

Sexual Harassment

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Introduction

Of all the forms that violence against women can assume, sexual harassment is the most ubiquitous and insidious; all the more so because it is deemed 'normal' behaviour and not an assault on the female entity. It affects women in all settings whether public or private and has psychological, medical, social, political, legal and economic implications. Instances of sexual harassment should not be viewed as isolated incidents; rather they should be construed as a gendered aggression against the rights and dignity of women. The fact that its pernicious effects are visible globally discount any effort to view it with less gravity than it deserves. According to a study by the International Labour Organisation (ILO) in 1992, in the 23 countries surveyed, 15-30 per cent of working women had been subjected to sexual harassment, which varied from explicit demands for sexual intercourse to offensive remarks. One out of 12 women surveyed hid to quit her job. Some of them were dismissed. The issue of sexual harassment has been in the forefront of western women's movements for equality and in the efforts to make educational institutions and workplaces safer.

In India, every 51 minutes, a woman is reported to be sexually harassed and every 26 minutes a woman is sexually molested. Several studies indicate that the magnitude of unreported cases is several times over the estimate. The report of a study conducted by the Gender Study Group of the University of Delhi showed that in 1996, 91.7 percent of all inmates of women's hostels and 88.2 per cent of all women day scholars had faced sexual harassment on the roads within the campus. In its analysis, the Group pointed out that following the suicide of a research scholar in 1987, although the death was imputed to academic harassment, 'the issue of sexual harassment by male professors entered the debate in the university community' (p. 1). The University's callous attitude was exposed by an incident, which took place in one of its colleges in 1991. Here, an undergraduate woman student was forced to strip while being ragged in the boys' hostel. The incident was widely condemned by academics and the general public alike.

However, in a response typical of its approach to such issues, the University did not take any strong action against the guilty. Neither was the investigation report made public. Vina Mazumdar was then, a member of the University Staff Academic Council. She resigned to protest the University's inability to take appropriate action on the incident. For the past two decades, the Indian women's movement has been demanding adequate mechanisms to deal with sexual harassment.

It is against this background that a recent judgement of the Indian Supreme Court assumes great importance. In *Vishakha and Others vs State of Rajasthan and Others*, the Supreme Court has in exercise of powers under Article 32 of the Constitution laid down guidelines and norms with regard to sexual harassment in workplaces which is to be treated as 'law declared', under Article 141. The judges of the Supreme Court stated, '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 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 the Constitution and the safeguards against sexual harassment implicit therein'. The guidelines draw heavily on the International Convention on Elimination of Discrimination against Women (CEDAW) 1993 signed by UN members.

The judgement, its position in the feminist discourse on sexual harassment and its implications are discussed here in a review article. The study of the Gender Study Group is also discussed which questions the projection of academic institutions as safe havens for women. Also reproduced are the Policy guidelines implemented in the Indian Institute of Technology, Delhi to deal with sexual harassment, probably the first measure of its kind in the country. The evolution of the guidelines owes a lot to the guidance and support of Lotika Sarkar who has been an active campaigner for recognising and ameliorating the menace. These texts are vital in understanding the magnitude and nature of the problem of sexual harassment in this country.

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Three Texts, One Issue

Vishaka and Others vs State of Rajasthan and Others, Judgement dated 13 August 1997. Scale, Vol. 5, 1997.

Benokraitis, Nijole, V. (ed.), *Subtle Sexism: Current Practice and Prospects for, Change*, Thousand Oaks, California: Sage Publications, 1997.

Sexual Harassment in Delhi University: A Report. Gender Study Group, Delhi, 1996.

It is rare to have an opportunity to read a book and locate it within an emergent political context; it is even more unusual to get the opportunity to review the book as an encounter with a set of other texts, quite unlike itself in form, but which are pivotal in constituting that emergent context.

Coincidentally and quite fortuitously, 1997 produced three 'texts' linked together broadly in terms of their collective location within the arena of gender relations and specifically in terms of the single issue of sexual harassment. The book is an edited volume on sexual harassment; the other texts include a judgement and a report. Even though each 'text' has its own viewpoint on the issue, addressing it from within the paradigms of its own framework, the nature of the issue and its politics vitally links the texts.

