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A brief history of the battle against sexual harassment at the workplace

By Vibhuti Patel

Sexual harassment at the workplace has been one of the central concerns of the women's movement in India since the '80s. Presently, women's groups are lobbying to get the bill on sexual harassment at the workplace, 2005, passed by Parliament

Introduction

Sexual Harassment at the Workplace (SHW) has remained one of the central concerns of the women's movement in India since the early-'80s (Patel, 2002). During the 1980s, militant action by the Forum Against Oppression of Women (Mumbai) against the sexual harassment of nurses in public and private hospitals by patients and their male relatives, ward-boys and other hospital staff; of air-hostesses by their colleagues and passengers; of teachers by their colleagues, principals and management representatives; of PhD students by their guides and so on and so forth received a lukewarm response from the trade unions and adverse publicity in the media (FAOW, 1991). But this trivialisation did not deter the women's rights activists. More and more working women started taking systematic action against SHW. *Baailancho Saad* ('Women's Voice') in Goa mobilised public opinion against the chief minister, who allegedly harassed his secretary, through demonstrations, rallies and sit-ins till the minister was forced to resign. In 1990, the same organisation filed a public interest litigation to bring amendments in the antiquated rape law that defined rape in the narrowest sense of 'penile penetration into the vagina'. Several women's groups came forward in support of a new concern about a variety of sexually violent acts against women, including SHW (Chorine *et al*, 1999).

During the 1990s, the most controversial and brutal gang rape at the workplace involved a Rajasthan state government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme. The feudal patriarchs who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and raped her repeatedly (Samhita, 2001). After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists -- "educated and upper caste affluent men" -- were allowed to go free. This enraged a women's rights group called Vishakha that filed a public interest litigation in the Supreme Court of India (*Combat Law*, 2003).

Some noteworthy complaints of SHW that came into the national limelight were filed by:

- Rupan Deo Bajaj, an IAS officer in Chandigarh, against ‘super cop’ K P S Gill.
- An activist from the All India Democratic Women’s Association, against the environment minister in Dehra Dun.
- An airhostess against her colleague Mahesh Kumar Lala, in Mumbai.
- An IAS officer in Thiruvananthapuram, against the state minister.

Before 1997, women experiencing SHW had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the ‘criminal assault of women to outrage women’s modesty’, and Section 509 that punishes an individual/individuals for using a ‘word, gesture or act intended to insult the modesty of a woman’. These sections left the interpretation of ‘outraging women’s modesty’ to the discretion of the police officer.

In 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue (Mathew, 2002).

Pursuant to this, the Government of India requested the National Commission for Women (NCW) to draft the legislation. A number of issues were raised regarding the NCW draft, until, ultimately, a drafting committee was set up to make a fresh draft. Several women’s organisations are part of this committee, including Majlis from Mumbai, which was asked to make the draft. Women’s organisations and women lawyers associated with trade unions in Mumbai have collectively worked on the draft with Majlis. Particular concern, whilst working out the draft, has been to include the unorganised sector and to incorporate provisions of the labour law. The bill to be introduced in Parliament is known as the Sexual Harassment Of Women At The Workplace (Prevention And Redressal) Bill, 2004. The bill provides for the prevention and redressal of sexual harassment of women at the workplace, or arising during and in the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India, and as upheld by the Supreme Court in *Vishakha vs State of Rajasthan* [1997(7) SCC.323] and as reflected in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which has been ratified by the Government of India.

Scenario in the post-Vishakha guidelines period

Several organisations have carried out research on SHW that has been widely disseminated. A survey by Sakshi (Delhi) throws up some worrying data: 80% of respondents revealed that SHW exists, 49% had encountered SHW, 41% had experienced SHW, 53% women and men did not have equal opportunities, 53% were treated unfairly by supervisors, employers and co-workers, 58% had not heard of the Supreme Court’s directive of 1997, and only 20% of organisations had implemented the Vishakha guidelines (Dalal, 2003). Controversy over SHW by the senior manager of Infosys (Nair, 2003), by the chairman and managing director of NALCO (Ramanujan, 2004), the Medha Kotwal petition on SHW of a PhD student by her guide at M S University,

Vadodara, complaints against a senior professor at Lucknow University (*Times of India*, 2003), complaints about SHW by the film star Sushmita Sen against the CEO of Coca-Cola have all alerted employers to the economic burden and efficiency loss from SHW. Still, most private companies refrain from investing funds in such committees.

