



## SEXUAL HARASSMENT AT WORKPLACE

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The Twenty-first century has witnessed resurgence for gender equality and human development, leading to economic and social empowerment of women in India. Women in large numbers have acquired education and skills and entered different fields of employment, thereby making their presence felt in the decision-making process in their workplace. Thus they are gradually facing escalation of various forms of 'harassment', that is violating their human rights and "the right to work with dignity", as spelt out under Article 14 of the Constitution.

Sexual harassment, an insidious form of violence against women is common to all cultures. Sexual harassment can take a variety of forms. It includes both physical violence and subtle forms of non-physical violence such as emotional and psychological harm or suffering to women including economic and professional injuries. The incremental number of reported cases of sexual harassment of women at the workplace is attracting nationwide attention and condemnation. We have to see whether the gradual restoration of societal imbalance have made men uncomfortable to accept, share and live with women's rising power, which involves a reduction of male power viz-a-viz women's empowerment. Like other forms of violence, sexual harassment at the workplace is a demonstration of power and control, and above all it exemplifies a form of gender inequality or gender discrimination.

### Judgement on Suicide of Advocate Sangeeta Sharma

Sangeeta Sharma, a young lawyer practising in Hyderabad committed suicide on 15 June 2000. In her suicide note she named three lawyers as being directly responsible for her death. She was being sexually harassed by her senior Shri D. Vijay Kumar, his colleague Shri Narasimha Naidu, and another prominent lawyer for the past one year. One of the lawyers named, the prime accused, was a senior lawyer who was fairly well known. In addition, Sangeeta left behind a letter addressed to the Chairman of the Bar Council of Andhra Pradesh dated December 1999, complaining of harassment, but did not submit the

letter. In February 2000, Sangeeta brought her complaint to Asmita, a women's collective in Secunderabad, but was not willing to divulge the names of persons involved in public. Before coming to Asmita, she had spoken about the harassment to fellow lawyers, had been asked to "forget it" by the relatively senior men and had received support from a few women. After hearing her story, Asmita then sent a letter to the Chairman of the Bar Council of Andhra Pradesh, that in the light of the frequency of complaints, the seriousness of the issue and the Supreme Court decision, the code of conduct of lawyers ought to be amended to specifically include sexual harassment within the definition of gross misconduct, and set up mechanisms for dealing with cases, according to the procedure and modalities laid down by the Supreme Court. We did not receive any response. When they reminded the Chairman of the Bar Council of their earlier complaint after Sangeeta's death, they received a reply, which said that sexual harassment would fall under the general definition of professional misconduct or any other misconduct and that they would need to approach the Bar Council of India and ask for a change in the statute for any specific changes. Meanwhile the investigation into the allegations made by Sangeeta was in progress. According to press reports, two people named in the suicide note were arrested and the third, the main accused had absconded. The police registered a case and Shri Narasimha Naidu was taken into custody and released on bail. On June 21, a senior lawyer appearing for the petitioners moved the High Court and obtained a stay on investigations. He said that, without going into the merits of the case, however arbitrary a claim or an accusation, no conclusion can be reached before the investigation is completed. There was a stay order on investigation and on June 28 the Court granted anticipatory bail to Shri D. Vijay Kumar. Asmita was of the opinion that courts, over the past 50 years since Independence, surely have to their credit several decisions that block litigation of this kind whose purpose is to stall investigation and a possible consequence is the watering down of evidence. Asmita immediately petitioned the National Human Rights Commission and the National Commission for Women to intervene in the matter and ensure the progress of investigation, sending them press clippings and details of the case. The National Commission for Women responded immediately, with Member Mrs. Shantha Reddy coming to Hyderabad and conducting an enquiry both on the incident and the general issue of sexual harassment in the premises of the High Court of Andhra Pradesh. She also met with various women's groups and human rights groups in the city and visited the family of Sangeeta Sharma.

