

CHAPTER VII
**JUDICIAL FINDINGS ON THE CASES OF SEXUAL
HARASSMENT OF WORKING WOMEN**

“Equality is the foundation on which all other rights are built” – Alec De Tocqueville.

In literal sense, the criminal Sexual violence against women has been understood through the traditional language of rape. The topic of Sexual Harassment at workplace is a complex one as it is mostly convinced through traditional outlook of the society. With rapid change in time has made this evil more difficult to be eliminated, and such impossibility of omitting it can be simplified and achieved with recapitulation of the efforts done on the part of legal fraternity with justified precedents emancipated by various Courts. The scarcity of economic resources and lack of courage has made this tender gender to suffer even if they are aware of their rights given by the law of the land.

The studies of precedents gain importance with the existing system with different loopholes revolted by few bold and courageous victims who took on tormentors and started a long legal battle on their own, and with the help of many women’s organizations.¹ The stringent attitude of the judiciary in such matters have time and again established that no one is above the law and that anyone committing such wrong would not be excluded from the jurisdiction of courts and his or her position and reputation cannot save them from the punishment.²

Gender Inequality Index is composite measure reflecting inequality in achievement between men and women in three dimensions of reproductive health, empowerment and the labour market.³ Women irrespective of geographical location,

¹ Gupta Ritu, *Sexual Harassment at workplace*, Lexis Nexis, 1st Edition, 2014

² Ibid.

³ Jaising M S Indira, *Mapping violence Against Women*, Allahabad Law Agency, 5th edition, 2004

position in their job, caste, religion or age are often victims of Sexual Harassment that has become a highly sensitive issue; it needs to be handled carefully as the reputation of both the victim as well as the accused is at stake and more importantly the goodwill of the organisation for which they serve. This topic has captured the attention of legislature and Judiciary with a manifold responsibility.

In India the Judiciary has been portrayed as a symbol of Justice assuring the oppressed and the under privileged 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 which consciously and unconsciously reflect traditional and rigid attitudes towards them as they themselves are raised in male superior tradition. Equally understood and defined in term 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 traditions and customs are violating legally defined rights of a woman.

In cases of Sexual assault relating to women, judgements 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. 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 one hand and sensitivity of the victim on the other hand.⁴

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 behaviour 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.

⁴ Pillai K.V Chandrasekharan, *women and criminal procedure*, Eastern book company, Lucknow

Sometimes the judge 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 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. Sometimes the sexuality of the victim is considered as responsible for the sexual assault and sometimes the past sexual history or character of the victim is taken into consideration for the determination of the guilt of the accused.⁵

Justice means balancing of interests and existence of democracy depends on justice and vice versa i.e., justice depends on the independent judiciary.

The judiciary is always identified as the last resort to restrict the emergence of arbitrariness, any instance of unjust nature or anything which is immoral. Judicial Activism is one of the most expensive and highly appreciated weapons on the part of judiciary which is expected to be executed in order to preserve constitutional principles, welfare norms, ensuring development and growth in the society. Judiciary plays a vital role in all regards.

The majority of the women are either unaware or ignorant about their rights given by law. And those, who are aware or well versed with the whole scenario, only a few have economic resources and courage to obtain legal redress. No one can ignore the significant role played by the judiciary in this direction to get whatever is justified. It's a great achievement of judiciary as one of the pillars of democracy to a large extent it is the victory of democratic principles itself that the equality between the sexes enshrined in our constitution is being reinforced and safe guarded through sound judicial process. In matters related to sexual harassment and judgments, the legal fraternity has shown utmost interest to help the needy, deprived and underprivileged

⁵ Saxena Sobha, *crimes against women and protective laws*, Deep & Deep Publications, New Delhi, p 25

people suffering the wrong may be due to ignorance, less awareness, lack of resources in silence giving a new definition to justice itself.⁶

The Judicial attitude concerning women has not developed spontaneously but is a result of constant endeavour of the socially sensitized judges in giving remedy to 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 the modesty of a woman, rape obscenity etc. However, as extremely miniscule no. of cases relating to Sexual Harassment of women at Workplace have reached to the 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 obstacle in the conceptualization, formulation and recognition of Sexual assault as the "Sexual Harassment" and subsequent evolution of concept of Sexual Harassment being not only an offence against the woman body but a systematized discrimination on the basis of sex.⁷

7.1 REMARKABLE JUDGMENT OF PRE-VISHAKA SCENARIO:

The term Sexual Harassment reveals some kind of unwanted, undesirable or unwelcome behaviour faced by the recipient. However, this 'Unwelcome' behaviour means any advance, request or conduct which was not solicited by the recipient and it is undesirable for her or offensive to her dignity. The most crucial element of Sexual Harassment is the nature of behaviour which must be established as unwelcome nature on the part of the victim and it must have to be non-consensual.

However, a verbal NO is not necessary in all cases as in this context the degree of difficulty encountered by a complainant for proving un-welcomeness of behaviour

⁶ Apparel Export Promotion Council v. A.K. Chopra, 1999, 625 and Medha Kotwal Lele v. Union of India, 2004 (5), SCALE 573 & 2013 (1) SCC 297

⁷ Kumari Ved, *Gender analysis of the Indian penal Code*; Eastern Book Co. Lucknow, P. 155 (1999)

will depend only on the type of activity involved. It is not only overt but subtle indications of un-welcomeness may be sufficient to communicate that the conduct is unwelcome to her tolerance or silence will not necessarily mean that such behaviour is solicited or welcomed.⁸

Passive tolerance must not be confused with voluntary acceptance

In a landmark case of *Meritor savings bank V. Vinson*,⁹ the US Supreme Court said that only because the sex related conduct was voluntary in the sense that the victim was not forced to participate against her will, should not give a definite conclusion that it was “Welcome by the victim”. Here, in this case the complainant lady has met the vice President ‘T’ and requested him for a job. When ‘T’ gave her an application for filing up and later on called her to get herself appointed in the Bank. With ‘T’ as her supervisor, the complainant started as a teller trainee, then teller and then to a Branch Manager having a steady journey of 4 years in the Bank. Later on, the lady applied for indefinite sick leave where she got dismissed for excessive use of leave. She subsequently filed an action against ‘T’ and Bank, claiming that her job Journey of 4 years, she was constantly been subjected to Sexual Harassment by ‘T’ the Vice President of the Bank ‘T’ denied the complainant’s allegation of Sexual activity. The District Court did not resolve the conflicting testimony about the existence of Sexual relationship but observed that T and the complainant was engaged in Sexual relationship during employment was voluntary and didn’t have any element of force and thereby she was not a victim of Sexual Harassment while employed at the Bank. However, the Court of Appeal finds that any Sexual relationship between the complainant and T ‘was a voluntary one’ did not obviate the need for a remand i.e., finding of voluntariness might have been based on some personal fantasies which had no place in litigation and upheld that passive tolerance must not be confused with voluntary acceptance.

⁸ Bhasin Alok, *Law relating to sexual harassment at work*, Eastern Book Company, Lucknow, 2nd edition, 2015 page no 30

⁹ 477 US 57 1986

Janzen V. Platy – ‘Sexual’ embraces wide range of conduct.

