

ADDRESSING SEXUAL HARASSMENT IN EDUCATIONAL INSTITUTIONS

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I am happy that the University of Mumbai has convened this national seminar on “Addressing Sexual Harassment in Educational Institutions.” The Women Development Cell and the Ramniranjan Jhunjhunwala College must be congratulated for this joint effort to inform and sensitise the teaching faculty and the students to this intractable problem which seriously affects young women who aspire for higher education and better employment opportunities.

Elimination of Gender inequality is one of the basic planks of any Human Rights Platform. Right from 1979 when CEDAW gave a concrete shape to women's aspiration for equality through non-discrimination, a focus area for women's empowerment is through education and employment. Article 10 of CEDAW deals with equality in education. It provides that State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular, to ensure, on the basis of equality of men and women the same conditions for career and vocational guidance, for access to studies of all categories, in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and nontechnical education, as well as in all types of vocational training. There are other details relating to education equality which are spelt out in article 10.

Article 11 deals with equality in the field of employment. It provides that the State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights, in particular: the right

to the same employment opportunities, including the application of the same criteria for selection in matters of employment and the right to protection of health and the right to safety in working conditions.

The right to education is closely linked with the right to employment. Hence these are two vital rights for women's empowerment. Education and economic independence are inextricably linked for women to attain equality of status with men-not just economically but also socially. Of course equality is multifaceted and not mathematical. In the words of John Dewey "Equality does not signify that kind of mathematical or physical equivalence in virtue of which any one element may be substituted for another. It denotes effective regard for whatever is distinctive and unique in each, irrespective of physical and psychological inequalities." Yet it is fairly obvious that a woman who is economically dependent, is ignorant and not educated, or is not qualified to work outside the home will have, by and large, a problem in being considered as empowered or equal to man.

It is therefore not surprising that a major hurdle for women in the field of employment and education is the same, namely sexual harassment. It is a form of violence against women. While sexual harassment in the context of employment has received much attention, its impact on the right to education has not received as much attention. But its impact on the right to education is equally devastating. In 1992 the CEDAW Committee issued general recommendation 19 which addresses violence against women and sexual harassment in employment. It notes that equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace. The same applies to young women and teachers in educational institutions who are subjected to sexual harassment. It is a serious form of violence which can leave a woman traumatized and affected for life. General recommendation 19 recognizes both quid pro quo sexual harassment and hostile work environment sexual harassment, as forms of

discrimination. It also describes what constitutes sexual harassment. Sexual harassment includes “such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography, and sexual demands - whether by words or actions.” This conduct becomes discriminatory when a woman has reasonable grounds to believe that her objection would result in adverse employment action or if it creates a hostile working environment. In the context of educational institutions, such conduct is aimed at making it clear to the woman who objects that it will have adverse consequences on her examination results or, in the case of a woman teacher, on her future prospects in the school, college or university.

One of the major problems in dealing with sexual harassment is that often such harassment is not recognized as offensive behaviour which can cause trauma and distress to the victim. Let me recount some of the myths surrounding the sexual harassment as tabulated by an NGO. The first myth is that sexual harassment is rare. In fact sexual harassment is extremely widespread. It touches the lives of 40% to 60% of working women, and similar proportions of female students in colleges and universities. In fact once a woman activist jokingly said, “sexual harassment is like God, it is everywhere.” The second myth is that the seriousness of sexual harassment has been exaggerated; most so-called harassment is actually trivial and harmless flirtation. In fact, sexual harassment can be devastating. Studies indicate that most harassment has nothing to do with flirtation or sincere sexual or social interest. Rather it is offensive, often frightening and insulting to women. Women are often forced to leave school or jobs to avoid harassment; many experience serious psychological and health-related problems. There is also a common belief that many women make up and report stories of sexual harassment to get back at their employers or others who have angered them. It is often said that women who are given low grades by their teachers, for example, allege sexual harassment to get back at their teachers. Research shows that only

very few complaints are false. Women rarely file complaints even when they are justified in doing so. In fact sexual harassment is about power, a tactic to dominate by embarrassment or degradation. It is certainly not an expression of healthy human relationships.

Several United Nations treaties prior to CEDAW including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights have pronounced against sexual harassment and gender discrimination. At the World Conference on Human Rights in Vienna in 1993, the Vienna Declaration recognized women's rights as human rights and recognised full and equal participation of women in all walks of life and at all levels. It condemned gender-based violence and all forms of sexual harassment and exploitation. I need not elaborate on various regional treaties on this subject.

In our country the Constitution provides & enjoins equal opportunities for both men and women. Articles 14, 15 and 21 of the Constitution provide for gender equality, non-discrimination in employment under the state and the right to a life with dignity. Article 19 (1)(g) secures freedom to practice any profession or to carry on any occupation, trade or business. The right to education is now a fundamental right. Many judgements of the Supreme Court interpreting these articles have emphasised the right to lead a life with dignity. These rights, to be enjoyed require a safe environment in which women can function. In reality women are often subjected to severe discrimination. As a result women who are victims of sexual harassment either ignore sexual harassment, hoping that it would be a onetime incident, or avoid the harasser if they can. There are very few women who make a formal protest against the harasser in the organisation. They do not report such behaviour for fear of losing employment or for fear of failing academically due to threats from the harasser. In many cases they feel embarrassed, helpless and powerless.

