

SEXUAL HARASSMENT *at* WORK

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Foreword

I am happy to contribute, on International Women's Day, the foreword to a well researched work on the meaning and scope of "sexual harassment", the need to combat it, responsibility to check it, and provide redress to the victims. It should help considerably in combating sexual harassment, and empowerment of the women who are the largest victims.

The 21st century is the century of knowledge, recognised not only as a significant form of wealth but also as power. Economics of knowledge is a scientific study of improving governance through human development. Thus, economics of knowledge with human development and social good at its core acquire significance in this century. There is a definite linkage between human development and human rights, which in turn are linked to democracy or governance. Human Development Index (HDI) is recognised as a new measure of development and ranking of a nation since the turn of the last century.

The Human Development Report, 1995 engineered a shift in the debate of gender inequality in the world, wherein Mahbub-ul-Haq warned: "Human development, if not engendered, is fatally endangered". He wrote gender into human development indicators. The 1996 Report emphasised that economic growth is the means for human development; and investing on women's capabilities and empowering them is the surest way to economic growth and overall empowerment. Economic growth alone is not sufficient, unless it is backed by proper policies ensuring distributive justice.

The Report on Human Development in Asia, 2000 dealing with "The Gender Question" focuses on the disproportionate share of burden of deprivation borne by the women. Its foreword quotes Mahbub-ul-Haq, who had earlier said: "As we approach the 21st century, we hear the quiet steps of a rising revolution for gender equality.... Women have greatly expanded their capabilities over the last few decades through a liberal investment in their education.... They stand ready and prepared to assume greater economic and political responsibilities. And

technological advances and democratic processes are on their side in this struggle.... It is quite clear that the 21st century will be the century of much greater gender equality than the world has ever seen before.” The Millennium Development Goals (MDGs) aim at gender justice; and the targets for the year 2015 focus on this goal by including therein gender equality and better reproductive health care.

For realising this vision, gender justice is essential since women constitute half the human resources. Augmentation of human resources is not possible without empowerment of women. To achieve this result, all impediments in the route of women’s empowerment must be removed. Gender bias in society is the biggest obstacle. It must be eradicated by correcting the mind set. The skewed sex ratio—more pronounced among the affluent—is a consequence of this aberration. The psychology behind the tendency to indulge in sexual harassment is also relatable to mental aberration.

The celebration of the International Women’s Day should remind every citizen of the fundamental duty in Article 51-A(e) of the Constitution of India “to renounce practices derogatory to the dignity of women”. Sexual harassment is a serious affront to human dignity. I do hope this comprehensive work will promote the cause.

“Sexual harassment” is a term of wide import, and combating it requires a multi pronged approach. The author, Alok Bhasin, has done a commendable job by his comprehensive treatment of the subject—a global social evil—its psychology, pathology, prevention and cure. A separate treatment of the topics focusing on the persons responsible for curbing and preventing the menace, and dealing with the effective remedies available to the victims has great practical significance. The author has combined the benefit gained from his practical experience as a lawyer with his academic credentials to produce an exhaustive guide, not only for the large task force of working women, but also for all sections of the society. I am sure, this book will be of great utility, not only to those who benefit from, but also to those who have the duty to faithfully implement the *Vishaka* judgment of the Supreme Court, and the long awaited legislation in the field, when it comes.

My best wishes for the success of this venture.

—J.S. VERMA

Exordium

They were helpless. We were helpless as we too stood by and watched as one by one they were dismissed. It was this sense of helplessness that made us pick up this issue of legislation for sexual harassment.

The strongest impetus for campaigns demanding a specific law for combating sexual harassment has, understandably, come from women themselves. As the findings of a report by ILO states:

Many of the countries study note the vital role that women workers' groups have played in spearheading campaigns and advocacy that have called for change in laws and policies that discriminate against women, and for the enactment of legal systems to protect women workers.¹

The passage quoted above is from an interview of women activists of Malaysia. The victims were six female employees of an international hotel who were dismissed for lodging police reports against their general manager for sexual harassment. In India also it was the collective action taken by various women's groups that ultimately culminated in the landmark decision of the Supreme Court in the *Vishaka case*². Of course, this is not to diminish the proactive, receptive and responsive approach of the Supreme Court to the points at issue.