The book in question is *Subtle Sexism*, edited by Nijole Benokraitis. It contains a diverse collection of essays, ranging from the very useful introductory essay defining forms of harassment, to Murray's discussion on the exclusion of men from contexts of child care, and an insightful analysis by Ann Marshall on the sexualised imaging of women in political humour. The volume deals with the different social contexts within which sexual harassment is situated and experienced. While some of the accounts are discursive, profiling the sites of harassment, other essays try and suggest ways in which sexual harassment can be dealt with, for example, through experiential role-playing that can transform a hostile environment that makes harassment possible.

The second text is a Report entitled 'Sexual Harassment in Delhi University' released in December 1996 and widely disseminated through 1997. Collated from questionnaires and written by a group of students and teachers of the University of Delhi, the Report locates the issue within the specificities of a single context, addressing harassment simultaneously from an academic and political perspective. The Report lays bare the process by which sexual harassment is transformed from isolated 'incidents' to a powerful formation governing relations of gender, and successfully constituting an entire section of the University community as powerless in the face of molestation and harassment.

The third and most recent 'text' is the 13 August 1997 judgement on the sexual harassment of working women at the workplace. It is a document that seeks to step into a vacuum: 'in the absence of any existing legislation on the subject, the court through judicial process... (has filled) the vacuum... (Scale 1997: 453-54). In terms of the constitutional basis of the judgement, sexual harassment is seen as 'a clear violation of the rights under Articles 14, 15, and 21 of the Constitution' (ibid.: 455) and a violation of 'the victim's fundamental right to work, universally recognised as an 'inalienable right of all human beings' (ibid.: 457).

It is worth detailing the spirit of at least some of the Articles of the Constitution, which the Supreme Court drew upon in formulating this legislation. It is clear that thus, Article 15 specifically prohibits 'discrimination on the grounds of religion, race, caste, sex...' (emphasis added). Article 42 is crucial in that it addresses the workplace and the 'provision for just and humane conditions of work.' Article 51A(e) relates to the fundamental duties of citizenship and states that 'It shall be the duty of every citizen of India ... to renounce practices derogatory to the dignity of women' (Scale 1997: 455-56).

Placing harassment within the framework of human rights signals the Court's determination to redress cases of harassment where 'Each... incident results in violation of the fundamental rights of "Gender Equality" and the "Right of Life and Liberty" (Scale 1997: 455). Inadvertently perhaps, but no less importantly, the constitutional referent also acknowledges the power of sexual harassment to strike at the heart of liberty.

Linking the 'inalienable right to work' with the 'right to work with dignity' positions harassment as a cognisable offence. The significance of the legislation is that it simultaneously acknowledges and combats the power of harassment to imprint a social context with images and experiences of hostility and fear. Despite their very different locations, what brings the three texts together is their recognition of sexual harassment as an 'institution' and as a discursive formation within which the lines of power are clearly articulated. Harassment is placed centre stage to become a publicly debated issue. The judgement's address to 'the workplace' brings critical attention to the public context of harassment where the law can enter to legislate hierarchical relations at different levels. The particular significance of the legislation lies in its attention to the 'public' nature of an institution that has for so long remained 'hidden' isolating the victim and the perpetrator behind a veil of silence.

The contract of silence is meticulously outlined in the Report, where the University's method of dealing with harassment was to incarcerate the victims rather than deal with

the perpetrators. The Report damns the administration in the most stringent terms. 'The general attitude of the administration has by and large been one that either disbelieves the victim or blames her for "provoking" harassment. By treating sexual harassment as "normal" the administration has systematically legitimised the sexist violence women face in the University' (Gender Study Group 1996: 21).

All three texts have outlined what they mean by the term 'sexual harassment'. However, the definition of the term needs to be very clear if the relevant legislation is to be effective. The Court's definition is inclusive, simultaneously 'closed' and 'open' in its movement between specificity and vagueness. The definition includes everything from the specific: '...physical contact and advances; a demand or request for sexual favours; showing pornography...' to the vaguely defined unwelcome sexually determined behaviour (whether directly or by implication)...', or '...any other unwelcome physical, verbal or non-verbal conduct of sexual nature...' (Scale 1997: 459).

