

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

**- By Adv (Dr.) Santosh A.
Shah**

**NATURE HAS GIVEN WOMEN SO MUCH
POWER THAT THE LAW HAS GIVEN
VERY LITTLE !**

NATURE HAS GIVEN WOMEN SO MUCH POWER THAT THE LAW HAS GIVEN VERY LITTLE

- The United Nation's report relating to women –
- 1/2 of the population of the world
 - 2/3 of working hours
 - 1/10th of the world's income
 - 1/100 of the world's property
 - Socio economic problem- Laws are felt necessities of time (Justice Holmes)

INTERNATIONAL COVENANTS

1. Universal declaration of Human Rights, 1948
 - Equal rights of Men and Women
 - Marriage shall be entered into only with the free and full consent of the intending spouses
 - Childhood, Motherhood and Widowhood are entitled to special care and assistance.

2. International covenant on elimination of all forms of discrimination against Women, 1979

- 1975 declared by the United Nations as International Women's year.
- India is a signatory to all the aforesaid major international covenants, instruments and conventions.

Indian Scenario

- Justice Krishna Iyer- Gender justice is lost cause.
- Women's Exploitation is a reality and gender justice is a fragile myth.

Constitution of India

- Right to Equality- Article 14
- Right to Positive Discrimination
- Common Civil Code

Matrimonial Law

Marriage

Conditions for a valid Hindu Marriage –

- Saptpadi
- Monogamy
- Sound Mind
- Minimum Age of 18 of a Girl and 21 for the Boy.
- The parties are not within close relationship

Grounds for Divorce

- ▶ Remarriage by husband
- ▶ Husband guilty of rape sodomy or bestiality
- ▶ Adultery
- ▶ Cruelty
- ▶ Desertion for 2 years
- ▶ Conversion to another religion
- ▶ Unsoundness of mind
- ▶ Virulent and incurable leprosy.
- ▶ Venereal disease
- ▶ Presumption of death
- ▶ Divorce by mutual consent

- ▶ Rights to Maintenance and Alimony
- ▶ Right to custody of children
 - below 5 years – Mother
 - After that welfare of the child
 - Protection against Domestic Violence by Domestic Violence Act, 2005.

Right to property

- ▶ Now part of Hindu coparcnery
- ▶ Share in husband's and father's self acquired property.

WOMEN AND CRIMINAL LAW

- 1) Offences Affecting Human Body
 - Dowry Death
 - Causing Miscarriage
 - Outraging the Modesty of a Woman
 - Kidnapping and abduction
 - Sexual offences against women

2) Offences relating to marriage

- Cohabitation by deceitful means
- Bigamy
- Adultery
- Enticing or taking away a married woman
- Cruelty by husband or his relatives for dowry
- Insulting the Modesty of a Woman

LABOUR AND INDUSTRIAL LAWS AND WOMEN

1. Equal Remuneration for Men and Women
2. Prohibition of Discrimination in Recruitment
3. Maternity Benefits
4. Provisions for Welfare and Safety of Women in Industrial Areas.

SEX DETERMINATION TEST AND FEMALE FETICIDE

- Misuse of Sex Determination Test
- Non Implementation by Government – Supreme Court Directives

Sexual harassment of women at work places

Vishkha V/s State of Rajasthan

1996 – Supreme Court of India – Sexual abuse of Women at work places.

Human rights – National Commission for Women Act, 1990.

AIR 1997 S.C. 3011

Vishka and others, Petitioners Vs State of Rajasthan and others, Respondents.

Petition under Arts, 14,19 and 21.

The petition was brought as a class action by certain social activists and NGO's to prevent sexual harassment of working women in all work places.

Sexual harassment includes such unwelcome sexually determined behavior whether directly or by implication as

- a) Physical contacts 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 applicable to public as well as private enterprises.

Complaints Committee – headed by a woman and not less than half of its members should be women. Involve an NGO familiar with the issue.