A Sophia Centre for Women's Studies and Development study shows that awareness and implementation of the Supreme Court's guidelines is very low and there is a need to spread awareness about the same. A study by Samhita (Kolkata), throwing light on the Bhanvari Devi case, has highlighted to the state and civil society the gravity of the menace of SHW (SCWSD and ICHRL, 2003).

Recently, Times Foundation organised a workshop for the corporate world on SHW. The testimonies of several participants at the workshop revealed that SHW is prevalent even in companies where the victims are highly educated and have considerable economic leverage. Similar views have been expressed in the business journals (*Business Today*, 1-9-2002).

On October 20, 2004, students beat up an anatomy professor from Versova, Andheri, for alleged sexual misconduct (*The Indian Express*, *Mumbai Newslines*, 21-10-2004).

Definition of sexual harassment at work

The Supreme Court directive of 1997 clearly and unambiguously provides an answer to the question 'What is sexual harassment?'

As defined in the Supreme Court guidelines (Vishakha vs State of Rajasthan, August 1997), sexual harassment includes such unwelcome sexually determined behaviour as:

- Physical contact
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, for example, leering, telling dirty jokes, making sexual remarks about a person's body, etc

The Supreme Court directive provided the legitimate space for the hidden truth about SHW to surface; earlier one only heard about victim-blaming, witch-hunting and blackmailing. Now women are fighting back tooth and nail. The electronic and print media have become extremely responsive to the issue of SHW. My firsthand experiences with providing support to women survivors of SHW has convinced me that we need to counter the myths about SHW with concrete facts, case studies and a database.

Myths and facts about sexual harassment

Myth 1: Women enjoy eve-teasing/sexual harassment.

Fact: Eve-teasing/sexual harassment is humiliating, intimidating, painful and frightening.

Myth 2: Eve-teasing is harmless flirtation. Women who object have no sense of humour.
Fact: Behaviour that is unwelcome cannot be considered harmless or funny. Sexual harassment is defined by its impact on the woman rather than the intent of the perpetrator.

Myth 3: Women ask for SHW. Only women who are provocatively dressed are sexually harassed.

Fact: This is the classic way of shifting blame from the harasser to the victim. Women have the right to act, dress and move around freely without the threat of attack or harassment.

The most popular slogan of the women's rights movement of the past three decades has been:|

However we dress, wherever we go
'Yes' means 'Yes' and 'No' means 'No'.

Myth 4: Women who say 'no' actually mean 'yes'.

Fact: This is a common myth used by men to justify sexual aggression and one-sided sexual advances.

Myth 5: Sexual harassment is not really an issue. It doesn't hurt anyone.

Fact: Persons subjected to sexual harassment experience a wide range of physical and psychological ailments. There are economic consequences for the victim's physical and mental wellbeing, and the organisation's productivity, efficiency and work ethic.

Myth 6: Sexual harassment is 'natural' male behaviour. Man is the hunter and woman the prey.

Fact: Men are not born knowing how to sexually harass others. It's learned within the context of a sexist and patriarchal environment that perpetuates control over women's sexuality, fertility and labour.

Myth 7: Women keep quiet. That means they like it.

Fact: Women keep quiet to avoid the stigma attached and retaliation from the harasser. Women are afraid that they will be accused of provoking it, of being victimised, of being called liars and made the subject of gossip.

Myth 8: If women go to places where they are not welcome, they should expect sexual harassment.

Fact: Discriminatory behaviour and abuse is unlawful. Women have equal access to all work facilities. A safe workplace is a woman's legal right.

The Vishakha guidelines categorically state that:

It is the duty of the employer or other responsible persons in the workplace or institution to:

- Prevent sexual harassment
- Provide mechanisms for the resolution of complaints

All women who draw a regular salary, receive an honorarium, or work in a voluntary capacity in the government, private sector or unorganised sector come under the purview of these guidelines.