We conquer'd you, we made Women of you.

—Colonial Records of Pennsylvania (1742)³

In her highly instructive and enlightening book, *Just like a Woman*⁴, Dianne Hales recounts an incident to make her point how, till not too distant a past, “man” regarded himself as the sole paradigm to measure

1. ILO, *Action Against Sexual Harassment at Work in Asia and the Pacific* (2001) 43.
2. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241: 1997 SCC (Cri) 932: AIR 1997 SC 3011, per J.S. Verma CJ.
3. *Reader's Digest, Success with Words* (1983) 685.
4. 1999, Random House (US) and Virago Press (UK).

or judge all things human – even in matters of (female) physiology. “Years ago”, she tells, when she was researching an article on irregular heartbeats, a cardiologist took out an electrocardiogram tracing from a file to show her an example of a normal pattern. However, immediately thereafter he cast it aside, mumbling, “No, that won’t do. It’s a woman’s.” “To my chagrin”, says the learned author, “neither he nor I questioned the assumption that the only norm—not just for hearts, but for all human physiology—had to be male”.⁵

Inability as well as reluctance to understand female physiology resulted in the notion that women were “biologically blighted”. Women became victims of their own reproductive biology. Biological differences—some actual and some supposed—in women were held against them as their deficiencies. These differences were enlisted to practise and justify discrimination against them. Even Hippocrates, who is regarded as the father of medicine, described woman as a “damp, soggy creature”; while Aristotle said a woman was naturally defective, a “mutilated male”. Women came to be regarded as the negative opposite of men, and not merely different from them. Till the 17th century medical opinion regarded female body “as a lesser variation on the male model, with analogous reproductive organs turned about and tucked inside”.⁶ According to a 19th century physician, “A woman is a pair of ovaries with a human being attached, whereas a man is a human being with testes attached.” As Dianne Hales says, “[This] was a cruel distinction—and a false one. Because it was just like a woman to have a womb, it was presumed she should not, could not use her brain. Because it was just like a woman to give life, her own life seemed to have no other value.”⁷ Physicians of the late 19th century held the view that removal of a woman’s ovaries was the best way to “repair” mental disorders.⁸ Even as late as in the early 20th century, an obstetrics book declared, “A woman has a head too small for intellect, but just big enough for love.”⁹ Even the natural biological process of menstruation came to be associated with so many myths and taboos that it would generate shameful feelings in a woman. Says Dianne Hales,

Although legends of ancient matriarchies suggest that menstruation once inspired awe, most of it triggered loathing. Menstrual blood was feared as a potent toxin that could spoil milk, destroy crops, sour beer, drive dogs mad, shatter glass, dull swords, and sicken even the most virile males. Its shedding was deemed so disgusting that women felt they had to keep a normal, fundamentally female process secret.¹⁰

5. “Preface” in Dianne Hales, *Just like a Woman* (1999).

6. *Ibid.*

7. *Ibid.*, 6.

8. *Ibid.*, 98.

9. *Ibid.*, 4.

10. *Ibid.*, 157.

It was only in the 19th century that a London physician connected menstruation with ovulation. Even till the early 20th century medical experts believed that mental activity during menstruation could interfere with ovulation and destroy a woman's capability.¹¹ Pregnancy, "the medical condition associated with procreation" and which, thus, is of "fundamental importance in our society",¹² instead of being regarded as a valid reason for absence from work, came to be treated as a virtual disqualification for employment.¹³

Biases against women manifested themselves in language and usage as well. The term *woman* has originated from *wifman* (meaning "wife of man" or "wife man"), though it has been humorously suggested that it is a derivative of *woe to man* or *womb man*. A *girl* was admired for her "youthfulness" and a *lady* for her "superior social status" and "refined manners". However, the term *woman* in general, was assigned a number of negative qualities like being fickle, fearful, foolish, cowardly, tearful, weak and selfish. On the other hand, "[a]ll the admirable qualities of adults—courage, strength, fortitude, determination, vigour—were assigned solely to man. Although both males and females possessed these good qualities, they were called *manly*, not *womanly* virtues".¹⁴ Some of the derogatory synonyms of *woman* include *baggage*, *piece* or *piece of goods*, *heifer*, *bit* or *piece of skirt*, *bit of fluff* and *the weaker sex*. Some proverbs also refer to a *woman* in a derogatory sense, as for instance, "A woman, a dog and a walnut tree, the more you beat them the better they be"; "A woman and a ship ever want mending"; "A woman's place is in the home"; "A woman's work is never done"; "Silence is a woman's best garment"; and "Never choose your women or your linen by candlelight".