► Criminal Law Amendment Act, 2013



Sexual Harassment

Active

Passive

ACTIVE SEXUAL HARASSMENT

Verbal/Written

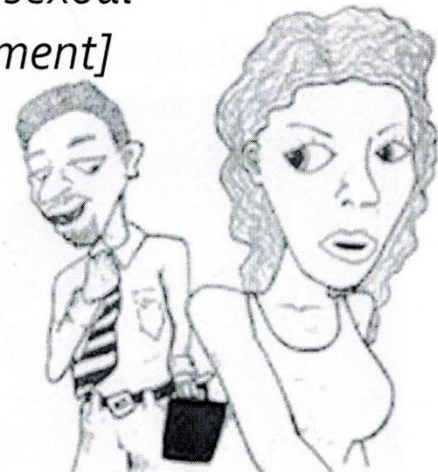
- Unwelcome comments on clothing, person's body, sexual jokes, requesting sexual favors, sexual innuendoes, threats, sending emails or SMSs of a sexual nature, showing pornography

Physical

- Inappropriate touching of a person or clothing, Assault, impeding or blocking movement, unwelcome kissing, hugging, stroking

PASSIVE SEXUAL HARASSMENT

- **Non Verbal** [*looking up and down person's body, derogatory gestures, following*]
- **Visual** [*Posters, drawings, pictures, screensavers, emails, SMSs of sexual nature*]
- **Gender based** [*includes sexual orientation based harassment*]
- **Quid Pro Quo** [*professional favors in exchange of sexual favors*]



LAW ON SEXUAL HARASSMENT IN INDIA

The
Constitution

Vishaka
V/s
State of
Rajasthan

Indian
Penal Code,
1860

The Sexual Harassment of Women at
Workplace (Prevention, Prohibition &
Redressal) Act, 2013

The Vishaka Judgement

The Hon'ble Supreme Court for the first time acknowledged that -

- Sexual Harassment is a Human Rights violation
- Sexual Harassment is a violation of Fundamental Rights

(Articles 14 & 15 : Right to Equality

Article 21 : Right to life - Right to live with dignity

Article 19(1) : Right to practice any profession/trade

- There is a need for guidelines in the absence of laws

COMPLAINTS COMMITTEE UNDER VISHAKA JUDGEMENT...

To be headed by a woman

Not less than half of its members shall be women

To involve 3rd party, NGO or body familiar with sexual harassment matters

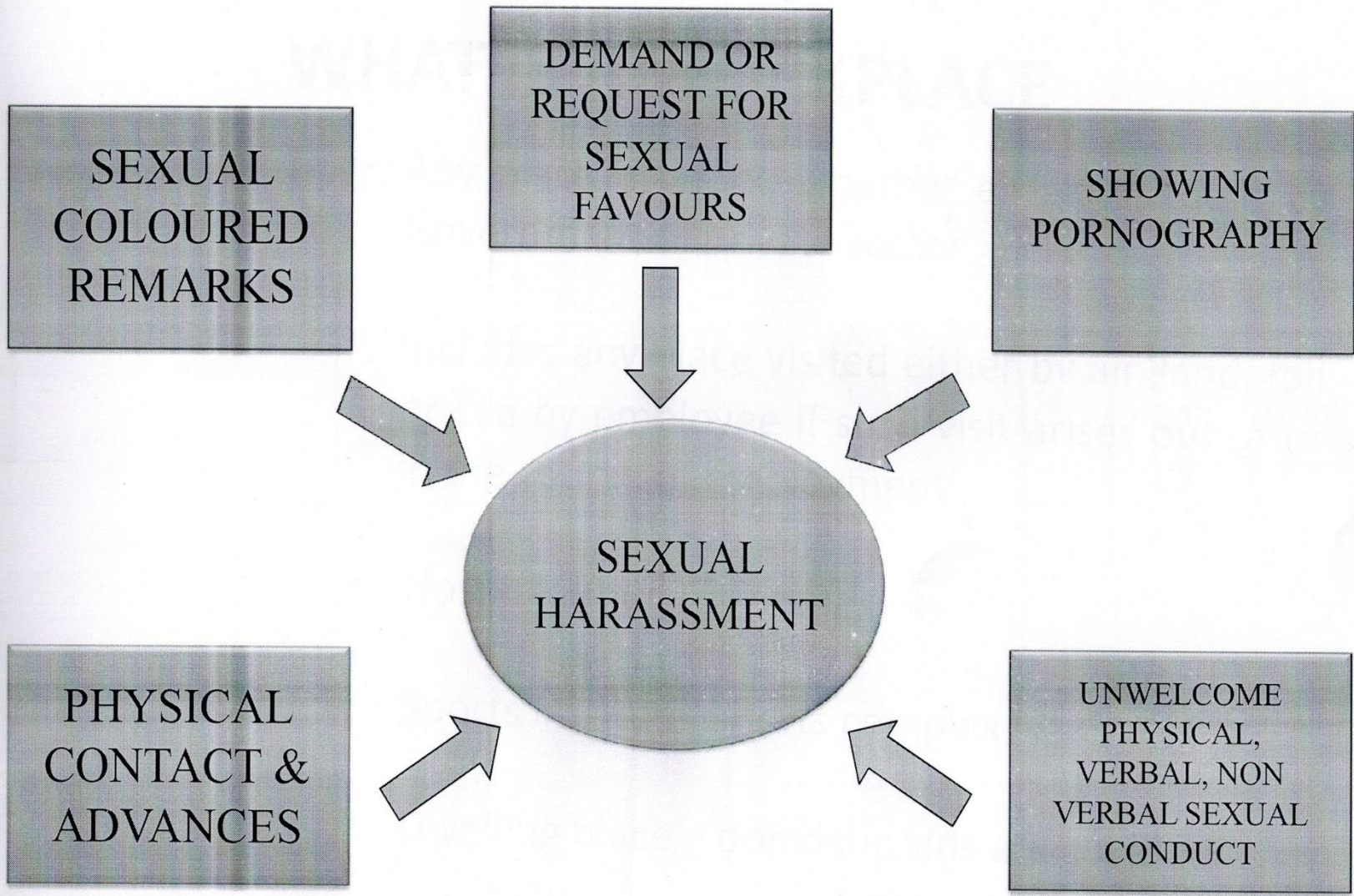
Must make annual reports to the government dept.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