Such oscillation between the vague and the specific permits the legislation to encompass future cases. *Vishaka vs The State of Rajasthan* may remain a historical defining moment, but the text of the legislation and its attention move beyond the immediate context toward future contexts within which sexual harassment will be challenged and therefore be constantly defined through challenge.

The other significant aspect of the Court's attempt to define sexual harassment is that in constituting it, the text of the legislation has recognised (intentionally or otherwise) that sexual harassment is not any one act—that harassment as a form and relation is dispersed through hundreds of different acts that vacillate between the definable and the open-ended. The power of harassment lies in its diffuse nature and the fact that it is not always overt but also subtle or hidden, making it a form of power that is extremely difficult to pin down precisely because the field of interpretation is wide-open, for victims and perpetrators alike.

The question of situating harassment and its negotiated nature within the social context is particularly well addressed in the Benokraitis volume. The title of the book and introductory essay 'Subtle Sexism' convey the emphasis and the primary concern of the essays because as a category, subtle sexism while 'purposeful and often maliciously motivated' remains 'hidden' (p. 12). Most of all, '...It is of ten not noticed because most people have internalised sexist behaviour as "normal", "natural", or "acceptable"...' making it difficult to document because 'many people do not perceive it as serious or harmful...' (p. 11).

The substantive section of the article deals with types of subtle sex discrimination, outlining them in some detail in an effort to 'fix' them, an exercise that echoes the attempt of the judgement. When the two texts are placed alongside each other, the urge to define and fix sexist behaviour transforms the act of constituting sexism from an academic exercise alone into a political act of recognition, of putting a name to a category to identify it. Naming enables the category to be understood for what it is and recognised as an act and event that could in turn be acted upon through legislation.

The difficulty in constituting and making apparent a category as an act is that the category-and therefore the act-is Janus-faced. It can appear 'friendly it face value' but has 'pernicious consequences' (p. 14). Thus 'condescending chivalry' for example, '... is superficially courteous behaviour (but) is not as innocent as it appears (because) the political nature of gender rituals ... activate the protector/protected frame ... and interweave hierarchical rituals with chivalric ones...' (p. 14). Similarly, friendly harassment like jokes which at face value appear '... harmless, or even playful... (nevertheless) create discomfort, embarrassment or humiliation...' (p. 16) and have the power to create a hostile environment.

The joke as 'political event' (p. 73) as a politics that happens, through which '... hostile views are expressed and reified...' (p. 85) is the subject of Ann Marshall's powerful essay 'Whose Laughing: Hillary Rodham Clinton in Political Humour'. Joking, says Marshall, '...provides a subtle, but effective means of exerting power...' (p. 85). Sexual jokes need to be recognised as a form of sexual harassment especially '... when told in the work setting between an employer and employee...' (p. 85). The jokes and political humour directed at Hillary Rodham Clinton aim to sexualise her, transforming her from a person with an independent politics and a figure in her own rights, to one where she is constantly disfigured corporeally and politically. Marshall's brief but telling historiography of humour surrounding political women reveals the obsessive preoccupation and the anxiety about women in power where the viciousness of the sexual/political humour reveals more about the disturbing sexist hostility toward political women than it does about the women themselves.

The crucial statement made throughout the book is that sexism as a reaction and sexual harassment as an act have to be given a visible face before either can be legally addressed. Part of the silence surrounding sexual harassment lies in the inability to give acts of sexism a specific name; forcing recognition of these acts as sexist is imperative especially for those who refuse to 'see'.

The political resource of framing harassment within a discourse of rights and specifically aligning it, as the judgement does, to the 'right to work', has a special significance within a workplace like the University of Delhi. Historically, women have not been denied the 'right to work' within the University. In fact, for many women, the University was a sanctuary that permitted them a space to be different, to live a life otherwise incongruent with wider social norms and expectations. In this sense (and possibly only in this sense) the record of the institution as a workplace remains unclouded in the eyes of the law. It is therefore quite ironic that when the judgement extends the 'right to work' to include the phrase 'with dignity' that the University's record is abysmal.