In case of Janzen V. Platy Enterprises Ltd.¹⁰ it was upheld by the Court that Sexual Harassment is not only an effort to attempt Sexual relations but also is a weapon of showing male dominance and power relations between both the genders. When Sexual Harassment occurs in any public or private workplace, it is an abuse of both economic and Sexual power. It is used to stress and remind women of their inferior status. Sexual Harassment may be actuated by the perpetrator's desire to demonstrate his power, instead of sheer lust. In this case, the term Sexual Harassment is used in much broader sense than the strict meaning.¹¹

In most of the cases of Sexual Harassment there is always a misuse mixed with power and position to satisfy sexual pleasure is involved by affecting the workplace negatively forcing to affirm with Sexual demands. Sexual Harassment includes the unwarranted prescription of sexual desires eventually transforming it to sufferings grouped with unequal distribution of physical and mental privileges.¹² The most important factor of Sexual Harassment is that the perpetrator of sexually harassing behaviour may not be motivated only by Sexual desire or lust but it is his way of showing his power to the victim. Thus, it can be an attempt of the perpetrators to indulge in showing Sexual dominance considering women as a gratifying element of Sexual desire.

The Supreme Court of Canada in the matter under appeal has made reference to Section 19 of Human Rights Code that has provided for eliminating sexual disparity in the workplaces.

Section 19 of the Human Rights Code in Canada reads as¹³

¹⁰ 1989, ISCR 1252

¹¹ Bhasin Alok, *Law relating to sexual harassment at work*, Eastern Book Company, Lucknow, 2nd edition, 2015, Page-44

¹² Constance Backhouse and Leah Cohen, *The Secret Oppression, Sexual Harassment of working Women*, 1978.

¹³ Bhasin Alok, *Law Relating to Sexual Harassment at work*, Eastern Book Company, Lucknow P. 36.

“19 (1) No person who is responsible for an activity or undertaking to which this Code applies shall (a) Harass any person who is participating in the activity or undertaking; or (b) Knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.”¹⁴

Section 19 (2) mentions ‘harassment’ means¹⁵

- any abusive and unwelcome behaviour and comment made on the character,
- any objectionable sexual solicitations, taking due benefit of the position
- intentional advancing sexual solicitations having knowledge of it being unwelcome,
- Any sexual solicitations on threat of reprisal in case of rejection done for sexual advance.¹⁶

Complainant didn’t regard the conduct as unwelcome at the relevant time

In case of Harris V. Forklift Systems Inc.,¹⁷ the then Justice ‘O’ Connor observed that if the victim doesn’t subjectively perceive the environment to be abusive the conduct has not actually altered the conditions of the victim’s employment, and thus there is no violation of Title VII of the Civil Rights Act, 1964.¹⁸

Definition of reasonable woman was attempted

In **Ellison v. Brady**¹⁹, the Court of Appeals formulated the ‘reasonable woman’ standard and observed that “It is believed that in evaluating the severity and

¹⁴ Bhasin Alok, *Law Relating to Sexual Harassment at work*, Eastern Book Company, Lucknow, P. 36

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ 126 LED, 2d 295: 510 US17 (1993)

¹⁸ Bhasin Alok, *Law Relating to Sexual Harassment at work*, P. 36 Eastern Book Company, Lucknow, P. 36

¹⁹ Ellison v. Brady, U.S. Court of Appeals, Ninth Circuit 924 F. 2d 872 (1991)]

pervasiveness of sexual harassment, one should focus on the perspective of the victim.”²⁰

Here the judiciary is supposed to deal with the subject from the victim’s perspective not depending much on existing social notions or stereotypical dimensions of particular definitions. It is a common practice to harass someone relying on the traditional execution of particular discriminatory practices.”²¹ In such cases the international fraternity has resumed its position and perceived these issues with utmost care and importance, ensuring equality, liberty of gender and dignity under any work place. However, Indian Society, the Judiciary and the executive has been inspired by the international efforts regarding promotion and protection of rights of women folk while taking proper cognizance on the subject with diligence & expertise.

The Constitution of India also guarantees fundamental Right to work, privacy and life and personal liberty, also provided for detail penal provisions expecting a strong control of such instances, yet, it has failed to place women at par with their male counterparts in the workplace in real sense. The remedial acts and legal efforts along with the fear of Indian society faced by the women for years together forced the women to bear the hardships in isolations. These situations have compelled the Indian judiciary to provide justice to women victims of sexual harassment at work place with decisive standard and were evaluated with firm reasoning in judicious manner. The Indian Judiciary particularly the Apex level judiciary has played a creative role in this regard and has upheld the basic principle of equality of sexes and tried to maintain the dignity and honour of women.²²

AIR India Corporation v/s. A. Rebellow

The case of AIR India Corporation v/s. A. Rebellow²³ in the year 1972 was the first time examined by the Apex court where a female employee raised her voice by making simple complaint to the Air India against the deeds of the pilot and never

²⁰ Bhasin Alok, *Law Relating to Sexual Harassment at work*, P. 36 Eastern Book Company, Lucknow

²¹ Ibid.

²² Dr. Mishra Jitendra, “*Right to Equality and Gender Justice*”, AIR 2004 Journal 48

²³ 1972 AIR 1343, 1972 SCR (3) 606

opted to appear in court nor deposed as a witness. In this case exceptionally the complaint was considered by the Apex Court as sufficient evidence under the pretext that a female employee shall not prefer to put herself in trouble by making complaint about her own dignity that may lead to character assassination. The order of dismissal of the employer without enquiry was also approved in this case by the judiciary. With the passage of time and evaluation of involvement of the female employees in the service sector the requirement was felt to frame some guidelines. Subsequent judgments and features of complaints were adjudged to trap the basis of the law. Constitutional law coupled with weak penal code required to be strengthened to curb the evils of the society with growing demand of work culture for the female employees. Safe guards were asked to be implemented by directive principles as per the judgments of the courts.

Rupan Deol Bajaj case²⁴

In this case, the victim and the offender both were government officers present at a dinner party with other government officials hosted by their colleague. The accused Mr. K.P. S Gill crossed over to the ladies' circle and called the victim, to talk over some matter. She went to him but without much delay she had realised that something was wrong and the victim moved away. The accused reached her and stood close to her with only four inches distance from her knees. The accused called the victim as many times it was rejected by her. The victim objected it considering the behaviour of the accused was unworthy. However even after disapproval and rejection the accused commanded the victim to accompany him by stopping her way. He eventually restricted her movement and arranged it in a manner that she needs to touch him in case she wants to leave. The victim however finds it intolerable and drew her chair to leave to which the accused could not tolerate but slapped her right there.

On 20 July 1988, she lodged a complaint alleging commission of offences under Section 341, 342, 354 and 509 Indian Penal Code against the Director General of police of Punjab (KPS gill) for sexually harassing her in presence of all concerned

²⁴ Rupan Deol Bajaj & Anr. Vs Kanwar Pal Singh Gill & another, 1996 AIR 309, 1995 SCC (6) 194

associates of the department. The incident happened with the victim was unexpected to all in many ways. The political equations have started right after the incident. Even the concerned police department behaved in all suspicion to save Mr. Gill. The victim along with sexual abuse suffered innuendos and slander rumoured against her in order to stop her from proceeding further. She was left alone in the office as a treat to her retaliation against such humiliating offence. Bajaj, the victim expressed that “she was subjected to such situation as she has different types of prescription, uniquely designed ailment and there is absence of law, legislation or precedent to repair her sufferings; it is only her courage that can be an answer to all”.²⁵

The situation she suffered was unique as Mr. Gill was a national hero awarded with PadmaShree during that time. She has many concerns and both advantages and disadvantages attached with her complaint which she suffered throughout her journey of seeking justice. If no complaint would have been raised then it may be understood as her willingness to participate and it will be a continuous event. As she has complained it has now a matter of fighting for her dignity. Many a times her life was at risk, but she didn’t lose her hope thus served with justice after 18 years.”²⁶

An FIR was registered, to which the high court rejected the complaint. The Supreme Court held that FIR makes the presence of a wrong under Section 354 Indian Penal Code. The High court pleaded that with Section 95²⁷ the victim didn’t have the right to entitle any action against the wrongdoer.