- Passed by Parliament in 2013
- Comprehensive law
- Creates complaint mechanisms
- prescribes punishment for sexual harassment
- Punishes false complaints of harassment



DEFINITION OF SEXUAL HARASSMENT UNDER NEW ACT

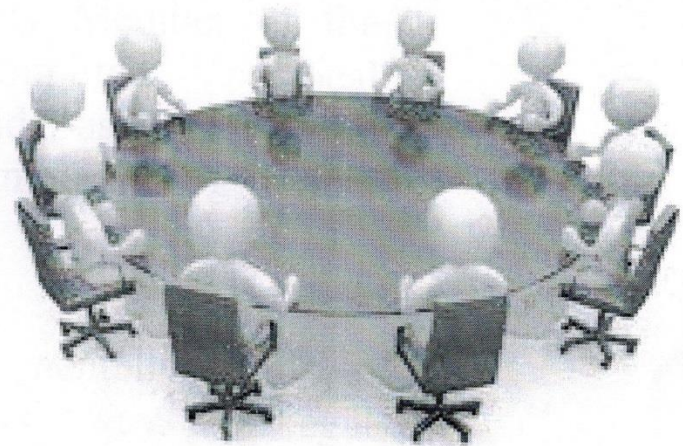


INTERNAL COMPLAINS COMMITTEE AND
LOCAL COMPLAINTS COMMITTEE

- 'Internal Complaints Committee' ("ICC") has to be set up at each office or branch, of an organization employing at least 10 employees.

- Members of ICC - senior level working women employed in company, two members from employees, one member from NGO or person familiar with issues relating to sexual harassment.

- The Government to set up a 'Local Complaints Committees' ("LCC") at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted.



Complaint

- To be in writing
- The Presiding Officer / any Member of the Internal Complaints Committee / Local Complaint Committee to render assistance to the woman to make the complaint in writing if she's unable
- If the woman is physically / mentally incapable of complaining, or has passed away, then legal heir can complain on her behalf

Option of Conciliation

- If the woman requests it, the Internal / Local Complaints Committee can try to settle the matter between her and respondent through conciliation
- Conciliation possible only before start of inquiry
- If settlement is arrived at, no inquiry can then take place on the complaint

Protections during Inquiry

Internal / Local Complaints committee can recommend to the employer to:

- Transfer the complainant female employee to any other workplace; or
- Grant leave to her, such leave to be in addition to leave she is otherwise entitled to if case is proved; or
- Grant other relief to be prescribed by Government

