CHAPTER 2

HISTORICAL BACKGROUND, CAUSES AND CONSEQUENCES OF SEXUAL HARASSMENT AT WORKPLACE

"The history of man kind is a history of repeated injuries and usurpations on the part of man towards woman, having indirect object, the establishment of tyranny over her"

- Women's rights conventions; manifesto Seneca falls 1848.

2.1 HISTORICAL PERSPECTIVE ON THE STATUS OF WOMEN

Women, who since ancient ages, were respected and worshipped as incarnation of “Sakti,” are today victimized by crimes from “Womb to Tomb”. Several enactments have been passed in India and at international level to bring about changes in the status of women and to eradicate crimes against women, but we have not yet achieved the desired result. The offences and atrocities against women far from being controlled have shown an increasing trend. In fact, nature has helped man to dominate over the weaker sex in all vistas of society. Besides biological factors, social, psychological and political factors are also responsible for the denigration of women.
2.1.1 Women in Vedic Period

It is observed in the Vedic period that, women enjoyed equal status with men and independence in action.

Not only they had the place of honor but also they were entitled to participate freely in social activities. They were allowed to pursue the academic attainments and shared the family life with full vigor\(^1\). They were free to select their conjugal partner and exercised free will in entering into matrimonial bondage as Svayamvar was in practice. Hence, the parent’s influence was not unfairly exercised against the wishes of the wards in choosing their life partner\(^2\).

The family life was also conducted according to Vedic *Dharma* and its injunctions. There was no intention of assigning the women folk a secondary role in pre-marital and post-marital life.

The status of women in early Vedic society is a matter of some debate. While there has been a consistent tendency to idealize their position, it is likely that reality may have been more complex. That women played a certain part in the productive process is evident. We have references to women seers of Vedic hymns, which would indicate some access to ritual and spiritual traditions. Besides, certain practices such as child marriages appear to be offspring of beginning of Christian era, seems to have been unknown in early Vedic society.

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1 Dr.Lila Samatani, "Status of Women in Vedic Times" (1957) 88.  
2 Mackdonell and Keith, "Vedic Index" Vol.1.
The Vedic Period particularly the Rig-Vedic period generally characterized by freedom and independence of woman. In this period there were no restrictions placed on woman and her social behaviour. As a person, She enjoyed respect and recognition. As a member of the society, she did not experience many of social restrictions on her role and relations. She moved freely within the society.

By the time of Atharvana Veda the higher status and freedom of women began to be curtailed. Prayers to avoid the birth of a daughter began. A son only could offer funeral Ceremonies to his father. The parents used to arrange the marriage of the daughter without taking her consent. But overall, during the period of Vedas, the woman enjoyed freedom and rights on par with a male.

2.1.2 Women in Sutra Period

Gouthama, Boudhayana, Apasthamba and Koutilya are the important exponents of this period. Gouthama recommended child marriages and prescribed specific wifely duties to women. According to Gouthama, woman could also have separate property of her own ‘Niyoga’ was also accepted.

Boudhayana states that women were not fit for independence and freedom. He rejected property inheritance rights to women. Apasthamba was the first to advocate greater conservatism and restriction of freedom of woman. He objects Niyoga and stresses on “Pativratya”. And Koutilya restricted free movement of
woman in society. Divorce and re-marriage, were still allowed but discouraged by Kautilya.

Thus, we see a descending trend in woman’s status in the Sutra period. But still she enjoyed good status.

2.1.3 Women in Epic Period

The portions of the Mahabharata present an account of women, who rose to great heights in every field, such as in domestic, in the service of humanity and in the emancipation of soul. She was denied vedic education and was married when she had no idea of matrimony. At home she entirely depended on men folk. She was no more a real partner in her husband’s mandate and spiritual efforts but she was his mere devotee and follower.

Whereas in the epics, the birth of a daughter was considered an unhappy event. Had it been so the custom of adopting daughters would not have existed at all. According to older traditions cited in the epics, several accounts of old maids are found. When a suitable husband was not found for sulabha, she was initiated in the religion of emancipation.

The forms of marriages as described in the epics were ways of procuring a wife. The kernel of the epic stories does not indicate restriction in marriages as far
as race distinct from varna (caste) is concerned. Gradually social conditions were changed. Inter caste marriages although allowed at first were being discouraged.