The hon’ble Supreme Court held that allegations raised by Rupan Deol Bajaj, prima facie shows offences under Section 354 and Section 509 Indian Penal Code, 1860. Here, the perpetrator was found guilty for repeatedly forming in appropriate advances against the victim, and the court assigned that it was a wrong against the

²⁵ Story of the day, Times of India, 18th July, 1988

²⁶ Reality Bytes, Delhi Times, The Times of India, July 30, 2005

²⁷ Section 95 of the Indian Penal Code states: —95. Act causing slight harm. — 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 and temper would complain of such harm.

modesty of the victim raising the concerns towards perceiving such action of the offender impairing the decency of women.

In this case the accused was found guilty under Section 354 read with 509 of Indian Penal Code and court directed him to pay 2 lakh rupees as compensation. This was the first instance where judiciary actually took a stand-up holding women's right. There has been no looking back by the judiciary since, then, keeping pace with the changed work culture, mauling progressively, step by step, in its quest to provide safe and projective environment to the women of the society.²⁸

7.2 THE LANDMARK JUDGEMENT VISHAKA V. UNION OF INDIA: ²⁹

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all fact of gender equality.”³⁰

In 1992, Miss Bhanwari Devi a social worker was engaged by the State of Rajasthan to work for marginalised section of the society and to prevent the practice of child marriage. At this point she was working for a social cause by preventing a marriage of one year old girl that attracted her towards resentment and suffered Sexual Harassment from men belonging to that community. The worker soon reported to local authority whose omission has caused a great cost as she suffered gang rape subsequently by those men. The Vishaka case of Sexual Harassment at work place is a landmark Judgement rendered by the Supreme Court of India in 1997. It was in this year that in the realm of judicial interpretation the term Sexual Harassment of working women was named and defined.³¹ The issue of Sexual harassment in the workplace became visible and drawn public attention in the form of Sexual Harassment. Besides

²⁸ Gupta Ritu, *Sexual Harassment at Workplace* Lexis Nexis, New Delhi, 1st edition page 46

²⁹ Vishaka V state of Rajasthan, 1997,6 SCC 246

³⁰ Late Chief Justice J.S Verma, Supreme Court of India, Vishaka V. State of Rajasthan 1997

³¹ Vishaka & others V Union of India, AIR, 1997

the incompatibility of expressions of Sexuality with models of organisational behaviour, sex at work has been almost invisible for other reasons.

It was only in the year 1997, that the Indian Supreme Court has dealt with a Public Interest Litigation filed against State of Rajasthan to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India, when this social activist of Rajasthan working for ending up the evil of child marriage was brutally raped for going against this evil prevailing in the society. The Court decided that the consideration of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1) (g) and 21 of Indian Constitution and the safeguards against Sexual Harassment implicit therein.

Bhanwari Devi was brutally raped by no of Gujjar men, which made her, determined to get Justice and lodged a case against these culprits. However, by taking advantage of the system the accused got acquitted by the trial Court. This appalling injustice, together with the fighting spirit of Bhawani Devi, inspired many women groups and NGOs to file petition in the Supreme Court under the collective platform of Vishaka.

This historic judgement was an outcome of a writ petition filed by certain social workers and NGOs to the gang rape of a government development worker in a village of Rajasthan. This project was to fight against child and multiple marriages in the villages in order to empower women as a part of her duty. As expected, the society rejected her good deeds and retribution came quite early in the form of social boycott. The Gujjars, an influential and majority community, resolved to refuse her basic needs. Not only this, she was threatened with dire consequences and harassed mentally as well as physically.³²

In September 1992, few upper caste men in order to take revenge as she challenged their authority, gang raped her during her work in the field. The male

³² Gupta Ritu, *Sexual Harassment at Workplace*, Lexis Nexis, 1st edition, 2014 page 47

doctor working in primary health centres refused his services and rejected to treat her medically. They left no stone unturned to harass and torture her.

This cruelty against her crossed the limits when her all plea got rejected and every time, she approached the system she failed to get any such resort. The Rajasthan government as employer did not provide her any sort of help in getting justice. The district administration and police tried to cover up shifting all burden upon her making her responsible for the unpleasant experience. In this battle of justice, she filed a case against the rapists in the trial court without losing confidence and her faith in the rule of law. However, with raising involvement of various women groups the movement of adjudicating authorities have started and hence the accused got arrested.

The criminals were acquitted in 1995 and the court opined that “Indian culture has not fallen to such low depths that someone who has been brought in it, an innocent, rustic man, will turn into a man of evil conduct who disregards caste and age differences and becomes animal enough to assault a woman.”³³

In 1997, 15 years after the incident, the Rajasthan High court addressed only a single hearing of the case and during all this time the two of the accused were dead. Soon a national outrage has started with possible efforts of all concerned with the movement. For the first time, “the High Court responded it as a case of gang-rape which was committed out of vengeance and considered it as a serious lapse on the part of the Rajasthan Government as an employer who has failed to provide safe working conditions to its employees.”³⁴

As an immediate and instant response to the judgement of the High Court, the three accused, who was absconding earlier, surrendered before the court. Several women’s groups have filed a Public Interest Litigation (PIL) in the Supreme Court, based on which the Vishaka judgment was delivered in 1997. In the history of justice, it is one of the best victories of women asserting a new trend.³⁵

³³ Vishaka V state of Rajasthan, 1997

³⁴ Ibid.

³⁵ AIR 1997 SC 3011

The writ petition filed in the SC by various women's organisations with three aims:³⁶

- (1) To assist in findings suitable methods for the realization of gender equality.
- (2) To prevent Sexual Harassment at workplace
- (3) To fill vacuum in the existing legislation.

The Supreme Court observed that, "in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places the contents of International Conventions and norms of CEDAW³⁷ are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in arts 14, 15, 19 (1) (g) and 21 of the constitution and the safeguards against sexual harassment implicit therein."³⁸

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.³⁹

It is derived from Article 51 (c)⁴⁰ and the enabling power of the parliament to enact laws for implementing the international conventions and norms by virtue of Article 253⁴¹ read with Entry 14 of the Union list in seventh schedule of the Constitution.

Article 73 also is relevant as it 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 enacts legislation to expressly provide measures needed to curb the evil.⁴²

³⁶ Vishaka V state of Rajasthan, 1997

³⁷ Convention On Elimination of all forms of Discrimination against women, 1979

³⁸ Vishaka v state of Rajasthan, 1993

³⁹ Ibid.

⁴⁰ Nilabati Behera v. State of Orissa, AIR (1993)2 SCC 746

⁴¹ Constitutional law of India, 1950

⁴² Para no. 7 of Vishaka case

Thus, the power of the court under Article 32 for enforcement of the fundamental rights and the executive power of the union have to meet the challenge to protect working women from sexual harassment and to allow her to enjoy their fundamental rights in a dignified way. The progress made at each hearing culminated in the formulation of guidelines to which the union of India gave its consent through the learned solicitor general, indicating that these should be the guidelines and norms declared by this court to govern the behaviour of the employers and all others at the work places to curb this social evil.⁴³

7.3 IMPLEMENTATION OF VISHAKA CASE:

In the landmark Judgement of Vishaka V. State of Rajasthan⁴⁴ the Apex Court of India has formulated certain guidelines prioritising certain legally binding norms with right to equality and dignity accorded by Indian Constitution as well as by the UN Convention on Eliminations of All Forms of Discrimination against Women (CEDAW).⁴⁵

It has included the following⁴⁶ –

- 1) A definition of Sexual Harassment.
- 2) Shifting accountability from individuals to institutions.
- 3) Prioritizing prevention.
- 4) Provision of an innovative redress mechanism.