Dealing with complaints

- Procedure of conducting inquiry yet to be prescribed by the Central Government
- As of now, existing service rules for conducting enquiry can be followed
- The Internal / Local complaints committee can
 - *Summon witnesses, enforce their attendance and examine them on oath*
 - *Require discovery and production of documents*

SECRETS TO BE MAINTAINED

Identity of aggrieved woman,
delinquent person & witnesses

Information on conciliation &
inquiry proceedings

Recommendations of Internal
& Local Committees

Action taken by employer

TOP SECRET



Decision of Complaints Committee

If complaint is proved;

- Recommendation to the employer to treat harassment as a misconduct & take action under service rules
- Recommendation to the employer to deduct adequate amount from salary harassing employee and pay to harassed female as compensation

If complaint is not proved

- Recommendation to employer than no action be taken

NON COMPLIANCE OF ACT BY EMPLOYER

- Fine of up to Rs. 50,000/- for first offence to employer
- Twice the punishment given for first punishment, on subsequent offence
- Cancellation of license / withdrawal / non-renewal of approval or registration of the employer for carrying on his business or activity



DUTIES OF EMPLOYER

- Safe Work environment.
- Display conspicuously the order constituting Internal Committee.
- Regular Workshops and training programs for sensitizing employees regarding the Sexual Harassment of Women at Workplace Act.
- Provide facilities to Internal /Local Committee for dealing with complaint/inquiry.
- Assist in securing attendance of respondent & witnesses before the Committee

A FEW QUESTIONS

1. At an office party, Mr. A. who is a good and friendly colleague to Ms. B, another employee, approaches her in an inebriated condition, grabs her arm and asks her for a dance. Ms. B objects strongly at which Mr. A retreats. Next day Mr. A apologizes to Ms. B for his conduct at the party. Would this act amount to sexual harassment ?

- Yes
- No
- Maybe

2. At a Company Sports Meet, Mr. A. an employee, while running suffers a muscular cramp in one of his legs. He is immediately taken to the resting area where another employee, Ms. B approaches his and says ;

“ Let my soft hands soothe your pain. Come, let me massage you. I do this a lot.”

Mr. A, feeling extremely uncomfortable refuses Ms. B's offer, however, Ms. B persists for very long. Would this act amount to Sexual Harassment?

- Yes
- No
- May be

- ▶ Owing to poor performance of Ms. A, her boss Mr. B refuses to approve her confirmation. That evening, Ms. A barges into Mr. B's office and tell him threateningly that if Mr. B does not approve Ms. A's confirmation then and there, she would run outside and accuse him of having committing sexual harassment against her. What should Mr. B do in such an eventuality?
 - Profusely apologies and approve her confirmation
 - Tell her to do whatever she liked, nobody would believe her
 - Tell her that her conduct amounts to sexual harassment and that if she didn't stop he would go to the company Sexual Harassment Committee.
 - Immediately call the HR Department to come and intervene.

3. Mr. A and Mr. B share a hobby. Every evening, after work both the employees get together at the latter's cabin and watch pornographic videos for hours. They often forget to shut the door. One evening, Ms. C was passing by Mr. B's cabin when she saw what Mr. A and Mr. B were doing. When she objected, both the employees refused to stop and instead, invited her to come and watch the videos with them. Would this act amount to Sexual Harassment.

- Yes
- No
- Maybe

- ▶ Mr. A and Ms B are two employees in an IT Company who are in a relationship. They suffer a bad break up. Every body in the office knows about this. Now, both Mr. A and Ms. B are silently afraid that the other may accuse them of sexual harassment. What may be done in such a situation?
- Both of them should mutually agree not to bring such allegations against each other.
- Both of them should approach the HR Dept and inform the same that things are in control and that work would not be affected and false allegations will not be brought.
- Mr. A should threaten Ms. B not to bring allegations against him.
- Ms. B should threaten Mr. A not to bring allegations against her.

6. Which of the following statements may be considered sexual harassment?

- “Hey there Neha, good job with the presentation, you totally rocked. And yes, nice Sari!”
- Excuse me, Neha, just wanted to tell you, you dressed great for the presentation!”
- “Oh Neha, that Sari you had on tonight, I had a tough time paying attention!”
- “Neha! Stop dressing like that presentations from now, on would you?”