The Report of the Gender Study Group demonstrates clearly and unambiguously the necessity of regulating the workplace to enable more than half the population of the University to work 'with dignity'. The Report cites countless instances of women of campus colleges being physically molested in the most violent fashion on campus. Men on two-wheeler scooters grab or hit women's breasts, or target women during festivals like Holi as objects for physical abuse and attack, presenting a terrifying history of experience within the supposedly 'safe' territory of the University.

Molestation is possible because its violent face is masked by its deceptive stage name, 'eve-teasing'. In India, sexual harassment has been disguised, made to appear harmless, by its name; the term 'teasing' conveys the apparently harmless intention of the act, successfully veiling the pernicious violence lying behind the mask. The term, *eve*, deflects attention away from the perpetrators onto the victim 'eve', who, through the process of naming, is pictured as '... a temptress who seduces or provokes men...' (Gender Study Group 1996: 5). Looking at women as 'eves' legitimises '... male aggression by blaming the victim for inviting as well as enjoying such aggressive male attention...' (ibid.). The internalisation of such behaviour as normal, 'natural' and 'acceptable' (Benokraitis 1997: 11) makes it possible for one of the 'teasers' to say '... sometimes eve-teasing can be acceptable to a girl. It may give her fun...' (Gender Study Group 1996: 4).

The judgement of 13 August 1997 must have given heart to the members of the Gender Study Group and to every member of the University. Legislative intervention can be translated from possibility to fact, assuring working women a safe workplace and also directly and unambiguously stating that the responsibility for making it safe rests with those who are in charge. Given the University's own record for redressing complaints of sexual harassment, the fact that the responsibility for redress is now thrown upon it is both heartening and problematic. In the past, the University administration has not treated sexual harassment as a problem that 'has traumatic consequences for women...'

the general attitude of the administration 1-xis by and large been one that either disbelieves the victim or blames her for provoking the harassment. By treating sexual harassment as 'normal' the administration has systematically legitimised the sexist violence women face in the University (Gender Study Group 1996).

The walls of the Post-graduate Women's Hostel on campus bear testimony both to the harassment to which the women are subject, and the University administration's usual response to the harassment. 'The balconies of the hostel wing facing one of the University roads were boarded up because men used to cruise up and down the Cavalry Lane to harass women ... the solution to the problem was seen in terms of boarding up the women hostellers rather than taking preventive measures to make the campus safe' (Gender Study Group 1996: 16). The Report as political document makes its own agenda clear: 'We believe we need to recover the history of sexual harassment in Delhi University as a testimony to the fact that women have been silenced and blamed for sexual harassment' (ibid.).

That is the heart of the matter. All three texts stand together to combat sexual harassment and uncover its violent face. There is strong refusal here: a refusal to be framed as an image in harassment's distorted mirror.

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Introduction

The initial impetus for formulating this document emerged interestingly from serious incidents of ragging in the Indian Institute of Technology (IIT), Delhi in 1993 involving sexual violence in the boys' hostel. The incidents invited wide condemnation in the media and were dealt with not only formally but informally as well. Discussions held within the IIT community at large demonstrated the highly gendered nature of ragging, replete with the power play, obscenity, sexual innuendoes and violence and bargaining usually associated with abuse against women. Indeed the IIT student counselor, Dr. Shobaga Sonpar, indicated the greater vulnerability of IIT students in general to harassment at work and study place, given the hierarchical context of laboratory and project work and the totally skewed male-female ratio of the campus community which kept levels of ignorance and fear high on the issue of sexuality and its appropriate codes.

Paradoxically therefore, unlike other academic institutions in the capital, the invitation to draw up a draft document on the matter was extended to me by the IIT authorities themselves-motivated certainly by a, large dose of administrative caution (the Anita Hill case in the USA had left institutions feeling very vulnerable financially on the issue of compensation to sexual harassment victims!). At the same time the long-term educative, preventive and deterrent function of such a policy was not lost on me. I accepted and it is at this point that Prof. Lotika Sarkar was of invaluable help on the legal and justice front. I still remember our discussion in her delightfully overcrowded study in Hauz Khas over tea and misfits (Bengali sweetmeat). It is she who encouraged me to cast all cynicism aside and to go ahead to do what I had to. Coming from a person like her, I knew she, meant it.