Female sexuality itself has been a victim of many myths, stigmas and stereotypes. Dianne Hales says,

11. *Ibid*, 158.

12. To use the words of Dickson CJ in *Brooks v. Canada Safeway Ltd*, (1989) 1 SCR 1219: (1989) 10 CHRR 6183: (1989) 59 DLR (4th) 321 (Can SC), Supreme Court of Canada; <<http://www.canlii.org>>.

13. See, *Neera Mathur v. LIC*, (1992) 1 SCC 286: 1992 SCC (L&S) 259: AIR 1992 SC 392, *per* K. Jagannatha Shetty J, where the Supreme Court quashed the termination of a lady probationer who was terminated for giving a wrong date of her last menstrual period in the declaration prior to her appointment. The Supreme Court said:

The particulars to be furnished... are indeed embarrassing if not humiliation. The modesty and self-respect may perhaps preclude the disclosure of such personal problems like whether her menstrual period is regular or painless, the number of conceptions taken place; how many have gone full terms, etc. The Corporation would do well to delete such columns in the declaration.

Also see, *Air India v. Nergesh Meerza*, (1981) 4 SCC 335, *per* S. Murtaza Fazal Ali J. In this case the Supreme Court concluded that the service regulation providing for termination of service of an air hostess on first pregnancy was arbitrary and, hence, unconstitutional under Article 14 of the Constitution.

14. *Reader's Digest, Success with Words* (1983) 685.

XII *Law Relating to Sexual Harassment at Work*

[F]emale sexuality always has been suspect. Some contend it's just like a woman to tempt, tease, titillate, seduce, or sleep her way into places of privilege or power. On the other hand, it's also seemed just like a woman to be cold, frigid, rejecting, sexually unsatisfied — and unsatisfying.¹⁵

This sentiment was expressed poignantly in the following words written for the Second International Women's Day broadsheet, Sydney, Australia in 1975:

*BECAUSE our work is never done & under or unpaid or boring or repetitious,
and we're the first to get the sack,
and what we look like is more important than what we do,
and if we get raped it's our fault,
and if we get bashed we must have provoked it,
and if we raise our voices we're nagging bitches,
and if we enjoy we're nymphos,
and if we don't we're frigid,
and if we love women it's because we can't get a real man,
and if we ask our doctor too many questions we're neurotic and/or pushy,
and if we expect community care for children we're selfish,
and if we stand up for our rights we're aggressive and unfeminine,
and if we don't we're typical weak females,
and if we want to get married we're out to trap a man,
and if we don't we're unnatural,
and BECAUSE we still can't get an adequate safe contraceptive but men can walk on the moon,
and if we can't cope or don't want a pregnancy,
we're made to feel guilty about abortion, and for lots and lots of other reasons,
we are part of the women's liberation movement.¹⁶*

Paradoxically, however, women—at least some women—have been worshipped as goddesses. And of course, many women have successfully conquered all biases. But biases against women still remain prevalent even in these supposedly progressive and modern times. Such biases have

15. Dianne Hales, *Just like a Woman*, 13.

16. Joyce Stevens, *A History of International Women's Day*; <<http://www.isis.aust.com>>.

resulted in practices like dowry and female foeticide. Even in some educated families in India the custom of changing the *first* name of a girl upon her marriage by her in-laws is still followed with relish.