7. Which of the following actions may be considered sexual harassment ?

- Boss pats female employee on the shoulder to commend her for good work done
- Boss keeps calling up female employee late at night to discuss work.
- Boss tells female employee he could give her a promotion if she went out for dinner with him
- Boss keeps accidentally bumping into female employee around corners and in corridors.

8. Ms. A, the CEO of a company holds a meeting where executives of other companies are invited. Mr. B is one such executive. During the meeting, Ms. A continually directs suggestive statements and jokes at Mr. B and on a few occasions, touches Mr. B inappropriately. Mr. B expresses his objection at such behaviour to Mrs. A in private, yet she does not stop. What should Mr. B do in such a situation?

- Insult Ms. A loudly in front of others
- Withstand Ms. A's subtle propositions silently and hope to leave quickly after the meeting is over
- Report Ms. A's behavior to A's company Sexual Harassment Committee immediately.
- Report the incident to the Police

- ▶ 10. What is the first thing you should do when you feel you've been sexually harassed?
- Run around office screaming " Sexual Harassment?"
 - Express objection clearly and immediately
 - Assault the abuser physically.
 - Threaten to harass him back

- ▶ 11. What is the best way of making a complaint of sexual harassment ?
- Send an SMS to the HR executive
 - Post it on you HR Executive's Facebook wall
 - In the form of a letter clearly stating all details, sent directly to the H.R. executive/ Complaints Committee member
 - Sending word through another colleague to the HR executive

- 12. Which of the following is one of the main protections a victim must be given after she has reported sexual harassment?
- Police protection to victim
 - Martial arts training to victim
 - 24 hour surveillance cameras in office and at victim's home
 - Transfer of victim and/ or the accused person to any other workplace

- ▶ 13. Which among the following are duties of an employer to keep sexual harassment at office at bay?
- Making that person's accused of sexual harassment are immediately fired
 - Holding regular workshops and training programs for sensitizing people about sexual harassment
 - Starting an Internal Complaints Committee at office
 - Sending out a circular to all employees on appropriate office dressing.

14. Mr. A is the General Manager of a reputed publishing house and Ms. B is his Deputy. Mr. A refuses to rely on Ms. B for official matters and does not give her any assignment of responsibility. When confronted, he replied, “Women cannot handle assignments that require brains, we men are best suited for such responsibilities ...” Would this conduct of Mr. Amount to sexual harassment?

- Yes
- No
- Maybe

▶ 15. Mr. A is a Manager at a reputed accounting firm. He is homosexual. Mr. A faces frequent ridicule and is made the subject of lewd jokes and statements. Even though he is hardworking and intelligent, his superiors often deny him opportunities and insult him openly. Would this conduct of Mr. A's peers and seniors be considered sexual harassment?

- Yes
- No
- Maybe

Instances from Education

- ▶ I am due for a promotion. The librarian has to write my confidential report. Yesterday he came over to me and said, 'you must come out with me so that just the two of us can be together
- ▶ My PhD supervisor says that if I spend more time with him alone in the evenings, he will allow me to submit my dissertation soon.
- ▶ Some students from my village helped me when I first joined the university. They now want to spend time with me alone and visit me at odd times even though I have said that I do not like it

- ▶ Male students with motorbikes offer me lifts to move around in the campus and then expect something in return which makes me very uncomfortable
- ▶ The male staff in my office crack sexual jokes about women and use abusive language. Some of them watch pornography in the office. I feel very uncomfortable

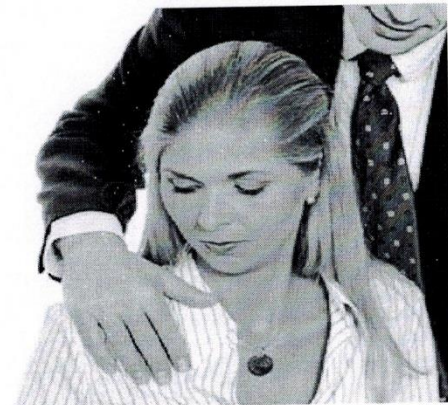
- ▶ I have been receiving obscene sms messages from someone who clearly knows my whereabouts.
- ▶ Street lighting on the way back to the hostel from the library is poor. Some men hang around and try to grab at us when we walk back at night
- ▶ In the art class the teacher makes obscene and embarrassing comments on women students and their work

- ▶ My class mate is a friend. He has been following me around wherever I go and is now saying that because I haven't begun a relationship with him he is getting very depressed and will harm himself. I feel victimised and afraid. How can I stop this behaviour?