Woman had a dual position during the epic period. She was praised on one side and abused on the other. She was described as impure unbelievable, devious and fickle minded.

2.1.4 Women in Hindu Civilization

The best way to begin our enquiry is to study the condition of women during their childhood and to find out the general arrangement made about their training and education.

The history of civilization can be taken back to pre-historic times. In ancient times in all patriarchal societies the birth of a girl was generally an unwelcome event. Almost everywhere the son was valued more than the daughter. He was considered as a permanent economic asset of the family.

The reason why the daughters were relatively unpopular in ancient India during the early centuries is not difficult to understand. Child marriage came into vogue from about the beginning of the Christian era, and there after both levirate and widow remarriages were prohibited. Inter caste marriages began to be disapproved by society. Remarriage of woman was no longer possible, parents had to bear heart-rending pain of seeing their daughter wasting herself in an
interminable widowhood. The practice of the Sati custom began growing from about the 5th century AD.

2.1.5 Women in Medieval Period

The period from the invasion of India by Mohammed of Ghori to the establishment of British authority in Bengal in the 2nd half of the 15th century the situation underwent a change. The general revival of Hindu life, which the period witnessed, also led to a considerable improvement in the status of women.

2.1.6 Women in Mughal Period

Muslims believed that woman’s place was home. Even the Mughal queen and the activities of women in political, cultural and social fields were to be kept in purdah. It was observed so strictly.

Slave girls were employed in plenty. Limited polygamy was the practice, four wives being allowed by the prophet. Concubines and slave girls were also allowed. A Muslim woman could not marry a person outside her religion. A woman could also claim her own marriage settlement and a “deferred dower” if she got divorced. But certainly the Muslim woman was freer than the Hindu wife who could never divorce her husband or even remarry if he dies, in case she escaped from the flames. The law of succession allowed a woman to be a heir like
man and a daughter had a share of her father's property. Thus a woman owned her property with her own rights.

### 2.1.7 Women and Contemporary Politics

In both the Mughals and the Turks period, the women did enjoy some political privileges. The position of widow was of great importance when a man died leaving his children still in infancy. The widow assumed all the rights of her husband, including even the leadership of the tribe.

Among the Timurides as well as the family of Chingiz Khan women used to accompany their husbands to the war fields. They not only looked after the comforts of the warriors but also took an active part in the actual fight.

The active role played by Ehasan Daulat Begam in contemporary politics was not an exception in the Mughal family. Babur’s mother and his wives also contributed, according to their own personal capacities to the solution of various complicated political problems. In addition to the ladies of the Mughal family, there were some other ladies who were fairly well known in contemporary politics during the reign of Humayun. To enhance the prestige of these ladies honorific titles were given to some of them. Usually they were addressed by these titles. Allowances and maintenance grants were given to them.
2.1.8 Women in British Period

The establishment of British rule in India during 17th century brought considerable changes in the position of women in India.

When the British arrived, they found that lack of education, child marriages, purdah, widowhood, and sati were associated with the Hindu woman. Social reformers like Raja Ram Mohan Roy, Ishwara Chandra Vidyasagar, Pandit Ramabai, Mrs. Ranadet, Keshava Chandra Sen, Swamy Dayananda and Mrs. Annie Besant, tried during this period to improve woman’s position in the society.

The social reform movement in India, which started in the 1920’s with Raja Ram Mohan Roy’s campaign against Sati or Widow burning, had always emphasized the emancipation of women.

Women then, were related to social image, the image of superiority. Thus, the historical inter connections between sexual and social stratification brought a heavy burden to bear on females, a burden, which increased not only their subordination but also their level of morality in infancy, childhood and adulthood.

Some of the outstanding legislations during that period are:

The Prevention of Sati Act, 1829;

The Widow Remarriage Act, 1856;
The Child Marriage Restraint Act, 1929

Hindu Married Woman’s Right to Separate Residence and Maintenance Act, 1946.

2.1.9 Women and Post Independence Period

Position of women had risen. Special instances of the high position to which women have risen with, a woman as our Prime Minister and many others playing important roles as ministers, political administrators, doctors, educationists and even in the business world, the fact of their success cannot be denied.

Indian women have advantages over other women of the world, through the legacy of the ancient years. The concept of emancipation of women existed early in India.