SOME POSITIVE DEVELOPMENTS

Women celebrated the *First International Women's Day* on 19 March 1911 in Europe. They demanded an end to all discrimination. They demanded the right to work. They also demanded the right to vocational training. The date 19 March had a historical significance. It was on 19 March 1848 that a Prussian king had promised to grant the right to vote to women. The promise, however, was never fulfilled.¹⁷ In 1917, women in Russia celebrated the International Women's Day on 8 March, which was declared as an official communist holiday. Eventually, 8 March became the "official" International Women's Day.¹⁸

In 1945, representatives of 50 countries signed the United Nations Charter. The Preamble to the Charter declared one of the central goals of the Organisation "the reaffirmation of 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women'". The UN Charter was the first international instrument to refer specifically to human rights and to the equal rights of men and women. By virtue of the UN Charter, all members of the United Nations became "legally bound to strive towards the full realisation of all human rights and fundamental freedoms".¹⁹

The *International Bill of Human Rights* "strengthen[ed] and extend[ed the] emphasis on the human rights of women. The *Universal Declaration of Human Rights* proclaim[ed] the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind". It also included sex among the grounds of such impermissible distinction. "The *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, both of 1966, ... translate[d] the principles of the Declaration into legally binding form."²⁰

The General Assembly of the United Nations adopted the *Declaration on the Elimination of Discrimination against Women* on 7 November 1967. However, the Declaration amounted only to "a statement of

17. *Ibid.*

18. ILO and Joyce Stevens, *A History of International Women's Day*.

19. *United Nations, Report by the Committee on the Elimination of Discrimination against Women*, Fourth World Conference on Women, Beijing, China, 4-15-9-1995; the United Nations website.

20. *Ibid.*

moral and political intent, without the contractual force of a treaty”. Subsequently, the General Assembly adopted the *Convention on the Elimination of All Forms of Discrimination against Women* on 18 December 1979. On 17 July 1980 at a special ceremony at the Copenhagen Conference, 64 States signed the *Convention on the Elimination of All forms of Discrimination against Women*. On 3 September 1981, the Convention entered into force, “thus bringing to a climax United Nations’ efforts to codify comprehensively international legal standards for women”. The Convention unequivocally declared that discrimination against women violates the principles of equality of rights and respect for human dignity. “Unlike earlier international instruments, which [spoke] only of ‘distinction’ or ‘discrimination’ on the basis of sex”, the Convention clarified that discrimination against women encompasses “any difference in treatment”, whether by way of distinction, exclusion or restriction, on the ground of sex, which has “the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality with men, of their human rights and fundamental freedoms in all spheres of life”. As a result, a number of countries started focussing attention on the human rights of women, including introduction of special measures of affirmative action. The Convention has also “positively influenced litigation” in many countries²¹ including India²².

From the 1980s many governments and employers’ and workers’ organisations also started focussing on one particular form of discrimination based on sex, namely the types of behaviour covered by the terms “sexual harassment” or “unsolicited sexual attention”. These would include

insults, remarks, jokes, insinuations and inappropriate comments on a person’s dress, physique, age, family situation, etc.; a condescending or paternalistic attitude undermining dignity; unwelcome invitations or requests that are implicit or explicit, whether or not accompanied by threats; lascivious looks or other gestures associated with sexuality; unnecessary physical contact, such as touching, caresses, pinching or assault... [where such conduct could] be justly perceived as a condition of employment or a precondition for employment; influence decisions taken in this field, or prejudice occupational performance; humiliate, insult or intimidate the person suffering from such acts.²³

21. *Ibid.*

22. As a matter of fact, the Preamble to the Indian statute, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 expressly refers to the Convention. The 2013 Act has been passed “for giving effect” to the Convention on the Elimination of All forms of Discrimination against Women.

23. ILO, 1988, *General Survey of the Convention C 111 and Recommendation R 111*; website of ILO.

Developments in the field of science, particularly gender-specific research in biology, anthropology, physiology, psychiatry, etc., have also contributed to demolition of various biases against women. Thanks to such research, now we know that we all owe our existence to the life generating mitochondrial DNA in every *female egg*. The mitochondrial DNA “has the unique ability to repair genetic defects in sperm and launch the development of an embryo. Both females and males receive mitochondrial DNA from their mother’s egg”.²⁴ The female body, observes Dianne Hales, is now no longer regarded as “an imperfect copy of the male model”, but “as unique...with its own norms”. Even the term *woman* now stands “rehabilitated” and “has become the preferred designation for ‘adult female human being’.”²⁵