Ms. Jaya Vindhya, General Secretary Andhra Pradesh PUCL, filed a writ petition to Justice G. Raghu Ram, regarding sexual and mental harassment of advocate, Ms. Sangeetha Sharma, by her senior, Shri D. Vijay Kumar, his colleague Shri Narasimha Naidu, and another lawyer for the past one year, on July 4, 2000. The writ petition alleged that some of the accused were whispering widely that their names are on the panel of Judges and therefore they won't come to harm. The wife of one of the accused was a District Judge and had wide influence over the police. The father of the prime accused was a former member of the Parliament. All these factors seemed to be influencing the course of investigation. The concerned ACP in charge of investigations was

said to have been transferred. Hence inquiry team was necessary and in the interest of judges, the investigation had been handed over to the CBI.

The writ further submitted that when the members of the National Commission for Women came to the Bar Association for enquiries many of the junior advocates and some of the senior advocates specifically stated that there was physical, sexual, and mental harassment of lady advocates in the Honourable Andhra Pradesh High Court. The writ had been admitted and the Court had issued notices to respondents, the Government of Andhra Pradesh, the Station House officer of Regimental Bazaar Police Station, the CBI, and the Union Government.

Apart from this, the State PUCL organized an Open House at Sundaraiah Vignan Bhawan Baghlingam Pally on July 14. Shri Keshava Rao Jadhava, President State PUCL, Vasudha, advocate High Court, Kavita Srivastava, National Organizing Secretary from Jaipur, Rajasthan participated in the Open House. Speakers condemned Sangeeta Sharma's mental and physical harassment and spoke about wide spread prevalence of sexual harassment of women advocates by their colleagues and seniors. The Open House demanded that (1) Sangeeta Sharma Case should be handed over to the CBI for enquiry; (2) Vijay Kumar, Sangeetha's Senior, Narasimha Naidu, and others should be prosecuted under IPC; (3) immediate implementation of Supreme Court directions in the case of Visakha vs. State of Rajasthan; (4) State Government should take immediate steps to establish committees to look into cases of sexual harassment in all public and private officers and Courts.

The suggestions made in the writ petition were taken into account and the concerned ACP in charge of investigations was said to have been transferred. It was agreed upon that an inquiry team was necessary and in the interest of deceased, the investigation had been handed over to the CBI.

Dr. Kalpana Kannabiran, President of Asmita Resource Centre requested the National Human Rights Commission to intervene in order to ensure proper investigation of the case and action against the accused.

Having regard to the sensitive nature of the complaint, the Commission issued notices to the Chief Secretary and DGP, Andhra Pradesh asking for an indication of the current status of the criminal investigation. The Government of Andhra Pradesh submitted a report dated 11 July 2000, which indicated that a case had been registered u/s 306 IPC. The report added that during the pendency of investigation, a writ petition had been filed in the High Court which granted a stay on further investigations being undertaken by the police pursuant to the FIR and anticipatory bail was also allowed to one of the accused. Subsequently, the High Court vacated the stay on 11 July 2000 and further investigations in the case were handed over to the CID. After completion of investigation by the CID, a charge-sheet was filed in the trial court.



In a parallel action, the Commission also took up the wider question of the sexual harassment of women in legal profession and called for and considered reports/comments from the Secretary, Andhra Pradesh Bar Association, the Secretary, State Bar Council of Andhra Pradesh, the Chairman, Bar Council of India, New Delhi as well as the President, Bar Association of India.

During a meeting with the members and officers of the Commission on 4 May 2001, which was attended amongst others by Shri Soli J. Sorabjee, Attorney General of India, Shri D.V. Subba Rao, Chairman Bar Council of India and Shri R.K. Jain, Senior Advocate, Supreme Court, a decision was taken to constitute a High Power Committee to examine this matter further.

Accordingly, such a Committee was constituted on 21 December 2001, under the Chairmanship of Shri Soli J. Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal profession and to make suitable recommendations for the penalisation/punishment for those who may be involved. The Committee would also consider whether amendments were needed to the Advocates Act, 1961 and the Bar Council Rules. The other members of this Committee are Shri Raju Ramachandran, Advocate, Supreme Court of India; Shri A.K. Ganguly, Advocate, Supreme Court of India; Ms. Meenakashi Arora, Advocate, Supreme Court of India; Smt. M. Daruwala, Director, Commonwealth Human Rights Initiative, New Delhi and Ms. Naina Kapoor, Director, SAKSHI, New Delhi.