Daughters were allowed a share in the property, which had hitherto, been denied to them; both wives and daughters are given a control over their inheritance that marriages are allowed between sub-castes and castes; monogamy is enforced and equal rights are given to husband and wife; widows have the same status as unmarried girls and allowed to marry again, and a woman can be free from her husband who is unfit to be a responsible house holder. In other words the Hindu Code sought to given the Indian woman a break at last and treat her as a member of the human society.
After attaining Independence several legislations have been passed to improve the conditions of woman, but still she is facing different problems.

Women, the sources of love and compassion have always been exploited by a patriarchal society. The histories and lifestyles of women reveal tragedies that speak volumes about the vulnerability of women living in penury, ignorance and fear of violence in Indian society. The stability and security within and outside the families are myths. Women perform more than half of the duties and responsibilities of the family but are hardly empowered to participate in decision making. They are not given any rights, they are supposed to do domestic work and to look after children.

Gradually with the passage of time, the concept of ‘working woman’ came into existence. Woman began to come out of the domestic sphere and has begun to take up professional roles outside her home. The traditional role of housewife has gradually evolved into the dual and more fulfilling role of a working woman and housewife.

No place is safe for the women, the new place of work brought with it new problems. Their life in the womb is threatened by techniques such as amniocentesis. At the home they are harassed by the husband, in-laws etc, at the workplace, they are physically and sexually harassed by the employers and supervisors. Even women, who are not the victims of violence, have had their way of life profoundly affected by the fear of such violence. The issue of violence against women has been the most pervasive theme of women’s liberation
movement in India. Female is a victim even in the industrialised, globalised and technological era.

2.2 HISTORICAL DEVELOPMENT OF SEXUAL HARASSMENT

Sexual harassment emerged out of activist concerns and trade union work on women's equality and tends to be defined in terms of repeated and cumulative incidents located in the work place. Responses have been primarily through institutional policy and anti discrimination provisions. It has become increasingly separated from other forms of woman abuse through its location in personnel and employment frame works. Female genital mutilation was raised as an issue in the mid 1970's by white western feminists and continues to be addressed by African women. The location of sexual harassment as an employment issue was cemented by Mackinnon's ground breaking work.

2.2.1 Sexual Harassment Scenario Before 1970's

Before 1970's the expression sexual harassment was not in use. However, behavior of that sort, later came to be labeled sexual harassment. Evidence for the existence of this behavior is found in documents, narratives, articles and books about women and work, as well as in legal records. Some scholars have begun to examine historical material for instances of the sorts of behaviors that are now being called sexual harassment.\(^3\)

\(^3\) The best sources for such material are; The sexual harassment of women on the job, MC Graw Hill 1978 New York; Catharine A Mackinnon-sexual Harassment of working women.
Sexual harassment in organisations has a long past but a short history. It is documented in historical accounts. Since the advent of the Industrial revolution led large numbers of women to work outside the home, it has only lately been recognised as an important social problem. Recently, the impact of sexual harassment has become increasingly well documented. Organisations have been confronted with new issues of corporate ethical responsibility, legal liability, organisational productivity and employee well being.

For much of US history, women who worked for wages as domestic servants, factory workers, or shop girls were suspected of being sexually disreputable. Because of the ignomy attributed to working women, if one of them has become pregnant by a supervisor or master, her loose morals were blamed, and coercion was not typically suspected.

A scholar who examined court records of sexual assault in England between 1700 and 1799 found that 29% of rape cases in London involved master and servants. The precise prevalence of coercive sexual behavior is difficult to determine, but a number of the personal accounts of working women surveys suggests that such behavior was fairly common in some employment arrangements. Women who worked in factories in England were subjected to sexual misconduct by their supervisors and employers.

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4 Dansky and Kilpatrick, in press; Fitzgerald and Ormerod, 1993.
7 Helen Cambell in prisoners of poverty: women wage – workers, their trades and lives 1887.
8 Fredrich Engels, “conditions of the working class in England “1845).
The sexual exploitation of African American women continued after the end of slavery\(^9\). Women who did domestic work were particularly vulnerable. When women rejected the advances of their masters, they were often punished severely\(^10\).

In Canada, women who worked in factories were harassed by their supervisors. In April 1890, the Canadian Federal Government introduced into the house of commons an amendment to the criminal law to make it a criminal offence for a person who had a female employed in his factory to seduce her or to use the power that his position gave him to outrage her virtue\(^11\).