RISING COMMUNITY

It is heartening that in India, various women’s organisations “have presented themselves as a ‘rising community’, a more conscious and aware community, and not wanting the ‘succour’ of any special provisions”.²⁶ As noted by the Committee on Amendments to Criminal Law, “Women want constitutional guarantees to be simply and plainly enforced and we think it is the duty of the State to make special provisions to ensure that they are granted.”²⁷

There is some degree of substance in the criticism [observed the Committee,] which we have heard from women’s organisations that women do not need sympathy, empathy or charity. They are equal *per se*. In other words, they claim what general human rights and the Constitution guarantees as their natural space to live freely and effect decisions based on individual judgment. We are unable to discountenance this argument. On the contrary this is entirely correct. The fundamental attitude, based on paternalism, must be discarded. We also think that the judgments of courts can sometimes be misconstrued as suggestive of sympathetic consideration in a criminal trial. We also think that the right to justice is a fundamental right under the Constitution and must not be earned out of a sympathy having regard to the social malaise which exists in society. In other words, we advocate an approach that if the juxtaposition between honour and shame on the one hand and the crime of rape is deconstructed, people would be able to step forward and be heard. Such crimes should be registered immediately and investigated impartially.... If an impartial investigation brings offenders to book, it is going to add to the confidence of not only the individual victim but also

24. Dianne Hales, *Just Like a Woman*, 61.

25. *Reader’s Digest, Success with Words* (1983) 685.

26. Report of the Committee on Amendments to Criminal Law, Chap. 4, “Sexual Harassment at the Workplace”, 121, para. 6.

27. *Ibid.*

to women in society that such crimes can be brought to book. No woman in India must feel a sense of shame or stigma in the event of sexual assault. She is entitled to the redressal of that injury and that offence and she is therefore statutorily and constitutionally capable of access to the rule of law.²⁸

THE PROBLEM OF SEXUAL HARASSMENT

As observed by the ILO:

The problem of sexual harassment relates not so much to the actual biological differences between men and women, but to the gender or social roles which are attributed to men and women in social and economic life, and perceptions about male and female sexuality in society.²⁹

Women through the centuries have been perceived to be, and therefore are socially conditioned from an early age to be, subordinate to men... Women are also expected to be compliant and sexually passive while men are socialized to believe that they are the ones to initiate sexual relationships. In most societies and situations, men are more likely to start sexual harassment than women, as societies tolerate or even encourage sexually aggressive behaviour by men. [C]ultural values [may also] condition and dictate that men should not despair if their initial advances are rejected, therefore giving rise to repeated unwanted sexual advances... Women can also become recipients of such conduct when they are seen to be competing for power...³⁰

Only 5-6 people are not culprits. The victim is as guilty as her rapists... She should have called the culprits brothers and begged before them to stop... This could have saved her dignity and life. Can one hand clap? I don't think so.³¹

28. *Ibid*, Chap. 3, "Rape and Sexual Assault", 91-92, para. 33.

29. ILO, *Action Against Sexual Harassment at Work in Asia and the Pacific* (2001) 8.

30. *Ibid*, 8-10.

31. This was the response of "godman" Asaram "Bapu" to one of most the horrific incidents of gang rape in Delhi in on 16-12-2012; see, Report dt. 23-1-2013 of the Committee on Amendments to Criminal Law, "Introduction", 11-12, para. 23. The report also quotes a leader of CPM: "We have told the Chief Minister in the assembly that the government will pay money to compensate rape victims. What is your fee? If you are raped, what will be your fee?"

It is shocking to note [says the above report,] that even after the...horrific incident of gang rape, many political leaders, including members of Parliament/State legislatures, spiritual gurus with large followings and other eminent persons have been making statements reinforcing the gender bias. Some have even blamed the victim for having facilitated the rape by her own behaviour... Many of them have reflected this gender bias contrary to the constitutional mandate after swearing 'to bear true faith and allegiance to the Constitution of India', in addition to their fundamental duty 'to abide by the Constitution and respect its ideals. These deep rooted prejudices have to be eliminated for the efficacy of any laws on the subject. The time has come to enact laws providing for the disqualification of elected representatives on this ground alone.