The policy document, which is finally approved by the Board of Governors and is now reproduced here, was of course not entirely satisfactory. Particularly the working out of informal procedure of redressal left much to be desired. Indeed my recent attempts to get a feedback on the policy from all those concerned-students, staff, faculty-more than two years after the formulation have confirmed some of my worst suspicions that:

1. Sexual harassment is present at and between all levels of the campus community.
2. But it is rarely reported or discussed even informally because of a combination of shame, fear and resignation
3. Many are aware of the policy but none has taken recourse to it in a deliberate manner. Indeed some have reacted sharply to its very existence.
4. The policy has not become an integral part of the working consciousness of the formal grievance committee of the IIT.

Nevertheless the policy exists and as I have later learnt from feminists, educationists and journalists. IIT Delhi has set a record of sorts in being the first to recognise the problem institutionally and to attempt to redress it atleast in letter if not in spirit.

Policy on Sexual Harassment

There is a growing global concern regarding incidents of sexual harassment. In keeping with it's commitment to the advancement of learning and the dissemination of

knowledge in a work and study environment free of fear, intimidation, exploitation and discrimination of any kind, the Institute has decided to formulate a policy on sexual harassment, and lay down formal, and informal, procedures for its implementation.

Staff, students and faculty are advised to take note of the Institute's strong disapproval of any and all conduct, which constitutes sexual harassment. The Institute will not tolerate the vitiation, through such conduct, of the atmosphere of goodwill and fair play on which its educational endeavour is presupposed.

It is fully prepared furthermore, to check this malpractice, both by mobilising public awareness and attitudes against it and by providing effective mechanisms for its redressal and reform within the campus community.

Disciplinary procedures, whether formal or informal, will first call attention to this policy and follow up with more direct legal action if necessary.

The foundational principles of this policy are already enshrined in section 7(1) of the Institutes of Technology Act of 1961, in Statute 13(17) of the same, (Appendix-3), laying down rules of professional conduct for employees, and in the various ordinances promulgated from time to time, regulating student life on the Campus.

However, for purposes of this policy, the definition and scope of sexual harassment needs to be spelt out more clearly:

Unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature, whether between members of the same or opposite sex, constitute sexual harassment when

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- submission to or rejection of such conduct by an individual is used as the basis for employment and/or academic decisions affecting such an individual, or

- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive campus environment, or
- any other conduct amounting to sexual harassment.

Some illustrative examples of unwelcome and offensive sexual conduct causing injury to a person or the community it large are:

- demands for sexual favours accompanied by veiled or open promises of preferential treatment or threats concerning an individual's employment or student status,
- physical and verbal aggression arising from the above,
- communicating or displaying obscene letters, posters, cartoons, or photographs,
- disparaging remarks and gestures made with prejudicial intent in the work or study places, which specifically relate to the issue of gender,
- harassment through unwelcome telephone calls or E-mail, uninvited chasing or following/blackmailing in or outside the campus.

Informal Procedures

Anyone subject to sexual harassment is urged to make it clear to the offending party that such conduct is offensive and contrary to Institute policy. If this has no effect, the matter should be pursued with appropriate person(s) indicated below:

*Staff:*Deputy Director (Admn.)/Head of the (Department/ Centre)/Registrar

Institute Engineer/Resident Engineers (for Staff in Works Department)

*Faculty:*Deputy Director Faculty/Head of the (Department/Centre)

Student:Dean of Students/House Master/Warden of Hostel/Head of the Department/(or of the Centre)/House Secy. of the Hostel.

To be taken serious note of, the complaint must be prompt and unpremeditated. The complainant's identity need not be disclosed. Further, the complainant need not be cross-examined before the accused. The Institute authority in turn must take formal note of the complaint while treating it with the strictest confidence and open-mindedness. Efforts should be made to resolve the matter through personal discussion. Authorities must also take note of fake cases that may be reported for character assassination. A record must be kept and a file maintained in such cases.

Formal Procedure

If the informal, reformative procedures adopted prove inadequate, an individual can pursue the matter through more established grievance procedures of the Institute which are already in existence for staff, faculty and students.

Formal procedures can be used either, instead of, or, in conjunction with informal procedures, though as a first step, tire complainant is strongly advised to consult with the person(s) named above.