AN INSTANCE...

A is a male employee and B is a female employee of a reputed IT company. A and B work in the same team and are required to work closely given the nature of their work. A, frequently during work and otherwise, touches B inappropriately and suggestively. In spite of B's objection and protests, A continues to touch B causing the latter discomfort and distress. A, in his defense says that these gestures of his are only friendly and not unprofessional at all.

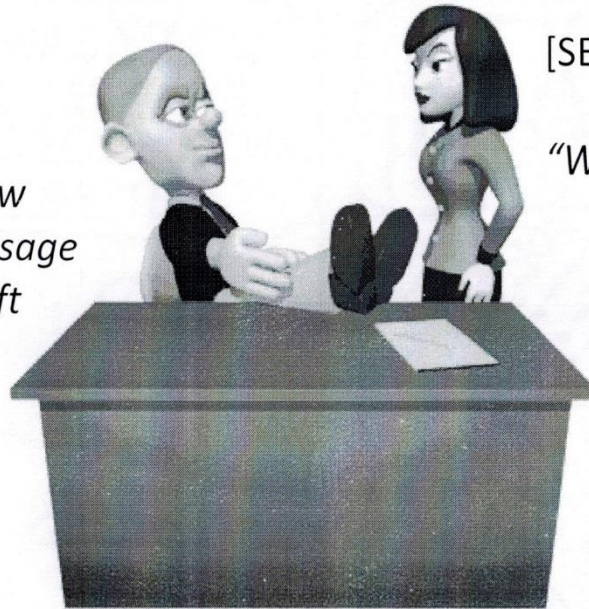
Is this sexual harassment?



ANOTHER INSTANCE

[BOSS]

"Daisy, I am stressed...how about a massage with your soft hands?"



[SECRETARY]

"What? No!"

Is this sexual harassment?

...or IS THIS SEXUAL HARASSMENT ??



WHAT TO DO WHEN YOU FEEL YOU'VE BEEN SEXUALLY HARASSED



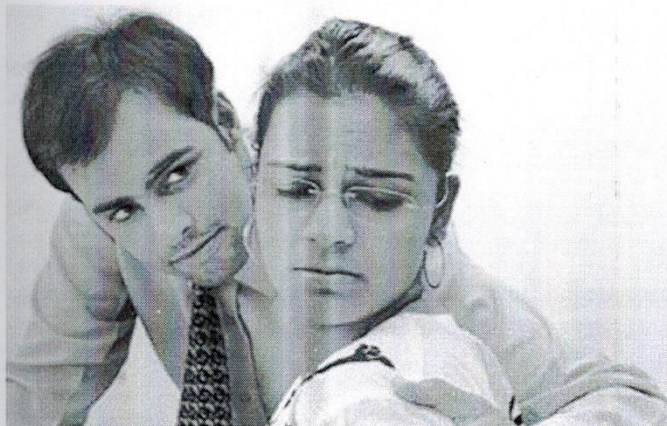
EXPRESSLY OBJECT TO IT!

Do not encourage sending of offending SMSs, Chats or messages

Inform offender that his SMSs/Chats/Messages are offending

Immediately report incident to Manager or HR Dept., or Complaints Committee

Take trusted colleagues into confidence



► What institutional arrangements do you currently have to address issues related to the safety of women on campus, whether students or employees?

1. CCTV/Cameras

2. Personal discussion with Students & Staff

3. Female Security Guard

4. Vigilance committee formed

5. Women's grievance Redressal committees

6. Patrolling squad in and around campus

- ▶ **7.** Value education to students
- 8.** Lectures on gender sensitive issues
- 9.** Women helpline numbers displayed at various places in campus
- 10.** Suggestion box for girl students to place their suggestions
- 11.** Separate common room for girls
- 12.** Orientation programmes at the beginning of the session
- 20. Any other**



The only devils in this world are those running around in our Hearts, And that's where all battles should be fought.

Mahatma Gandhi

The Gujarat High Court Mediation Centre

Winston Churchill:

- ▶ Courage is what it takes to stand up and speak. Courage is also what it takes to sit down and listen.

Thank You