Agnes Herrmann, speaking to a congress on the working conditions of female clerks in 1896 in Berlin, said that women clerks were subject to "immoral attacks from numerous supervisors"\(^12\).

The idea that sex has no place in the work place is not new in India also. The realisation that incidence of sexual harassment is uncivilised, unethical, immoral and a fundamental legal wrong, has been in existence in our society since long. Most working women in India have come to regard sexual harassment as an 'occupational hazard' and society in general, thinks it is a normal misbehavior of man. Perhaps, it is because of this dismissive attitude and trivialisation of the issue

\(^9\) Supra Note 5 at p. 20-22.
\(^10\) Jones, Labor of Love 20, 38; Segrave "sexual harassment", 16 – 20.
\(^11\) Back house and Cohen, "sexual harassment on the job".
\(^12\) Carole Elizabeth Adams, women clerks in Wilhelmine Germany (New York Cambridge university press 1988).
that no real efforts have been made by lawmakers to understand the issue or work out desirable amendments to cope with the situation.

The deliberate silencing at the behest of our social structures and organisational might is oft confused with absence till a rare reported incident debunks the egalitarian equitous workplace myth leading on to acknowledge what every professional knew but dare not admit—women may have fought stereotypical roles of homemakers to enter the work place but organisational structures are still configured to view women through the prism of gender identities. Sexual harassment at workplace underscoring powerlessness of women is a manifestation of the insidious operation of patriarchal power that codes women in dominant social stereotypes. Working women have faced hostility in countless subtle and direct ways ranging from condescending attitudes, less than humorous remarks on women's appearance, filtratious glances, direct request for sexual favours.

The historical evidence suggests that the case of economic power by employers to obtain sexual access to employee is not new, but it was not lime lighted. Lack of knowledge about sexual harassment made the issue not to regard or define as a problem.

2.2.2 Sexual Harassment Scenario After 1970's

By now we are all familiar with sexual harassment in and out of the work place. Sexual harassment is a universal problem and has caught the attention world over. The awareness has increased because of women’s rights movements,
increase of women population at work places, enhancement in women’s education and adoption of Convention on Elimination of all forms of Discrimination against women by UNO etc.,

2.2.3 The Creation of the Concept of Sexual Harassment

The term sexual harassment coined in 1970’s by feminist activists, and their conception of sexual harassment was socio-cultural. Linfarely claims to have discovered the Phenomenon of sexual harassment. Farely spoke to many working women and discovered that this pattern was widespread. She does not say just where the term sexual harassment came from. Only that the male behavior eventually required a name and sexual harassment seemed to come about as close to symbolizing the problem as the language would permit. Recognition of the problem led to the formation of working women united in 1975 to address the issue they labeled sexual harassment.

In 1975 US Congress senate Committee on Labor and Human Resources stated at the institute’s formation that, it coined the phrase “sexual harassment” and gave a name to a formerly taboo dilemma aced by millions of working women.

Mackinnon credits “working women united institute” with being the first to use the term “sexual harassment” as a term of act. Working women united institute

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13 Farely, “Sexual shakedown”-XI.
14 Farely, sexual shake down – X
15 Ibid.
16 Sex discrimination in the work place : Hearing before the Committee on labor and Human Resources 97th Cong 1st sess.
seems to have been the first to use these words first in connection with the case of Carmita wood in October 1975\textsuperscript{17}

The first definition of sexual harassment was formulated by Farely and working women united. In order to discover the pervasiveness of sexual harassment, they distributed the first questionnaire ever devoted solely to the topic of sexual harassment in May 1975. The definition of sexual harassment used in the survey was:

"Any repeated and unwanted sexual comments, looks, suggestions or physical contact that you find objectionable or offensive and causes you is comfort on your job".

This definition is nearly equivalent to current legal definitions of sexual harassment.

Farely conceives of sexual harassment as a widespread pattern of behavior that in part explains, and in part is explained by male supremacy. Men impose sexual harassment on women in the context of work because they are in a position to do so, and because it maintains their position of superiority in the work place.

Catharine Mackinnon’s sexual harassment of working women, published in 1979, was a major influence in the construction of the social and legal meaning of sexual harassment. Catharine Mackinnon was one of the first scholars to theorize

\textsuperscript{17} "Mackinnon, Sexual harassment" 250 note 13.
the unfavourable conditions that so many women had experienced, Mackinnon defines sexual harassment as follows:

"sexual harassment most broadly defined, refers to the unwanted imposition of sexual requirements in the context of a relationship of unequal power. Central to the concept is use of power derived from one social sphere to lever benefits or impose deprivations in another"18.