The Supreme Court defined Sexual Harassment as- “any unwelcome Sexually determined physical, verbal or non-verbal conduct covering any situation where a woman can be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life.”⁴⁷

⁴³ Para no. 8 of the Vishaka case.

⁴⁴ AIR, 1997, SC 3011

⁴⁵ Handbook on sexual Harassment at work place by Ministry of women and child welfare, Government of India, November, 2015

⁴⁶ Ibid.

⁴⁷ Vishaka v state of Rajasthan, 1993

It has placed responsibility on employers to ensure that women did not face a hostile environment and prohibited intimidation or victimisation of those co-operating with an inquiry including the affected complainant as well as witnesses.

The state's failure to have a functional policy on Sexual Harassment for its village development workers cast some degree of liability on the state. These amongst other questions also became the basis for not just litigation before the Supreme Court of India but for potentially innovative legislation. Having defined and recognised the existence, extent and impact of Sexual Harassment, women's groups adopted a human rights perspective to shift the focus from criminal wrong doing to systematic discriminatory conduct which needs to be eliminated. Arguing for a comprehensive law on Sexual Harassment, women's group travelled to the Supreme Court of India to define their human rights at work adopting equality principles based on CEDAW. In the first of its kind Judgment the Supreme Court of India articulated gender equality based on the harm experienced by a grass root level women activist.

In doing so it recognised two clear social responsibilities:⁴⁸

- 1) That Sexual Harassment is not a fiction.
- 2) That gender-based violence is discrimination and does violate a woman's basic human rights.

Defining Sexual Harassment⁴⁹, the Court accounted a long list of improper behaviour of sexual nature and the women's group has took the initiative to raise the concern for not defining work place, for not including responsible persons under employer, and the term employee has inclusion of all responsible persons and employee includes every women worker whether salaried or voluntary.⁵⁰

The most inspiring outcome of the Vishaka Judgement is that for the first time Supreme Court recognised the need to alter systematic violence against women. It did

⁴⁸ Bhasin Alok, *Law Relating to Sexual Harassment at work*, Eastern Book Company, Lucknow

⁴⁹ Vishaka v state of Rajasthan

⁵⁰ Ibid.

so by focusing on how to change attitudes. That approached to broad-based guidelines on Sexual Harassment.

By restoring burden on the employer, person in position of trust and moral decency the accountability in case of sexual abuse has enlarged to the extent of not only covering individual perpetrators but liability has also increased for institutions to ensure protective environment at work for woman. One of the most remarkable actions of the court was to accept the proposal for mandatory complaints committee at all workplaces. Such committee must comprise of third-party neutral element as NGO working on the issue. Vishaka case was the first instance that has secured the space for women to articulate violation of their Sexual rights as discrimination. Earlier, few outdated criminal law provisions like outraging the modesty of a woman or insulting the modesty of women are serving as closest Indian Law to treat any matter arising as sexual misconduct.

Not surprisingly, it is rare that a woman approach NGO's or the police to redress the crime of molestation. Even under existing labour laws while the state is accountable for injuries in the workplace for which compensation is payable, the type of injury most working women was likely to experience i.e., Sexual Harassment/abuse as described above offered no redress and were by and large perceived as trivial. The issue become all more troublesome when the workplace for many women in India extended beyond the four walls of an institution. Here, the Court confirmed the failure of current civil and criminal law provision to safeguard the liberty of woman and that the enactment of such legislation is the actual need of the hour. Vishaka case has given strength to NGOs of India to start the campaign on Sexual Harassment as a human right abuse. That is the superior advantage of a rights-based focus especially in an over-litigious society like India. A legal approach that strengthens attitudinal changes and encourages community collaboration will have far-reaching consequences to eliminate the effects of harmful discrimination and to empower individual woman.⁵¹

⁵¹ Vishaka v State of Rajasthan

The contradiction between the trial Court acquittal of the rapists and the imposition of responsibility is perhaps dearest example of the differences that employee in understanding violence against women as an equality rights issue.

At the end, Vishaka, provided a very clear basis for legislation and in effect filled a gap to meet the equality needs of women who face Sexual Harassment at workplace. At the same time, it also showed up the interpretative tools necessary to ensure legal language can be made to comply with contemporary needs.

7.3.1 Guidelines and Norms Prescribed in Vishaka Case

Guidelines and Norms prescribed in this case are as follows: ⁵²

- 1) Duty of the Employer or Other Responsible Persons in Workplaces and other Institutions⁵³:** the duty of the employer or other responsible persons in work places or other institutions is enlarged to include the intent to prevent commission of sexual harassment and to arrange resolution procedures to settle acts of sexual harassment.
- 2) Definition:** For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as under:⁵⁴
 - 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.

⁵² Vishaka v State of Rajasthan

⁵³ Ibid.

⁵⁴ Ibid.

- 3) **Preventive Steps:** all employer, people in-charge of work place 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 some steps as under:⁵⁵
- a. Express prohibition of sexual harassment as defined above at the work place should be published, notified and circulated in appropriate ways.
 - b. The rules or regulations of government and public sector undertaking bodies relating to conduct and discipline should include rules or regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
 - c. The private employers should take steps to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
 - d. The appropriate work conditions should be provided in respect of work, health, leisure and hygiene to further make sure that there is no hostile environment towards women at workplaces and no employed women should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- 4) **Criminal Proceedings:** in case any conduct amounts to a specific offence under the IPC the employer or any responsible person shall initiate proper action in accordance with law by raising a complaint with the concerned appropriate authority. However, it should be taken care that the victims 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:** in case any such conduct amounts to sexual misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be taken for the employer.

⁵⁵ Vishaka v State of Rajasthan

- 6) **Complaint Mechanism:** in order to handle such conduct constituting an offence under law or a breach of the service rules, an appropriate complaint mechanism should be designed for redressal.
- 7) **Complaints Committee:** The complaint mechanism must be strong enough to provide complaints committee, a special counsellor or other support service, including the maintenance of confidentiality wherever necessary. It should be headed by a woman and must comprise with half of women members.
- 8) **Worker's Initiative:** Employees should be allowed to raise such issues of sexual harassment at workers meeting and in other appropriate forum discussed with positive outlook to manage and control with necessary arrangements.
- 9) **Awareness:** Awareness of the rights of female employees is the most relevant deed in this regard by notifying the guidelines.
- 10) **Third Party Harassment:** sexual harassment committed due to act or omission of any third party or outsider must be handled with necessary and reasonable assistance given by the employer to the employee.
- 11) **Consider Suitable Measure:** The Central or State governments must consider adopting suitable measures to deal with these issues related to sexual harassment. It might include legislation to make sure that the guidelines have reached to all women categorised under different heading.