Complaints mechanism

- All workplaces should have an appropriate complaints mechanism with a complaints committee, special counsellor or other support services.
- A woman must head the complaints committee and no less than half its members should be women.
- The committee should include an NGO/individual familiar with the issue of sexual harassment.
- The complaints procedure must be time-bound.
- Confidentiality must be maintained.
- Complainants/witnesses should not experience victimisation/discrimination during the process.

Preventive steps

- Sexual harassment should be affirmatively discussed at workers' meetings, employer-employee meetings, etc.
- Guidelines should be prominently displayed to create awareness about the rights of female employees.
- The employer should assist persons affected in cases of sexual harassment by outsiders.
- Central and state governments must adopt measures, including legislation, to ensure that private employers also observe the guidelines.
- Names and contact numbers of members of the complaints committee must be prominently displayed.

Employers' responsibilities

- Recognise sexual harassment as a serious offence.
- Recognise the responsibility of the company/ factory/workplace to prevent and deal with sexual harassment at the workplace.
- Recognise the liability of the company, etc, for sexual harassment by the employees or management. Employers are not necessarily insulated from that liability because they were not aware of sexual harassment by staff.
- Formulate an anti-sexual harassment policy. This should include:

* A clear statement of the employer's commitment to a workplace free of unlawful discrimination and harassment.

* Clear definition of sexual harassment (using examples), and prohibition of such behaviour as an offence.

* Constitution of a complaints committee to investigate, mediate, counsel and resolve cases of sexual harassment. The Supreme Court guidelines envisage a proactive role for

the complaints committee, and *prevention* of sexual harassment at work is a crucial role. It is thus imperative that the committee consist of persons who are sensitive and open to the issues faced by women.

* A statement that anyone found guilty of harassment after investigation will be subject to disciplinary action.

- The range of penalties that the complaints committee can levy against the offender should include:

* Explicit protection of the confidentiality of the victim of harassment and of witnesses.

* A guarantee that neither complainant nor witnesses will be subjected to retaliation.

* Publishing the policy and making copies available at the workplace. Discussing the policy with all new recruits and existing employees. Third-party suppliers and clients should also be aware of the policy.

* Conducting periodic training for all employees, with active involvement of the complaints committee.

Employers' duty

Freedom from sexual harassment is a condition of work that an employee is entitled to expect. Women's rights at the workplace are human rights.

There are four perspectives on SHW, as explained below:

Feminist	Legal	Organisational	
		View A	View B
1 Power relation, male over woman	1 Exploitative	1 Inter-personal	1 Inter-personal
2 Constitutes economic coercion	2 Involves both implicit and explicit terms of employment	2 Consists of misinterpretation or misunderstanding of person's intentions	2 Improper use of power to extort gratification
3 Threatens women's livelihood	3 Used as a basis for employment decisions	3 'Love affair gone sour'	3 Treats women as sex objects
4 Reflects women's subordinate status in society	4 Produces consequences from submission to/or refusal of advances	4 Personal matter. Why should organisation get involved?	4 Coercive, exploitative, improper

5 Asserts women's sex role over her work role	5 Promotes intimidating, hostile or offensive work environment	5 Can hurt reputation of accused	5 Asserts women's sex role over work role
6 Parallels rape			6 Aberrant behaviour

Recommendations of the National Commission for Women (NCW) on safety of women in and around college and university campuses

In response to barbaric sexual violence against three women students in three different places within a week in Delhi University campuses, in 2002, the NCW called an emergency meeting to discuss the safety of women at educational institutions.

Recommendations that emerged out of the meeting, convened by the National Commission for Women with the Principal Secretary (Home), Delhi Police Commission and heads of educational institutions regarding strategies to prevent the occurrence of rape and sexual harassment in and around campuses, are as follows:

Police

- More PCR vans should be deployed to patrol educational institutions.
- Along the lines of women's helplines, college helplines should also be provided and its number should be prominently displayed.
- There should be police patrols around educational institutions at least for two hours before and after college gets over.
- There is a need to improve relationships between the police and educational institutions.
- Every case of rape must be handled by a woman police officer.
- The attitude of the police needs to be made more positive towards the victim.

