

# The Supreme Court Judgement

## INTRODUCTION

The Supreme Court judgement on Sexual Harassment of working women in the case of *Vishakha vs. the State of Rajasthan* (August 1997) has initiated debate on the issue not just among women's groups, lawyers and activists; but also among women in the workplace. For the first time, behaviour that can be considered sexual harassment has been explicitly legally defined.

"... sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

Physical contact and advances;  
a demand or request for sexual favours;  
sexually coloured remarks;  
showing pornography;  
any other unwelcome physical, verbal or non-verbal conduct of sexual nature."  
(*Supreme Court of India Guidelines on Sexual Harassment*, August 1997)

The guidelines are significant in that, for the first time sexual harassment is identified as a separate category of legally prohibitive behaviour. Sexual harassment should be considered a separate legal offense not because it is less serious (as some have argued), but because it is taken less seriously.

They identify the critical factor in sexual harassment as the *unwelcomeness* of the behaviour. Thus it is the *impact* of behaviour on the recipient, rather than the *intent* of the perpetrator which is to be considered. By doing so they conform to the internationally accepted standards for sexual harassment. However, as experience in other countries shows, the complainant has to prove the "unwelcomeness" of the behaviour. Anything less than a clear rejection of sexual advances could then create problems. Particularly in the absence of witnesses or other concrete proof, it often becomes the complainant's word against the harasser's.

Also notable is the fact that the guidelines have - again in accordance with international standards - identified sexual harassment as a question of power exerted by the perpetrator on the victim. Further, in addition to sexual harassment being a violation of the right to safe working conditions the Guidelines also proclaim it to be a violation of women's right to equal opportunity in the workplace.

## SUPREME COURT JUDGEMENT ON SEXUAL HARASSMENT AUGUST, 1997

### 1. WHAT IS SEXUAL HARASSMENT?

The Supreme Court Judgement of 14 August 1997 contains Guidelines prohibiting sexual harassment. As defined in the Guidelines, "Sexual harassment includes such unwelcome sexually determined behaviour such as:

- a. physical contact
- 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 a sexual nature."

### WHO DO THESE GUIDELINES APPLY TO?

It is the duty of the employer or other responsible persons in work places or other institutions to prevent sexual harassment and to provide procedures for resolution of complaints. Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity – in the government; private sector or unorganized sector come under the purview of these guidelines.

## 2. PREVENTIVE STEPS

Must be undertaken by employers or other responsible authorities in public or private sectors as follows:

- a. Express prohibition of sexual harassment should be notified and circulated.
- b. Prohibition of sexual harassment should be included in the rules and regulations of government and public sector bodies.
- c. Private employers should include prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- d. Appropriate work conditions should be provided for work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

## COMPLAINTS PROCEDURE

Employers must provide a Complaints Committee headed by a woman and not less than half of its members should be women.

- Complaints Committee should include an NGO or other organization that is familiar with the issue of sexual harassment.
- Complaint procedure must be time bound.
- Confidentiality of the complaint procedure has to be maintained.
- Complainants or witnesses should not be victimised or discriminated against while dealing with complaints.
- The Committee should make an annual report to the government department concerned of the complaints and the action taken by them.

## DISCIPLINARY ACTION

- When the offence amounts to misconduct under service rules, appropriate disciplinary action should be initiated.
- When such conduct amounts to an offence under the Indian Penal Code, the employer shall initiate action by making a complaint with the appropriate authority.
- The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

## OTHER PROVISIONS OF THE GUIDELINES

- Sexual harassment should be affirmatively discussed at worker's meetings, employer-employees meetings and other appropriate forums.
- Guidelines should be prominently notified to create awareness of the rights of female employees.
- The employer should assist persons affected in cases of sexual harassment by outsiders or third parties.
- Central and State governments are required to adopt measures including legislation to ensure that private employers also observe guidelines.

**These Supreme Court Guidelines are legally binding and must be enforced.**

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