It is one of the most discussed and publicised case of Gang rape leading Supreme Court to issue directives relating to prevention of Sexual Harassment of women. It was a leading case consisting of Vishaka guidelines as declared by Supreme Court of India on 13th August, 1997 declaring Sexual Harassment as violation of rights of gender equality, violation of right to practice any profession, occupation and trade.⁵⁶ Through this writ petition the Court went on to give a concrete direction to prevent and address Sexual Harassment at workplace.⁵⁷

⁵⁶ Gupta Ritu, *Sexual Harassment at workplace*, Lexis Nexis, 1st edition, 2015

⁵⁷ Gupta Ritu, *Sexual Harassment at workplace*, Lexis Nexis, 1st edition, 2015

7.4 THE SCENARIO OF POST-VISHAKA JUDGMENT:

The raising responses towards judicial activism has started to refill the gap existed in judicial framework since historic momentum. Every new verdict sentenced by the Apex Court was treated as a remedy, creating a sense of security for the aggrieved. The stringent attitude of the court helps to curb the mushrooming growth of such instances. The Apex Court however included an attempt to molest a woman is also a kind of sexual harassment. Outrageous behaviour of the employee is sufficient to constitute sexual harassment and actual assault or touch is not necessary to prove it.⁵⁸

A.K CHOPRA V. APPAREL EXPORT PROMOTION COUNCIL⁵⁹

Apparel export promotion council V. A.K Chopra⁶⁰ was one of the landmark judgments assuring the discrimination of female workers in the society by exposing the glaring demerits. In this case A. K Chopra,⁶¹ an Employee of Apparel Export Promotion Council was charged with sexual harassment case by a woman employee working as a clerk cum typist. It was raised that he had tried to physically molest her in office premises. Ignoring her denial, the culprit continues to repeat his unwelcome overtures.⁶²

Here the victim has complained about a sexual misbehaviour committed by any superior senior. There was initiation of disciplinary proceedings against the culprits based on guidelines laid down by the Supreme Court in the successful case of Vishaka. The committee established for the purpose of making him guilty of sexual harassment and removed him from service. The parties who are not satisfied with the decision appealed to the Staff Committee. The High Court in this case, has arrived at a conclusion that the accused have attempted to molest the clerk without any harmful intentions, and as such he could not be removed from the service.

⁵⁸ Apparel Export Promotion Council v. A. K. Chopra, AIR 1999 SC 625.

⁵⁹ Ibid.,

⁶⁰ AIR 1999, SC 625

⁶¹ Ibid.

⁶² Ibid.

The decision came in favour of the culprit and directed the authority to implement the decision of the staff committee. The company moved with an appeal to the Supreme Court on the matter criticizing the position of high court that has erred in deciding the case. The Alleged harasser and the court should not ordinarily interfere in the findings of the disciplinary proceedings unless.⁶³

(a) The finding was based on evidence or

(b) The finding was legally tenable.

Here, the Apex Court of India applied the law laid down in Vishaka's case for the first time upholding the dismissal of a senior authority. The Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the work place and also found guilty of violating the fundamental rights guaranteed under Article 21 of the Constitution of India.

The Supreme Court in this case held that, 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 concept of definition of sexual harassment.⁶⁴ Any incident of sexual harassment at work results in violation of Fundamental Right to Gender Equality and the Right to Life and Liberty. As early as in 1993 at the ILO Seminar held at Manila recognized sexual harassment at workplace as a form of gender discrimination against women.

NALINI NETTO CASE:

A senior IAS officer in Kerala, Nalini Netto, was assaulted by the then Minister for Transport, Neelalohitadasan Nadar in his office premises of the Legislative Assembly during the course of an official meeting. She didn't find it okay and thereby retaliated against it and informed her husband. She did not lodge a formal complaint thinking it will damage the image of the government. Many of her

⁶³ Apparel Export Promotion Council v. A. K. Chopra, AIR 1999 SC 625.

⁶⁴ Ibid.

colleagues and well -wisher has advised her similarly to maintain silence expecting a storm.

However, after a month the stress and mental agony became unbearable to the victim and she sought intervention of the Chief Minister requesting a suitable change in working environment. Immediately after this her case came into light which was more highlighted as the case of Prakriti Srivastava, the Divisional Forest Officer, Nilambur, Kerala forwarded to lodge a complaint on 2001, alleging sexual harassment by the same minister in February 1998. In this instance also she didn't bring a formal complaint rather kept it short by informing the city police commissioner about the incident. It was her insecurity that has restricted her to file the complaint respecting the social attitude and ethos.

Shehnaz Mudbhalkal v Saudi Arabian airlines

It was in *Saudi Arabian Airlines, Mumbai v. Shehnaz Mudbhalkal*⁶⁵ probably for the first time that any High Court applied the court's guidelines with regard to sexual harassment at workplace. Shehnaz Mudbhalkal story is not unusual. She was the first one to successfully conclude the legal victory in the labour law jurisdiction on the grounds of sexual harassments and has made a history. The service of Shehnaz's with Saudi Arabian Airlines was terminated because she did not respond to sexual demands made by her superior, Abdul Ellah Bahrani. Shehnaz joined the services of Saudi Arabian Airlines (SAA) on November 16, 1978 as secretary to the Station Manager. She had a good carrier in her job profile and also trained many people entrusted of Customer Service Agent. In July 1983, Abdul E. Bahrani took over as station manager. He started interfering in her job and started requesting her to go out for lunch and dinner, also made suggestive remarks, and even in one occasion he made physical advances at her at a colleague's party from which she escaped with the help of some friends. She even approached the country manager with her grievance but was informed not to put anything in writing as this would harm both her career as well as the company's image. Bahrani embarked on a predictably vindictive course. He used

⁶⁵ 1999, 2 LLJ 109 (Bom)

various methods of humiliation and repeatedly threatening her with termination and even threatened to jeopardise her husband's job in Saudi Arabia if she did not submit to his demands.

Matters came to headline, when vacancy for the Lead Customer Service Agent (Bom) arose. Fearing Bahrani's vindictive response, she made a representation that in view of her seniority and past record she would be given the post. Bahrani telephoned her residence at 12 midnight and asked her to come over to discuss the representation. She naturally refused. The victimisation intensified from this point onwards. On January 24, 1985 she re-joined but was not allowed to sign the muster. He forced her to tender a letter of apology with a promise not to use it. For her job she wrote down a letter what was dictated to her and this letter was later used as a ruse to issue a suspension order against her. The same letter years later convinced the labour court that Bahrani was indeed victimising her. Subsequently he intensified the pressure by issuing a suspension order for four days from February 6. When she resumed work, she declared that her suspension was illegal and she would complain to authorities in Jeddah. She was compelled to proceed on a month's sick leave when she joined her husband in Jeddah. Here, she approached the company headquarters initiating a complaint. She was assured with best remedy but was not allowed to work and was advised to stand by at home. A letter of termination was sent to her. The order of termination was pre-dated to 24 July, 1985 to escape from the consequence of the directions received from the Jeddah office in the matter. He was still not satisfied and the very next day he despatched letters to all the Airline offices in Bombay informing them that she was a terminated employee, thereby ensuring that she would find it impossible to obtain another job. She challenged the termination order and acquired the remedy as full wages and continuity of the services. Here, the case in long run has signified that any instances of sexual harassment include both quid pro quo and hostile working environment.

Tarun Tejpal's case:

Another case that created news ripples is that of Tarun Tejpal v The State of Goa⁶⁶ the founder and editor of Tehelka, an Indian journalist, publisher and novelist. Tejpal was arrested in Goa after a woman colleague accused him of sexually assaulting her in a hotel in November 2013. Tejpal was charged on February 18 with rape, sexual harassment and outraging the modesty of his colleague. The story thereof came into limelight because of certain e-mails that got leaked somehow. The irony stands in the point that the respondent in this case happens to be father of the complainant's friend and he was seen as a paternal figure who had worked with father of the complainant. The respondent is accused of having violated his position of trust in relation to the complainant and what is more unfortunate is that the respondent journalist himself had launched crusades against the sexual harassment of women by way of his hold over the Art of Journalism. It was an occasion for the host of Telhaka's think festival with an intellectual gathering where the alleged most un intellectual cause of action took birth and culminated in the slapping of serious charges upon the Tejpal which do find mention in Sections 341⁶⁷, 342⁶⁸, 354A⁶⁹ and 375⁷⁰ of the Indian Penal Code. The alleged sexual harassment of the lady by the respondent, if proved true, is definitely no case to be treated with any sort of lenient action but here the slapping of charges of rape' and the same being upheld by a Goa Court⁷¹ demanded an introspection of the over enthusiastic Legislature⁷² which has very actively modified the basic structure of the definition of rape earlier to be found in Section 375 of the Indian Penal Code, 1860. Tejpal was punished with six months jail before the Supreme Court granted the bail.

