant not being an ordinary lady and having completed two years of probationary training, including training in martial arts, would not have allowed herself to be propelled physically into the car by the accused. And if she was so badly molested by the accused earlier, she would not have continued to travel in the car right up to Ghatkopar Railway Station during which time the accused was holding her hand and patting her thighs, as alleged by the complainant. Further, since the accused was not the immediate boss of the complainant and did not have any powers in connection with her posting or training, there was nothing to compel the complainant to surrender to his wishes. She could have very well asked the driver to stop the car and get out of the car and taken a taxi to her hostel. The trial court concluded that the behavior of the complainant after she left the cabin of the accused till the moment she was dropped at Ghatkopar Railway Station was unnatural since the complainant did not prevent the accused from his advances even in the car till she was dropped, when she said ‘thank you’ to the accused. Rejecting the conclusions drawn by the trial court, the Bombay High Court held, “the [trial court] in arriving at the above conclusion has completely misdirected himself by basing his findings on unwarranted inferences and surmises about the physical training and social standing of the complainant …. The use of the word propelled may not be a happy expression but it does not mean that the complainant was bodily lifted and shoved into the car. It does however, convey the meaning that the attending circumstance gave no time to the complainant to decide and that she found herself in the car even before she realized it. Moreover no modest woman would create a scene in front of others, especially the staff working under the accused who was a high ranking official in the customs department and also the fact that she had just come out of his cabin. The complainant has also in her evidence stated that during the travel …. the complainant resisted the advances of the accused by abruptly pushing his hand. If the complainant said thank you to the accused
after she was dropped near the Railway station that cannot be held against her … rather it would show that the complainant was a cultured and well mannered person who did not want to create an unnecessary scene. The conclusion therefore of the trial court that the conduct of the complainant was unnatural, needs to be rejected.” The High Court observed that the very scheme of approach of the trial court to a sensitive and delicate matter which involves a woman’s privacy has been faulty. The High Court also pointed out apart from stating his defence in his statement under Sections 313/314 CrPC, the accused did not examine any witness in support of his defence. He did not produce any evidence to show why any officer in the customs Department wanted to have him out of his coveted position. There was nothing brought on record to show that there was any pervious enmity between the accused and any particular officer in the customs Department nor was there anything on record to show whether any officer stood to gain in any way by getting the accused falsely implicated in a charge of molestation, that too of a woman who had just completed her training as a probationer in the customs Department. The complainant stated her case on oath before the court, which was corroborated by her complaint to the police(FIR). However the accused only denied the allegations and gave his version in his written statement under Section 313 of the CrPC which was not on oath. The High Court further expressed, “no decent self respecting woman would allow herself to be used as a tool in the hands of her superiors to falsely implicate another superior officer in such a serious charge as molestation with a view to improve her prospects in the organization, especially since the allegations would be damaging her personal reputation and character” Moreover, there was nothing to show how the complainant would in any way have personally gained or benefitted by implicating the accused in such a false charge. Nor was there any evidence to show the nature of relationship of a particular officer with the complainant enabling that officer to influence the complainant to such extent as to cause her to file a false complaint implicating the accused in a serious charge, the natural consequence of which would be damage to her honour and invasion of her privacy as a woman. The High Court found the evidence of the prosecutrix/complainant to be credible and unimpeachable, which required no corroboration. The High Court, therefore, set aside the order acquitting the accused and convicted him for an offence under Section 354 IPC with the rigorous imprisonment for 6 months and to pay a fine of Rs 25,000, in default, to suffer further rigorous imprisonment for 1 month. Thus the gross error committed by the trial court was rectified by the High Court. This case illustrates the type of sexual harassment
where a probationer fell to the crafty design of an officer who under the pretext of work relating to the training, subjected the victim to molestation.

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

Despite her complaints to the management, no Complaints Committee was constituted to address her complaint. The management pressured her to withdraw her complaints. Finally, when she did not withdraw her complaints, the management terminated her services on the basis of two anonymous complaints. The complainant challenged her termination, alleging sexual harassment as one of the grounds, the High Court held that it was a clear cut case of sexual harassment and therefore directed army authorities to take disciplinary action against appellant’s DSG and HB. The Supreme Court observed that the school authorities had not constituted a complaints committee as directed in Vishaka’s case, to look into the grievance made by respondent I.

Before the High Court, the appellant, inter alia, contended:

(i) That the order of termination has nothing to do with alleged sexual harassment.

(ii) Writing a letter was merely appreciable in nature and by reason thereof no sexual harassment was caused by HB

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87 (2009) 2SCC 210
(iii) HB has nothing to do with the management of the school and that the letter having been sent from Sonamarg cannot be said to have any sexual harassment at the workplace of the first respondent.

The High Court held, “Therefore, the Secretary, Ministry of Defence, Government of India and the Chief of the Army staff are directed to take disciplinary action against these two officers, as the case of sexual harassment is evident from the contents of the letter and the admission by both the officers followed by the termination of the petitioner.” The High Court passed this order in view of the law laid down by the Hon’ble Apex Court in Vishaka v. State of Rajasthan\(^\text{88}\). The High Court further directed, “The progress of the disciplinary action so taken in such a serious matter which may even warrant the court martial proceedings of these two officers shall be submitted before this court within a period of 2 months from the date of production of the certified copy of this order.”

When this matter reached the Supreme Court on appeal, the Court placed on record that a first information report was also lodged against respondent I by the school management alleging financial irregularities. After investigation carried out in this behalf, a final report was submitted exonerating her and the report has been accepted by the Chief Judicial Magistrate, Pithoragarh by an order dated 13.2.2006.

The Court reaffirmed the Vishaka definition and held that it is a matter of great regret that the Army which is a disciplined organization failed to provide a complaint mechanism and ignored the decision of this court which was bound to be given effect to in terms of Article 144 of the Constitution of India. A Complaints Committee as per Vishakha [sic] was constituted for the other teachers and the staff but evidently no complaint committee was constituted for entertaining a complaint of this nature\(^\text{89}\).

However the Supreme Court observed that the High Court could not have claimed that it was a clear-cut case of sexual harassment of the petitioner without a proper enquiry. The Court directed that, as no Complaints Committee had been constituted, which was imperative in character, the High Court should appoint a three-

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\(^{88}\) (1997) 6 SCC 241: AIR 1997 SC 3011

\(^{89}\) Id., at 213 para 24.
member committee headed by a woman, and, in the event that it is found that the writ petitioner was subjected to sexual harassment, a report may be sent to the Army Authorities for initiation of a disciplinary action against the appellants on the basis of such a finding. All the expenditures that may be incurred on this behalf were ordered to be borne by the Army Authorities. Thus the Supreme Court exemplified the limited compliance of the Vishaka guidelines in the country as even after a span of 11 years of its pronouncement, no complaint committee has been constituted in a number of organisations. However, the Supreme Court sounded a word of caution in deciding the cases of sexual harassment as it left a caveat at the doors of subordinate judiciary and directed the High Court to get the matter to be enquired first by the complaint committee and then decide accordingly.

In sexual harassment of women at workplace, the judiciary's role has been commendable as it has filled up the void by creating a law through creative interpretation where legislature has remained silent. However, the judicial pronouncements howsoever encouraging cannot be a substitute for the legislative enactment. The problem having escalated over the years needs comprehensive legislation through proper policy planning based on the pragmatic approach.

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90  Id., at 213 para 26.