Mackinnon’s definition shares with Farely’s survey definition the element of ‘unwantedness’. It also brings to the fare the inequality of power is evident in Farley’s conceptual definition.

Until, the mid seventies sexual harassment was not recognised by law in United States. It was only in 1980 that the EEOC published a set of guidelines identifying harassment and hostile environment as harassment19. In 1986, U.S. Supreme Court ruled for the first time that sexual harassment constituted a violation of 1964 Civil Rights Act20.

During the first half of the 1990’s sexual harassment took the center stage, the issue of sexual harassment captured the American nations attention, because of the nationally televised hearings on the confirmation of Supreme Court nominee Clarence Thomas. Law professor Anita Hill charged that Clarence Thomas had sexually harassed her during the time she had worked for him first at the

18 Id at p. 1-2.
19 Dr. Swarana Lata Sharma, “Gender discrimination and Human Rights”, Gender based violence, p.154
department of education and later at the equal employment opportunity commission\textsuperscript{21} The senate confirmed justice Thomas despite Hill’s testimony.

Similarly it was only in 1991 that the European Community adopted a new code of practice of the Protection of Dignity of Women and Men at work. Spain and France have made sexual harassment a criminal offence, but new laws are vague. Britain and Ireland too recognised sexual harassment in judicial terms only in 1991\textsuperscript{22}

2.2.4 Evolution of Concept of Sexual Harassment in India

In Indian criminal law, sexual harassment of women has not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, \textit{sexual harassment of working women} was named and defined\textsuperscript{23}.

This does not imply that there are no related laws in the Indian Penal Code that may be evoked when a woman is sexually harassed. However, related laws are framed as offences that either amount to obscenity in public or acts that are seen to violate the modesty of women under sections 294, 354 and 509 of IPC.

\textsuperscript{21} (Anita Hill’s – 1994).
\textsuperscript{22} “Women challenges to the year 2000”; 72-73).
\textsuperscript{23} Vishaka and others v. Union of India, AIR 1997
An analysis of the crime in India reports reveals that up to 1991 the classification of offences such as murder, homicide and cheating did not document specific crimes against women apart from rape and kidnapping. The laws related to sexual harassment, sections 354 and 509 were subsumed under the category of 'other IPC crimes'. Hence the statistics were not produced separately in the absence of such a classificatory grid\textsuperscript{24}, thereby indicating that harassment of women was not yet viewed as a serious crime.

In 1992, however, a chapter on 'Crimes against Women' was added to the Crime in India report to cope with the continuous demand for data on the burning issue of crimes against women. The report further stated: crimes against women have become a matter of growing concern. We are in the process of recognising women's rights increasingly and ensuring their due status. The evidence is everywhere. The voices of women are increasingly being heard in the parliament and in the public\textsuperscript{25}.

Thus in 1992 the semantic category of crimes against women was coined and a new set of classificatory practices operationalised to generate data to cope with the demands thrown up by challenges from the women's status discourses. This shift was significant in that it distinguished general criminality from crimes specifically against women that violate their rights. This new category was now to act as an index of the status of women\textsuperscript{26}.

\textsuperscript{24} Shobna Saxena, "Crimes against women and protective laws", 1995, p.225
\textsuperscript{25} Pratiksha Baxi, "Sexual harassment", seminar 505-sept 2001 p.57.
\textsuperscript{26} Ibid.
The report listed the following crimes against women as enunciated in the IPC. Rape (376 IPC): kidnapping or abduction for different purposes (363-373) homicide for dowry, dowry deaths or their attempts (302/304-B. IPC) torture, both mental and physical (498.A IPC): molestation (354,IPC): and eve teasing (509.IPC).

The report classified 354 as molestation and section 509 as eve teasing. Molestation then was read against those offences that use force or assault to outrage the modesty of women. Eve teasing was recognised as a popular form of harassment of women in public places.

1994 Crimes in India Report continued to classify 354 as molestation, it categorised 354 as molestation, and it categorised section 509 as sexual harassment. It is significant that this category was foot noted to explicitly say: 'referred in the past as eve teasing.' Thus the social contestations are read into the legal categories making eve teasing a matter of the past (see table).