Educational institutions

- Educational institutions must ensure proper lighting in and around their premises, as darkness is conducive to crime. The height of hedges must be reduced in campuses for proper visibility.
- An internal security committee should be constituted by all educational institutions, headed by the head of the institution, police officer and student representatives who must be invited for meetings to review the security arrangements. If the need arises, other government departments like the PWD, MCD, etc, may be invited to review the security arrangements.
- The internal security committee should have monthly or bi-monthly meetings and must maintain the minutes of the meeting.

- Experts should be invited to inspect the college area to assess the security needs and arrangements on campus.
- Educational institutions must perform their administrative role for the security of the students.
- Students must be given proper training in self-defence.
- The telephone numbers of women's helplines must be provided.
- Entry into educational institutions must be restricted. Entry should be through identity cards.
- Construction workers should not be allowed to stay on the premises of the institute overnight.
- Safety gadgets should be provided in hostels.
- Educational institutions could engage retired police officers on their security committees/boards.
- De-politicisation of the campus is a must; institutions must ensure this.
- Awareness programmes on the safety and security of students must be conducted on a regular basis.

Media

- There is a need to sensitise the media regarding the repeated relay of incidents relating to violence against women. This has negative repercussions on society, especially on children.
- The National Commission for Women directs the media not to intrude on the privacy of the victim.

Delhi University passed an ordinance based on its policy against SHW, with clearly-defined rules and procedures. It has mentioned a range of disciplinary action to punish the culprit (employee) of SHW, including warnings, written apologies, bond of good behaviour, adverse remarks in the confidential report, debarring from supervisory duty, denial of membership to statutory bodies, denial of re-employment, stopping of increments/promotion, reverting, demotion, suspension, dismissal. For student/s culprits, the punishment could be in the form of warnings, written apologies, bond of good behaviour, debarring entry into hostels/campuses, suspension for a specific period of time, withholding results, debarring from exams, debarring from contesting elections, debarring from holding posts such as member of a committee, of courses, membership of a college union, expulsion, denial of admission, declaring the harasser to be 'persona non grata' for a stipulated period of time, and other such relevant mechanisms (Court Meeting, 2003).

Conclusion

Sexual harassment at the workplace is a universal problem. Even though the occurrence of sexual harassment at the workplace is widespread in India and elsewhere, this is the first time it has been recognised as an infringement of the fundamental rights of a woman, under Article 19(1)(g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business".

Of late, the problem of sexual harassment at the workplace has assumed serious proportions, with a meteoric rise in the number of cases. Surprisingly, however, in most cases women do not report the matter to the concerned authorities.

In India, Articles 14, 15 and 21 of the Indian Constitution provide safeguards against all forms of discrimination. In recent times, the Supreme Court has given two landmark judgments -- Vishakha vs State of Rajasthan, 1997, and Apparel Export Promotion Council vs A K Chopra, 1999 -- in which it laid down certain guidelines and measures to ensure the prevention of such incidents. Despite these developments, the problem of sexual harassment is assuming alarming proportions and there is a pressing need for domestic laws on the issue.

India is rapidly advancing in its developmental goals and more and more women are joining the workforce. It is the duty of the state to provide for the wellbeing and respect of its citizens to prevent frustration, low self-esteem, insecurity and emotional disturbance, which, in turn, could affect business efficacy, leading to loss of production and loss of reputation for the organisation or the employer. In fact, the recognition of the right to protection against sexual harassment is an intrinsic component of the protection of women's human rights. It is also a step towards providing women independence, equality of opportunity and the right to work with dignity.

In the last 50 years, various international human rights organisations have been focusing on promoting and protecting women's rights. The United Nations has acknowledged that women's rights are synonymous with human rights. The same was reiterated in the Beijing Declaration.

Most international women's human rights movements have raised their voice against abuse and violence perpetrated against women in general. In 1979, the UN General Assembly adopted the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Areas where discrimination was found to be rampant include political rights, marriage, family and employment. The convention emphasised that discrimination and attacks on a woman's dignity violated the principle of equality of rights.