⁶⁶ Vasant Kothari case, application no: 2012 STPL (web)616 SC jurisdiction

⁶⁷ Wrongful Restraint (punishment)

⁶⁸ Wrongful Confinement (punishment)

⁶⁹ Sexual Harassment under the Criminal Amendment Act, 2013

⁷⁰ Rape

⁷¹ Available at <http://www.ndtv.com/article/india/tehelka-case-prima-facie-evidence-to-show-rape-said-judges-as-she-rejected-tarun-tejpal-s-bail-plea-452954> last visited on 10-03-2020

⁷² The Criminal Law (Amendment) Act, 2013

Medha kotwal lele & Ors. V U.O.I

This case arose when doctor Medha Kotwal coordinator of Aalochana, a centre for documentation and research on women and other women's group, petitioned the court highlighting a no of individual cases on Sexual harassment and arguing that the Vishaka guidelines were not been effectively implemented. It was considered sympathetically and converted into a writ petition by the Supreme Court.⁷³ In particular, the petitioners argued that, despite the guideline's women continued to be harassed in the workplace because the Vishaka Guidelines were being breached in both substance and spirit by state functionaries who harasses women workers via legal and extra-legal means, making them suffer and by insulting their dignity. The court was specifically required to consider whether individual state governments had made changes to procedure and policy required by the vishaka guidelines and a number of earlier orders of the court.

The Court in Medha Kotwal Lele⁷⁴ went on to notice that there is still no legal regime governing disciplinary proceedings in bar councils, medical associations, councils of architecture, institutions of chartered accountants, institutes of company secretaries and other statutory institutions. It therefore directed that these institutions to issue the necessary circulars, and amend the rules/guidelines applicable to them in a time-bound manner. It is clear that this judgment is applicable unambiguously to employment situations in these institutions, however it is not clear whether it is applicable to non-employment situations or not.

In 2004 an interim order was passed by the Court with detailed directions and changed the entire dynamic of the Vishaka guidelines and the internal complaints committee set up under it. From being a preventive mechanism, this committee was recognised as an enquiry committee for the purposes of taking disciplinary action against an employee. It can be seen from the proceedings in this litigation, the emphasis was on the civil services, with little or no discussion regarding employees in

⁷³ Medha Kotwal Lele and others v. Union of India and others; 2004 (5), 2013, 1 SCC 297

⁷⁴ Ibid.,

the private sector or in technical institutions. On 9th of October, 2012 the Supreme Court rendered the final judgment in *Medha Kotwal Lele*⁷⁵ where it said that the findings and the report of the complaints committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent. It is fortunate that the service rules⁷⁶ had already been amended and brought in conformity with Vishaka, and subsequently with the directions of the Supreme Court in *Medha Kotwal Lele*, and these amended rules remain in full force and effect.

Justice Ashok Kumar Ganguly's Case:

The former chairman of west Bengal Human rights Commission and a former judge of supreme court of India Mr. Ashok Kumar Ganguly, who delivered judgment in some high-profile cases came into limelight when a young woman lawyer had alleged that she was harassed in a hotel room in New Delhi on September 24, 2012 while she was interning with A.K Ganguly. She was reluctant to file a complaint with police but however, she felt it was important to warn young law interns. Thereby she chose to do so through a blog post on 6th November 2013, ironically during a huge protest over a gang rape case.

The Supreme Court then appointed a three-member committee headed by Justice R.M Lodha to probe the allegations and identified A K Ganguly was the one who harassed her. He repeatedly denied all charges. He was indicted on 6th December 2013 by the committee, which agreed with the intern's allegation that he had subjected her to 'unwelcome sexual behaviour' in December 2012. He resigned from the West Bengal Human Rights Commission on 6 January 2014, after the union Cabinet decided to make a presidential Reference on 2 January 2014 to the Supreme Court for his removal.⁷⁷

⁷⁵ *Medha Kotwal Lele and others v. Union of India and others*; 2004 (5), 2013, 1 SCC 297

⁷⁶ Service Rules for Central Government employees are contained in the Central Civil Services (Conduct) Rules, 1964, and the Central Civil Services (Classification, Control and Appeal) Rules, 1965. State governments often have separate or additional rules, as do other wings of the State, such as the armed forces

⁷⁷ The Times of India, 2nd July, 2014 on A K Ganguly's case

RECENT CASE OF NIRBHAYA GANG RAPE⁷⁸

“Nirbhaya” is the pseudonym used for the rape victim of the famous Delhi gang Rape case committed on 16 December 2012. On that chilly December night in Delhi, Nirbhaya and her friend while returning from theatre were waiting for a bus. One of the would-be culprits convinced them to get on an empty bus with tinted windows. The incident was committed by six male persons one of whom was a minor, aged 17. The friend, when he tried to protect Nirbhaya, was beaten up by the perpetrators and even thrown out of the bus. Nirbhaya was not just sexually violated, her body was mutilated beyond human imagination even her intestines were pulled out, and private parts were mutilated. She later died of multiple organ failure, internal bleeding and cardiac arrest on the 29th of December, 2012.

There was a lot of social outrage happened after this gruesome incident. There were a lot of candle light marches, solidarity movements and protests were started and rumors for India being unsafe for women ignited public outrage. **The outrage was not restricted to India, as the whole world has shown sympathy for the victim.** A British documentary called “India’s Daughter” was filmed on the incident which was later banned by the central government because it portrayed India in a very derogatory way and poor light. Feminist and women’s movements gained momentum and incentive asking to give exemplary punishments to the culprits. Not just social, there were legal repercussions of the incident too. The UPA government was being pressurized to make stricter laws regarding rape and dealing with juveniles committing heinous crimes.

The Nirbhaya gang rape was definitely the spark that ignited the fire for women’s rights and women’s safety. But sadly, the fire was short lived. The public outrage died in a few months, and with it, women’s issues took their usual place in the daily agenda.

⁷⁸ Mukesh & anothers vs NCT (Delhi) Nirbhaya Case, 2017 6 SCC1

The Legal Perspective: Law about Rape and Sexual Harassment in India

Until 2012, the definition of rape was restricted to sexual intercourse. The Criminal Law (Amendment) Act, 2013 gave a broader meaning to the term rape and it has amended the definition of rape under Section 375 of the IPC. Section 375 of the IPC, after the amendment, defines rape as any involuntary and forceful penetration without the woman's consent into the woman's body parts like the vagina, urethra, mouth or anus. Nirbhaya case and Justice Verma Committee's report serve as major components of amending the provisions under Criminal Law.

Justice Verma Committee report

The committee was made after the appraisal of Nirbhaya case to provide a quick trial and enhance punishment and criminal provisions in the law for people who are accused of committing sexual offences against women. Some of the progressive changes suggested by the committee are:

- According to the committee rape and sexual assault don't seem to be simply crimes of passion however it is an expression of power. Rape should be treated as a separate offence and it should not be limited only to the penetration of the vagina, mouth or anus and its scope should be widened. Any other non-consensual penetration whose nature is sexual should be included in the definition of rape given under various laws.
- It recommended that marriage should not be considered as a licence to perform sexual offences.
- It counselled those non-penetrative forms of sexual contact should be regarded as sexual assault. The offence of sexual assault to be outlined so as to include all forms of non-consensual or non-penetrative touching of sexual nature.
- The use of words or any act or any form of gesture that creates a threat of sexual nature should be termed as sexual assault and be punishable for the same.