Often women do not complain as they do not trust the system or feel that their reporting will not change the system anyway.

There is no law dealing with sexual harassment. But there are existing laws which contain provisions under which sexual harassment can be challenged. The Indian Penal Code, for example, has no specific provision dealing with sexual harassment, but it has section 354 (outraging modesty of a woman), section 375 dealing with Rape section 509 dealing with act intended to insult the modesty of a woman etc. There are Acts such as Indecent Representation of Women (Prohibition) Act 1987 or the Delhi Prohibition of Eve Teasing Act 1988.

A famous case in this context was that of Rupan Deol Bajaj vs K.P.S. Gill. Rupan, an IAS officer was slapped on her posterior at a dinner party by the then Chief of police K.P.S. Gill. After rounds of litigation the Supreme Court in 1998 fined Gill Rs. 2 lakhs. In another case of N Radhabai vs D. Ramchandran, Minister of State of Social Welfare, when Radhabai protested against his abuse of girls in State institutions, he attempted to molest her and dismissed her. Supreme Court in 1995 awarded her pay and perks.

About 15000 sexual harassment cases are brought before the US Equal Employment Opportunity Commission each year. In Europe its prevalence is estimated to be among 40% to 50% of women employees.

It was in this background that the Supreme Court in August 1997 pronounced judgement in the case of Vishaka versus State of Rajasthan. The Court recognised sexual harassment at the work place as a human rights violation and it laid down guidelines for the effective enforcement of basic human right of gender equality through prevention, protection and punishment of sexual harassment. It directed the State, public sector & other institutions to set up a complaint mechanism. The court held that in the absence of any law in

the field, international treaties can be relied upon to bridge the gap and protect human rights of people in India.

One of the most difficult tasks before the court was to define sexual harassment. With the help of experts appearing before the court, it has defined sexual harassment to include (a) physical contact and advances (b) a demand or request for sexual favours, (c) sexually coloured remarks, (d) showing pornography and (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. The court further stated that an act will be considered as sexual harassment if the victim apprehends in relation to her employment or work, whether she is drawing salary, or honorarium or is working voluntarily, whether in government, public or private enterprise, such conduct can be humiliating and may constitute a health and safety problems; or if she feels that her objection would disadvantage her in connection with her work or create a hostile working environment or result in adverse consequences

However the reason why the judgement has made some impact on the problem is because it lays down specific preventive and disciplinary or punitive steps which should be taken. It recommended as a measure for prevention, that there should be appropriate publication and circulation of the fact that sexual harassment is prohibited at the workplace. It has recommended that the rules and regulations of government and public sector bodies relating to conduct and discipline must prohibit sexual harassment and provide appropriate penalties against the offender. It has recommended that appropriate work conditions should be provided for women ensuring that women do not feel disadvantaged in connection with their employment

The complaint mechanism however is a very important mechanism set up under the judgment and it requires time bound disposal of complaints by the complaints committee. You are all familiar with the composition of such a committee, which should be headed by a woman and where not less than half

the members should be women. It also requires a third party NGO to be a member of the complaints committee.

The Vishaka judgment is followed by the Bangladesh High Court in 2009 in the case of Bangladesh National Women Lawyers Association vs. Government of Bangladesh. The judgment cites several cases of sexual harassment of women students in the universities and of women teachers, including character assassination of a women Professor. Its guidelines expressly cover educational institutions and employees.

I had the interesting and somewhat unique experience of being a judge who laid down the guidelines and who later was given the task of implementing these guidelines when I was a member of the National Human Rights Commission. We found in the Commission that complaints committees were not set up at that time by most of the government departments and we had to take steps to ensure that such committees were set up in government and public sector undertakings. It took some effort before the service rules were amended & the inquiry procedure was simplified. The second most revealing experience for us was learning about the extent of sexual harassment prevalent in universities and educational institutions. I consider this as an even more serious violation of women's right to equality. Education is the foundation of women's empowerment and violence against women in this area can cause severe damage to a woman's right to equality. Considering the importance of the education sector where a large number of women are employed or are present as students, and with a view to have a proper & effective complaint mechanism in various educational institutions and establishments, both at the college and school levels to prevent or deal with complaints regarding sexual harassment, NHRC in 2001 discussed the issues relating to sexual harassment of women in schools, colleges and educational institutions with the Vice Chancellors of some Universities, University Grants Commission, the Secretaries of Education and Ministry of Human Resource Development, Government of India.

I'm happy that the Mumbai University took the lead in establishing Woman Development Cell. It is important that the teachers, staff and officials of the University are sensitized to the issue of sexual harassment in the University. It is also good to learn that complaints committees are set up to act at different levels in the University to deal with complaints of sexual harassment. A little training to the committee members can be imparted from time to time as and when required so that they can perform their job more effectively. The committee should also be able to arouse confidence amongst the victims that they can approach the committee for redressal of the problems and that the committee will be able to understand their problem and the harassment they are subjected to, and the complainant will not be punished for making the complaint. I hope this national seminar will highlight the problems faced by all concerned in this sensitive area, and will generate a better understanding of the issues involved and the remedies which can be effective.

Thank you.