One of the most commonly held beliefs in many cultures says the ILO report, is that women “provoke” and “ask” for the conduct in question. The “natural” sex drives of males and the dress and appearances of women are often cited as the reason for sexual harassment of women.

However [, says the ILO Report,] this does not explain why women who work...in regulation work-clothes get harassed, nor why women who are considered ‘suitably covered’ by community norms and standards, are also targeted. Moreover, it does not clarify why some men harass and others do not. Shifting the burden and responsibility for the problem confuses the issue...and reveals a deep-rooted problem that exists in understanding what sexual harassment is really all about.³²

In many cultures and societies “[s]exual harassment is considered to be the price which women must pay for having stepped out of the closed spaces segregated for them”.³³

Studies made by women’s groups in Asian countries for the ILO have found several “culture-based” views about sexual harassment³⁴, which

32. *Ibid*, 13.

33. ILO, *Action Against Sexual Harassment at Work in Asia and the Pacific*, 14.

34. Wittingly or unwittingly, the Supreme Court, even while rendering an otherwise progressive judgment in *Bharwada Bhoginbai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217: AIR 1983 SC 753, and holding that in cases of sexual assault of women it is open to the court to rely upon the evidence of a complainant even without seeking corroboration if corroboration by medical evidence is available, sought to stereotype Indian and Western women “in a somewhat unorthodox way” by observing in paras. 9 and 10, inter alia, thus:

We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the western society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

- (1) The female may be a ‘gold digger’ and may well have an economic motive—to extract money by holding out the gun of prosecution or public exposure.
- (2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by fantasizing or imagining a situation where she is desired, wanted, and chased by males.
- (3) She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.
- (4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta.

either justify sexual harassment or dismiss it altogether.³⁵ Some of such views are: “sexual harassment is something that happens only in Western

- (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-importance in the context of her inferiority complex.
- (6) She may do so on account of jealousy.
- (7) She may do so to win sympathy of others.
- (8) She may do so upon being repulsed. (Para. 9)

By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband’s family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent. (Para. 10)

Commenting on the above observations of the Supreme Court, the Committee on Amendments to Criminal Law said in its report dt. 23-1-2013:

As a listing of these characteristics, we regret that there is a profiling of an Indian girl which has taken place which is an overgeneralization and it would neither be accurate nor scientific to test the testimony of an Indian women with reference to the criteria which are mentioned in paragraph 10 above. But what is important is that the judgment, in a certain sense, discloses how a woman is viewed in India.

(Report of the Committee, Chapter 3, Rape and Sexual Assault, 80–83, paras. 25–26).

35. Referring to the *Bhanuvari Devi case* that led to the *Vishaka* Judgment, the Committee on Amendments to Criminal Law says in its report dt. 23-1-2013 in “Introduction”, 14, para. 32:

The most appalling feature of the case is that the trial court acquitted the accused observing that the rapists were middle-aged and respectable persons of a higher

communities where men and women mix freely”; “Western television programmes are bad influence on the local population because those programmes portray that it is fine for women and men to interact in overt ways”; Western television programmes can potentially titillate men into sexually harassing women; “[m]odern young Western women are game for a bit of fun, unlike traditional Asian women who are more reserved about joking and teasing”; “[t]easing and cajoling women are really just part of the local culture and there was nothing wrong with this until Western feminist ideology came along and ‘problematized’ cultural norms, turning them into a human rights issue”; and “women ask and deserve to be sexually harassed because they have transgressed local norms”.³⁶

Without doubt, the problem of sexual harassment has to be dealt with full firmness and sensitivity. At the same time, possibility of some complaints being false and motivated cannot be ruled out.

Sexual harassment may take diverse and varied forms. It is not limited to demands for sexual favours made under threats of adverse job consequences. Sexual harassment would include any unwanted conduct of a sexual nature or other conduct based on sex, which violates the dignity of a person, in particular when it creates an intimidating, hostile, degrading, humiliating or offensive environment for the recipient. Such conduct may be physical, verbal or non-verbal. Sexual harassment is a species of gender-discrimination. It is for the recipient to decide what conduct is acceptable or offensive to her or him, and from whom. All these aspects are discussed in Part I of the book, — “What is Sexual Harassment”.