- There are some key recommendations made by the Committee on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 which were:
 - Domestic workers must be included within the purview of the Bill.
 - The complainant and the respondent should first attempt to conciliation that makes it easy for both of them to settle the issue.
 - The employer should pay compensation to the woman who has suffered from sexual harassment at the workplace in any form.
 - The employer should institute an internal complaints committee to which complaints should be filed and heard.
- It opined that Acid attack should not be clubbed with the provisions of grievous hurt and recommended that the central and state government should take some steps to compensate victims of sexual assault.
- It recommended that the requirement of sanction for prosecution of armed forces personnel should be specifically excluded when a sexual offence is alleged. Special commissioners should be appointed in the conflict areas to monitor and prosecute for sexual offences against women.

Nirbhaya case verdict delivered by Supreme Court

A three-judge bench agreed that the act done by the accused did not deserve any sympathy. In order to spread a strong message, that the diabolic crime had shocked the collective conscience of the society, and that the court can treat it as a rarest of rare cases where death sentences can be awarded. DNA identification, fingerprints, witness testimonies and odontology proved the presence of the accused in the bus and their involvement in the crime, as said by the Supreme Court.⁷⁹ The

⁷⁹ Neogi Suprateek, *Nirbhaya Gang Rape case study*, Rajiv Gandhi National University of Law, Punjab

manner in which she was treated and the devil way of them to play with her body, her identity and her dignity is humanly unthinkable.

The Supreme Court administered justice to the family of the victim and all the women in the country by confirming the punishment of death sentence to the four convicts in the Nirbhaya gang rape and murder case, terming it as the 'rarest of rare', most brutal and barbaric attack on the 23-year-old paramedic student, Jyoti Singh. The convicts treated the victim as an object of enjoyment and exploited her sexually to the worst level.

A three-judge bench, through a unanimous verdict, upheld the Delhi High Court judgement that had concurred with the trial court decision of the case. Mukesh (29), Pawan (22), Vinay Sharma (23) and Akshay Kumar Singh (31) were hanged till death for the brutality they had shown against a woman of the country. The bench awarded them the death sentence because their crime met 'rarest-of-rare' threshold. After the incident, the fifth accused was not tried and he was sent to a correction home for three years because he was a minor at that time.⁸⁰

Criminal Law Amendment Act, 2013: Some important highlights of this amendment are: Under this change, new offences such as stalking, acid attacks, and voyeurism were added into the definition of rape and provisions mentioned in the Indian Penal Code, 1860.

- Even the threat of rape is now a crime and the person will be punished for the same.
- The minimum sentence was changed from seven years to ten years considering the increase in the number of rape cases.
- In cases that led to the death of the victim or the victim being in a vegetative state, the minimum sentence was increased to 20 years.

⁸⁰ Neogi Suprateek, *Nirbhaya Gang Rape case study*, Rajiv Gandhi National University of Law, Punjab

- The ‘character of the victim’ was totally irrelevant to rape cases and it doesn’t make any difference in granting punishment for the crime.
- Since one of the accused in this case was a juvenile, another flaw in the system was identified after this case. So, the age for being tried as an adult for violent crimes like rape was changed from 18 to 16 years, that to the Juvenile Justice Act, 2015.⁸¹

Changes in the Indian Penal Code, 1860: These new changes have covered insertion of section 166A, 326A and B, 354 A, 354B, 354C and many more provisions highlighting the dignity and security of women in every aspect of life.

Legislative Reforms post Nirbhaya case:

- The Criminal Law Amendment Act, 2013 was a landmark response of the Government of India to the public protests across the country after the Nirbhaya case.
- Another response taken by the government was “One Stop Centres” to provide immediate to long-term care for survivors of such discrimination and violation.
- The protesters had several demands such as insufficient and incompetent security of women, unreliable public transport, improper functioning of the police force that often-blamed rape victims and denied to write an F.I.R. for the crime inflicted upon them and forms of bureaucratic procedure surrounding sexual assault.
- Justice Verma Committee was assigned the task of the reformation of the anti-rape laws of the country.
- More female officers were added to Delhi’s police force so that women can share everything with them.

⁸¹ Neogi Suprateek , *Nirbhaya Gang Rape case study*, Rajiv Gandhi National University of Law, Punjab

- Security was tightened and patrolling was increased and the police now had to undergo gender sensitization courses which help in understanding the issue of women rights and their safety.
- Six fast track courts were set up to specifically deal with rape cases with the aim of providing immediate aid to rape victims.
- Laws against sexual assault were made even stricter.
- Since one of the accused was a minor (17 years old) at the time of the crime, a need for changing juvenile laws had opened up.
- A space for public discussion of sexual violence against women that had not existed before was created.
- Failure to provide medico-legal care is now an offence under section 166 B of IPC as per the CLA 2013.

HYDERABAD GANG RAPE CASE:

Dr. Priyanka a young woman veterinary doctor was gang raped by four men who were arrested on November 29, 2019 for allegedly raping and killing the woman and later burning her body. This incident had led to widespread outrage and recalled the horrors of the December 16, 2012 gang rape and murder of a physiotherapy intern in Delhi. This incident attracts peoples concern and a protest was started throughout the country. All the big cities have witnessed massive outrage and stringent punishment was demanded for the culprits. The four accused were soon arrested by the police officials and demand of hanging or shoot at sight was raised by locals of Hyderabad.

While transporting the accused from the Shahnagar police station to the jail in Hyderabad, stone was pelted on the accused. Police was compelled to use force to control the crowd. Constant demand to hand over the accused to the protesters was raised. The public sentiment was against the police, and their impartiality and morality were questioned. These protesters demanded that police should act in a sensitive, responsive and proactive manner. All four accused were killed in a police encounter on

6 December 2019. According to the police, the incident happened while suspects were taken to the location for reconstruction of the crime scene, where two of them allegedly snatched the guns and attacked the police. In the ensuing shootout, all four suspects were shot dead. Later on, some accused the police of extra-judicial execution while except the few rest thousands have appreciated the task of police.

On 2nd December 2019, the incident was discussed in both houses of the parliament, the Lok Sabha and the Rajya Sabha showing heartfelt dissatisfaction on the incident. In the Lok Sabha, the union Minister Rajnath Singh stated that the government was "open to every suggestion to curb such heinous crimes" and ready to explore strongest legal provisions. Minister of State for Home Affairs G Krishan Reddy said, "There is zero tolerance towards crimes against women and children. The government advocated bringing requisite amendments to Cr PC and IPC.⁸² The state government passed a bill named Disha Act (also known as, Andhra Pradesh Criminal Law (Amendment) Bill, 2019) to award death penalty for rapists within 21 days after the crime is committed.

7.5 Cases studied in the area of Research

Case No: 4305/2002

Assam samabay bank ltd., Panbazar

A complaint was lodged by a woman employee of Assam Samabay Apex Bank Ltd., Panbazar. She complained that she has been sexually harassed by some of her colleagues by making some derogatory and objectionable comment at her. AHRC issued notice to the Apex Bank MD asking whether the complaint of sexual harassment made was disposed in terms of law laid down by Supreme Court. The MD later on requested the AHRC to permit him to form the complaint committee with respectable women of the state as in the Bank there is no women who can head the complaint Committee. Regarding the composition of complaint committee in Vishaka v state of Rajasthan, the Apex Court guidelines are quoted by the AHRC and it is of the opinion that there is no bar to constitute a complaint committee with respectable

⁸² https://en.wikipedia.org/wiki/2019_hyderabad_gangrape#cite_note_NDTVparliament_48

women from the state and MD's request was accepted and directed the MD to submit a report within three months from passing of the order on 5-8-2004.