Though there was action taken against the perpetrators, the final verdict against them is not known. Also, though Sangeeta Sharma got justice to some extent, it was saddening that justice was delivered after her demise. Therefore, one cannot fully claim that this judgement was a progressive one. One feels that had the legal system been supportive towards a topic like sexual harassment, and had not dismissed it as merely 'work troubles', Sangeeta could have been alive and well today.

From the above case, one can make certain inferences. There is a concerted attempt to police women who are willing to speak about the problem, or those who see that there is a problem. The argument is that this is an internal matter that concerns the profession and must not be discussed in public. It is something that must be "managed" from within. While there are mixed reactions to this entire episode, and the usual slandering and character assassination of Sangeetha by many of her fellow lawyers and some women lawyers too. Sexual harassment is a criminal offence, which should be investigated and adjudicated in the courts of law, in accordance with due process, so that there is an opportunity for the aggrieved party to establish and prove guilt.

The experience as a woman in India has been that the incidence of violence against women (and sexual harassment is a form of violence) has been highest in closed spaces. Sexual harassment is particularly high in the legal profession. These spaces have a clearly hierarchical structure in which those in subordinate positions are directly dependant for survival and largesse on those above them, and resistance results directly in the severing

of survival options. The legal profession, like every other profession, perhaps far more than any other profession, mirrors the cleavages, fissures and conflicts in society. Caste and community are important markers. Add to this the fact that although women qualify in equal proportions to men at the entry point of professional courses (this is particularly true of the premier institutions imparting legal education in the country today), there is a progressive decline in the number of women as one moves up the hierarchy. Silence and tolerance of abuse is the price women pay for apprenticeship. For women being in a profession is perhaps not very different from being in a marriage, in a family, in a community. As long as things are smooth and as long as women conform and are acquiescent, there is no problem. "No Comment" then, is an important strategy for survival.

Women have the right to work in a secure and safe environment and it should be the duty of all employers enforced by legislation by Government to provide such an environment for all female employees. Moreover if that environment is threatened by sexual harassment the Government has the duty to legislate for prosecution of the violator and redress for the victim as per the Supreme Court Guidelines. The Government of India has a Constitutional mandate to guarantee gender equality under articles 14, 15 and 16 of the Constitution. India is also a signatory of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which also guarantees gender equality and non-discrimination, including sexual harassment in the workplace.

Prior to the 2013 Act on sexual harassment, there was no law against it. In the interim, the Supreme Court specifically stated that the Vishaka Guidelines were to be strictly observed in all workplaces for the preservation and enforcement of gender equality and furthermore they would be binding and enforceable in law until Government enacted suitable legislation. The government finally got the "Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act 2013", passed a year back. During this intervening period of the Vishaka judgement and the Act of 2013, numerous shortcoming/inadequacies noticed were addressed and the scope and area of serious concerns were enlarged, making the enactment more focussed- the Act now covers both the government (organised) and the private (unorganised) sector workplace and provides for punitive clauses for its implementation and that too, within a time bound period.

Sexual harassment is one of the most potent areas of gender bias, in the country, that had fast merged in the national horizon after the landmark Vishaka judgement. The issue had been generally swept under the carpet and remained in a state of suspended animation for ages. The perpetrators were powerful, wielding unquestioned authority against whom the women victims remained powerless as there were no mechanisms available to them to secure justice and restore their dignity. As mentioned earlier, sexual harassment mainly fell under the domain of domestic laws and the specific word of women's 'modesty' was given new coinage as 'sexual harassment'. In the past fifteen years (since the Vishaka judgement), the issue of sexual harassment has made slow yet steady progress to attract occasional national attention, thanks to the media. It now occupies a well-defined area of

women's human rights that cannot be targeted or violated nonchalantly. Voices are being heard loud and clear after the enactment of the 2013 Act, which is bound to have a firm and definite impact in the near future. The resistance and reluctance to act firmly is due to the perpetrators being the men, who are perched in different levels of authority like the judiciary, law enforcement, executive etc. where these women specific crimes are treated with disdain and just winked away.

The 2013 Act allows for prosecution of the violators of sexual harassment, full redress for the victim and proper monitoring of all public and private employers to ensure a safe, harassment and violence free working environment for all women in India. Thus we can say that Women's shrill cry of anguish has breached the impregnable wall of men's power and authority and firmly entrenched women's rights to human dignity within the ambit of the majesty of law.

## **REFERENCES**

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