<table>
<thead>
<tr>
<th>Year</th>
<th>Molestation Section-354</th>
<th>Eve teasing / Sexual harassment Section-509</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>20,611</td>
<td>10,283</td>
</tr>
<tr>
<td>1992</td>
<td>20,385</td>
<td>10,751</td>
</tr>
<tr>
<td>1993</td>
<td>20,985</td>
<td>12,009</td>
</tr>
<tr>
<td>1994</td>
<td>24,117</td>
<td>10,496</td>
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<tr>
<td>1995</td>
<td>28,475</td>
<td>4,756</td>
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<tr>
<td>1996</td>
<td>28,939</td>
<td>5,671</td>
</tr>
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<td>1997</td>
<td>30,764</td>
<td>5,796</td>
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<tr>
<td>1998</td>
<td>30,959</td>
<td>8,034</td>
</tr>
<tr>
<td>1999</td>
<td>32,311</td>
<td>8,858</td>
</tr>
</tbody>
</table>

This semantic shift is significant in its acknowledgment of the contestation over women's presence in public spaces and the discourse on women's status. The replacement of eve teasing with sexual harassment marks a discursive break with the past.

There have been numerous campaigns and legal interventions against sexual harassment, most recommending reform of the law. The Judgment of Supreme Court in 1997 has been an important legal event, making the judicial activism in the arena of gender justice. The Judgment of Supreme Court recognised sexual harassment at work place and outlined guidelines for the prevention, deterrence and redressal of sexual harassment.

2.2.5 Behaviour that Constitute Sexual Harassment

Sexual behaviour may be considered sexual harassment when a person finds himself personally, offensive sexually. Such behaviour may be subtle or obvious, verbal or non-verbal its scope may cover a wide range of behaviour that runs the gamut from patting women's bottoms, when they work down in hall or offices, to pinching, to repeated insistent arms around the shoulder, couched in friendliness, the questions about the women sex all the way to the explicit proposition that require women to engage in sexual relationship.

27 K.P.S Gill v. Rupan Deol Bajaj
28 Visaka and others v. Union of India .AIR 1997
However, sexual harassment can be done in both the ways, physically and psychologically. In its refined form, it may be confined to verbal and in appropriate affectional gestures and in extreme behaviour, the sexual harassment amounting to attempted actual rape.

The following may be considered the sexual behaviour

i. Verbal Sexual behaviour

   The verbal sexual behaviour includes-
   a. Comments of a sexual nature about figure, size, shape, body weight, 
      unwelcome remark, rough and vulgar humour / jokes.
   b. Insulting publicly saying something demeaning and humiliating.
   c. Graphic sexual description, chatter of sexual nature.
   d. Telephone calls with sexual tones.
   e. Teasing and using names such as darling, honey, sweet heart 
      etc.,(US court held that --- Calling others as ‘Monica’ amounts to 
      sexual harassment.

ii. Non-verbal behaviour and gestures

   Gestures are the movement of the body, head, arms, hand, fingers, figures, 
   face and eye that are expressions of an idea, an opinion, a hint or an emotion. The 
   following may constitute sexual harassment.

   • Licking lips or teeth, holding or eating food provocatively.
   • Sexual looks such as leering and calling with sexual tones.
• Obscene written materials, such as letters, e-mail, notes, invitations.

iii. Visual sexual harassment

It includes showing pornography, nude poster, photograph and cartoon, sexually explicit picture.

iv. Physical sexual harassment

It includes, actual physical attempt for kissing, embracing, patting, squeezing breast and cheeks and other physical attempt.

v. Psychological sexual harassment

This includes—calling every day for work and retain her for excessive hours, and staring on her face, breast, neck, eye and other part of the body; repeated unwanted invitation for dinner, drinks and movies, proposal for physical intimacy beginning with subtle hints which may lead to overt request for dates or sexual intercourse, sexual favour, requiring to wear sexiest and revealing or suggestive saree, suit, dress and to adopt suggestive hairstyle, lipstick etc.,

2.2.6 Definition of Sexual Harassment

There is no legal definition for Sexual harassment, In the leading case of Vishaka v. State of Rajasthan29, the Supreme Court has defined "sexual harassment“ as follows:

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29 (1997) 6 SCC 24
sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) physical contact 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.