A Bill to Prevent Sexual Harassment at the Workplace, 2005, has already been introduced in the Indian Parliament. Women's groups have begun lobbying with parliamentarians to get it passed as an Act in the winter session of Parliament. For any sexual harassment law to be successful in India, it is important to be aware of the difficulties confronting our society and ways to overcome them. We all know that India is a patriarchal society and most cases of sexual harassment remain unreported. Women are reluctant to complain and prefer silence due to lack of sensitivity on the part of Indian society. There is a need to gender-sensitise our society so that the victim does not feel guilty and is encouraged to report any form of harassment. The victim's privacy must be protected. The police and the judiciary, in particular, also need to be gender-sensitised. There should be speedy redressal and an increase in the conviction rate. Women themselves should be made aware of their right to a safe and harassment-free work

environment. The concept and definition of sexual harassment should be clearly laid down, and the redressal mechanism made known to women in each and every sector of the economy. Structures and mechanisms should also be created for women in the unorganised/informal sector to combat SHW. Despite bold judgments by the Supreme Court, there is no sexual harassment complaints committee at most workplaces, even in the government sector. The apex court must direct the various workplaces to form sexual harassment committees within a stipulated time frame.

In any civilised society, it is the fundamental right of people to be able to lead their lives with dignity, free from mental or physical torture. To ensure this, transgressors must pay for their unsolicited sexual advances. At the same time organisations such as Men Against Violence and Abuse, that conduct gender-sensitisation programmes and self-defence classes to combat sexual harassment at the workplace, must be encouraged (Sadani, 2003).

To effectively prevent SHW we need both a top-down initiative by the state and employers and civil society initiatives from citizens' groups, women's organisations and trade unions.

References

1. Chorine, Christine, Mihir Desai, Colin Gonsalves (1999), *Women and Law*, Vol I and II, Socio-legal Information Centre, Mumbai
2. *Combat Law* (2003), the human rights magazine, special number on violence against women, September-October
3. Court meeting (2003), Amendments to Ordinances and Appendices to Ordinances, No 19, XV D Sexual Harassment, University of Delhi
4. Dalal, Sucheta (2003), 'Bias in the Boardroom', *The Sunday Express*, May 18
5. FAOW (1991), 'Moving...But Not Quite There -- Evaluation Report of One Decade 1980-1990', Forum Against Oppression of Women, Mumbai
6. Gupte, Manisha and Renu Khanna (2002), Process Documentation of Gender Training of Dilaasa, Mumbai
7. Mathew, Mini (2002), Sexual Harassment at Workplace, India Centre for Human Rights and Law, Mumbai
8. Nair, Meera (2003), 'The Seamier Side of Office Life -- This Women's Day Let's Do Away With the Groping, Lecherous Advances Made by Male Colleagues at the Workplace', *The Indian Express*, March 6-12
9. Patel, Vibhuti (2002), *Women's Challenges of the New Millennium*, Gyan Publications, Delhi
10. Patel, Vibhuti (2004), 'Crusade of University of Mumbai Against Sexual Harassment at Place of Work', presented at a seminar 'An Interdisciplinary Approach to the Unexplored Areas Related to Women', sponsored by University Grants Commission and organised by Maniben Nanavati College for Women, Mumbai, on July 30-31, 2004
11. Report (1999) Workshop on Prevention of Sexual Harassment of Women at Workplaces, Department of Adult and Continuing Education and Extension, University of Mumbai
12. Sadani, Harish (2003), 'Man Against Violence and Abuse --MAVA', *Urdhva Mula*,

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13. Sadashivan (1999), Policy for Prevention of Sexual Harassment in Educational Institutions and for Dealing with Cases of Sexual Harassment', Bombay University College Teachers' Union, Mumbai
14. Samhita (2001), *The Politics of Silence*, Kolkata
15. Sophia Centre for Women's Studies and Development and India Centre for Human Rights and Law (2003), 'Sexual Harassment of Women at the Workplace', Department of Sociology, Sophia College, Mumbai
16. The Times News Network (2003), 'Disclosures -- What is Sexual Harassment?', *The Times of India*, June 15, 2003
17. Women Development Cell (2002), Orientation Programme on Women's Rights: Laws that Protect, August 6-7, 2001, organised by the Department of Adult and Continuing Education and Extension, in collaboration with Ghanshyamdas Saraf Girls' College, University of Mumbai
18. Women Development Cell (2002), Report for 1991-2001, Department of Adult and Continuing Education and Extension, University of Mumbai

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