Sexual harassment is a serious and real problem for various working women in a large number of occupations, employments, jobs, trades and businesses, and economic sectors. It is an affront to the dignity and self-respect of the victims. It may have disastrous consequences both for the victims and the employers. Part II of the book deals with the aspect, — “Why Sexual Harassment Needs to be Combated”.

It is the legal duty of the employer to take appropriate affirmative action to combat sexual harassment at work. “The fundamental rights to life with human dignity, to equality, and to work in ones chosen profession or trade inherently include protection from sexual harassment.”³⁷ Part III of the book discusses the aspect of “Combating Sexual Harassment at Work”. Part III has two sub-parts: III-A and III-B. Sub-part III-A deals with “preventative and procedural action by employers”, “sexual

caste who could not have raped a lower caste woman. The mindset of the judiciary also needs to be improved by their education in gender sensitivity.

36. ILO, *Action Against Sexual Harassment at Work in Asia and the Pacific*, 17–18.

37. Report of the Committee on Amendments to Criminal Law, “Introduction”, 1.

harassment of students”, as also the “role of employees, trade unions and collective bargaining”. Sub-part III-B examines and discusses the provisions of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”.

Part IV of the book reviews the aspect of “Liability and Remedies”. This part mainly discusses the applicability, etc., of laws other than the 2013 Act, which may (also) apply to certain cases of sexual harassment, such as the Indian Constitution³⁸, Labour Laws, Criminal Laws, the National Commission for Women Act, 1990, Protection of Human Rights Act, 1993 and Torts Law. Part IV also discusses the circumstances under which an employer may be held vicariously liable for the sexual torts of its employees.

—ALOK BHASIN

38. As stated in the Report of the Committee on Amendments to Criminal Law, “Introduction”, 2-3, paras. 4-7:

The right to be protected from sexual harassment and sexual assault is ... guaranteed by the [fundamental rights enshrined in] the Constitution, and is one of the pillars on which the very construct of gender justice stands.

This right is buttressed by the directive principles of state policy ... and these fundamental principles bind the State in performance of its task of governance of the country.

Every person invested with public power remains primarily a citizen who is duty bound to perform the fundamental duties of every citizen with the added public duty of implementing the directive principles of securing a social order for the promotion of welfare of the people.

A fortiori, the duty of the State, therefore, is to provide a safe environment, at all times, for women, who constitute half of the nation’s population; and failure in discharging this public duty renders it accountable for the lapse. The State’s role is not merely reactive to apprehend and punish the culprits for their crimes; its duty is also to prevent commission of any crime to the best of its ability. Crimes against women are an egregious violation of several human rights demanding strict punishment with deterrence to prevent similar crimes in future by the likeminded.

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"The author, Alok Bhasin, has done a commendable job by his comprehensive treatment of the subject — a global social evil — its psychology, pathology, prevention and cure."

– Extract from the Foreword by **J.S. Verma**

Former Chief Justice of India

Former Chairman, National Human Rights Commission

The second edition of this comprehensive work critically examines the Supreme Court's directives in the Vishaka case (1997) regarding sexual harassment at workplace, and goes on to discuss the development of the law since then.

Sexual harassment at work is a serious problem for working women in a large number of occupations and employments. After almost 16 years of the landmark judgment of Supreme Court in Vishaka case (1997), India finally enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The learned author with his vast practical experience and academic credentials has produced this exhaustive guide, for the employers, the working women and for all sections of the society. The book is divided into four Parts:

Part I of the book thoroughly explains what constitutes sexual harassment and its diverse forms.

Part II emphasises upon the need for combating sexual harassment.

Part III is sub divided into III-A and III-B. **Sub-part III-A** deals with "preventative and procedural action by employers", "sexual harassment of students", as also the "role of employees, trade unions and collective bargaining". **Sub-part III-B** examines and discusses the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Part IV reviews the aspect of "Liability and Remedies". It mainly discusses the applicability, etc., of laws other than the 2013 Act, such as the Indian Constitution, Labour Laws, Criminal Laws, the National Commission for Women Act, 1990, Protection of Human Rights Act, 1993 and Torts Law. It also discusses the circumstances under which an employer may be held vicariously liable for the sexual torts of its employees.