Sabita Lahkar v Editor in chief, Amar Asom

Case no: 321/17-09-03

Even as the sexual assault case against well-known editor Tarun Tejpal continued to grab headlines across the national media, a woman journalist in assam has written to the National Human Rights Commission (NHRC) alleging sexual abuse by a veteran journalist of the state dating back a decade. In a letter to the NHRC dated November 22nd 2013 Sabita Lahkar a Guwahati based journalist stated that after looking at the Tejpal's case, she in utter dismay, wanted to state that she had similar experience of abuse by a senior Editor of Assam in 2003 and that she had publicly demanded action against the editor of Amar Asom, a popular Assamese daily published from GL publications, Guwahati. She narrated in her letter that then she was working as chief sub-Editor with Amar Asom and for three years she has suffered repeated sexual and physical harassment from the said editor.

She had organized a formal press Conference in Guwahati press Club on 10th September 2003, where she raised her demand for justice. She had also resigned from the newspaper later on. In a letter she notified that she has registered a case against the Chief Editor in AHRC mentioning about the torture she faced. Lahkar wrote that she had also sent letters to the press Council of India and to the editor's guild of India. A protest meeting was also organized in the press club auditorium on 12th September, 2003 by the journalist Action Committee and the Journalist Union of Assam (affiliated to Indian Journalists Union) in association with the Assam Tribune Employees Union, the Assam Press Correspondents Union and the national Federation of Newspaper Employees etc.

She had also lodged an FIR on 17th, September, 2003 at Paltanbazar police station (Guwahati- 781001, case no 321/17/09/03, section 354/509 IPC). According to Lahkar following her complaint the AHRC asked the management of Amar Asom to

constitute a redressal committee in its office as per the landmark judgment of the Supreme Court of India on sexual harassment at workplace, popularly known as the Vishaka case. She said that the management did constitute a redressal committee and called her to record her grievances, however the same committee did not call the accused for recording his statements. She mentioned in her letter to NHRC that the police did not investigate the case properly and even they did not dare to call the accused for interrogation.

Bina Haloi v Aniruddha Pathak

Case no: 165/08/u/S294/506

Here the Complainant Smt. Bina Haloi stated that on 04-12-2008 at about 2pm the complainant in her capacity as President of Hara Gauri Self Help Group went to the concerned department to get information about the day of distribution of benefits amongst the beneficiaries of the Self-Help Group. When the complainant approached Smt. Biva Neog an employee of the department, the Deputy General Manager sri Aniruddha Pathak rebuked her in slang and in obscene language without any reason whatsoever. He even threatened the complainant to finish her with A.K 47. The complainant stated that she was shocked at such strange behavior of said Aniruddha Pathak. She alleged that she was humiliated in the presence of her sister-in-law and one of her nephews who accompanied her. She lodged an F.I. R on 6/12/2008 in Panbazar women police station. According to the complainant the Latasil police recorded evidence from certain person picked by the accused. But according to the victim the police did not investigate the matter in a proper way and therefore no justice can be expected from them. The complainant also approached the commission for justice. Regarding the matter Commission issued a notice to the Superintendent of Police, Guwahati city to conduct an Enquiry by an officer of DSP rank and to submit a report in this regard.

In due course of time the commission received the report and a copy was sent to the complainant seeking her comments. The case in question was enquired by the Deputy Superintendent of police, city, Guwahati has forwarded the report to the

commission. In the report it has been inter-alia, stated by the Deputy Superintendent of police that as regard to the incident referred in the complaint a police case was registered in Latasil police station and in the due course of investigation the accused was arrested and released on bail. Charge sheet was filed against the culprit on 31/12/2008. A trial before the hon'ble Gauhati High Court via order dated 08/05/2008 had stayed all further proceeding of the case before the Trial court. In her comments the complainant had stated many matters which are not relevant for the case and the revision petition filed by the accused before the High Court could not be entertained as the subject matter being sub judice the commission has no jurisdiction to hold parallel inquiry.

Baby Das v Md. Azizur Rahman

Case no: ASCW/197/2017

The complainant here is an office superintendent in the catering services of office of the Chief Commercial Manager/ Personal Manager, N.F Railway Maligaon. However, the accused is the chief office Superintendent in the same office. The complainant claimed the relief under section 376/506 IPC, 67(A) IT Act. The complainant stated that both of them works in the same organization and thereby shares a comfortable and cordial relationship. However, the accused soon started to sexually abuse the victim as he tries to establish physical relationship with her. He even tried to molest her by giving her sweet pan to eat with mixing of seductive element. He then took obscene and sexually explicit pictures of her and tried to blackmail her to establish physical intimacy with him. The case diary reveals that the petitioner and the victim had relationship since long which is also known to the employees of the organization. The note of the investigating officer reveals that no such photograph on the mobile phone was found and even it could not be found out that who has printed those pictures of the victim in compromising position and who had distributed the same. The accused has a pending case in Jalukbari police station vide case no: 693/2017. He has another pending case in department relating to the same matter. The accused got bail under 1046/2017-21/08/17.

In India the judiciary has always been portrayed as a symbol of justice assuring the oppressed and the under privileged 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 which consciously and unconsciously reflect traditional and rigid attitudes towards them as they themselves are raised in male superior 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.

7.6 DISCUSSION:

This chapter VII contains detail study of judicial findings given by Apex Judiciary on the subject of Sexual harassment at workplace. It shows the restrictive attitude of judiciary in commission of any such crime that is derogatory to human values, dignity, standard of living and towards reputation. This complex topic requires strong involvement of judicial interpretation as well as strenuous attitude on the part of the court to establish the faith among all that even if the perpetrator stands high, the judiciary will use its long arm to combat and eradicate the same.

Similar opinion has been pronounced by Alok Bhasin in his contribution Law relating to sexual harassment of women at workplace. He affirmed that role of judiciary is much vital in finding a solution for issues relating to sexual violence of woman.

The researcher has found that a judge without using his power of judicial activism fail to play an active role as a watch dog of Constitutional norms. The judges, must interpret any provision safeguarding fundamental or any basic human rights with care aiming to ensure development and growth. This judicial attitude towards women's right is a result of constant effort and involvement of sensitive and socially oriented judges. Here the researcher has studied cases from both pre-Vishaka scenario and post-Vishaka scenario to give a clear picture of prevailing situations in this regard.

The landmark case of Vishaka, which has designed this concept of sexual harassment and compelled the judiciary to frame and define laws, definitions and remedies relating to it has been thoroughly discussed by the researcher. The implementation, execution as well as administration of the Vishaka judgment have got a special mention here. The recent case of Nirbhaya gang Rape case and Hyderabad rape case has been discussed under this chapter defining this concept of sexual harassment to another level of importance and justification.

Researcher under this chapter has studied few instances that has occurred within the district of kamrup metropolitan and evaluated the situational existence of sexual violence.

Table no.6 on awareness of female employees on constitutional rights shows the interest of working literate women to preserve their identity and safeguard their dignity. 79% of working women have responded positively regarding awareness on their rights and privileges. However, table 9 and 10 shows the threat of physical sexual violence and verbal sexual violence existing in public workplaces hampering their right to work. 77% women nullified experiencing physical threat of violence whereas 69% has confirmed suffering the verbal sexual violence in their respective workplaces.

Thus, the researcher has seen that judicial intervention and interpretation can be a strong tool to deal with as well as to restrict commission of sexual violence instances as a whole.