Where any of these acts are committed in circumstances under which the victim of such conduct has reasonable apprehension that in relation to the victim’s employment or work (whether she is drawing salary, or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace ("SHW"). It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting or promotion), or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.
In Apparel Export v. A.K. Chopra\textsuperscript{30}, the Supreme Court defined, "sexual harassment" as "any action or gesture [that], whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee."

The ILO policy convention defines sexual harassment at the workplace as "any unwanted conduct of a sexual nature, which in the reasonable perception of the recipient, creates an intimidating, hostile or offensive working environment. It is particularly serious when behaviour of this kind is engaged in by any official male or female, who is in a position to influence the career or employment conditions (including recruitment, assignment, contract renewal, performance appraisal or promotion) of the recipient of such behaviour".

International instruments, national legislatures and courts have prohibited sexual harassment but have not agreed on a universal definition of the term. There are a few common elements in definitions of sexual harassment worldwide. Generally speaking, behaviour constituting sexual harassment in the workplace must:

1. occur in the place of work or in a work-related environment;
2. occur because of the person's sex and/or it is related to or about sex;
3. be unwelcome, unwanted, uninvited, not returned, not mutual;

\textsuperscript{30} 1999, 1 SCC, 739
4. and affect the terms or conditions of employment (quid pro quo sexual harassment) or the work environment itself (hostile work environment sexual harassment).

The United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination Against Women reaffirms these elements by defining sexual harassment to include "such unwelcome sexually determined behaviour as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates hostile working environment".

2.2.7 Kinds of Sexual Harassment

Mackinnon’s contributions to the development of the concept of sexual harassment led to a distinction that has become very important in the legal realm. Mackinnon introduced the distinction in sexual harassment, women’s experience of sexual harassment has been divided into two forms.31

31 See also “Justice Wad and Alice Jacob”, report of SC, Bhatia case
For the first time the USA Court recognised two types of harassment, quid pro quo and hostile work environment harassment in *Meritor Saving Bank v. Vinson*[^32].

1. **Quid pro-quo harassment**

   In which sexual compliance is exchanged or proposed to be exchanged, for an employment opportunity. In quid pro quo harassment employer offers job benefits such as promotion or salary increase or transfer to a particular place etc.,

   The equal employment opportunity commission (EEOC) defines quid pro quo harassment[^33] as “unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature”, when

   i. Submission to such conduct is made either explicitly or implicitly on condition of an individual employment or

   ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (under title – VIII of the Civil Rights Act of 1964).

   Quid pro-quo harassment is employers conduct that

[^33]: under title VII of the Civil Rights Act of 1964
i. Conditions tangible job benefits on acquiescence to unwelcome sexual conduct or

ii. Penalize an individual for refusing to participate in such conduct.

2. Hostile Work Environment Harassment or Abusive Work Environment Harassment.

In this type of harassment plaintiff is subject to a hostile intimidating or offensive work environment. The Equal employment opportunity commission defines this type of sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature”. When such conduct has the purpose or effect of unreasonably interfering with an individuals work performance or creating an intimidating, hostile or offensive working environment.

The environment that is hostile or abusive can be determined by looking the circumstances, which may include –

(a) The frequency of the discriminatory conduct;

(b) Its severity;

(c) Whether mere offensive utterance;

(d) Whether it unreasonably interferes with an employees work performance; and

(e) Psychological well being of the employee.
However behaviour can be considered sexual harassment even if it does not involve overt sexual behaviour. This may be categorised as:

3. **Harassment Based on Gender**

Often women are excluded from fully participating in the class as the men. Much discriminatory behaviour towards women may not be deliberate. Yet teachers have the power to shape to control the interactions in the classroom for that which is taught also comprises emotions and attitudes. Tacit devaluation of women students can diminish their confidence and enthusiasm to learn and be creative. *e.g.*, Explicit use of derogatory terms of stereotypic generalisations, use of humorous images or statements that demean or trivialise women or a teacher trying to explain the beauty of a woman with sexual under tones in the class etc.,

4. **Electronic or Online Sexual Harassment**

Electronic harassment in the workplace is a new category of threatening behaviour in the workplace. The offenders, misuse corporate resources to harass co-workers, invade their privacy and even track their whereabouts. Every one who receives E-mail or uses the internet is susceptible to electronic harassment.
“E-mail stalking has been defined as “the practice of harassing individuals via electronic mail or other computer based communication to the point where they feel as threatened as if they were being watched, followed or spoken to in person”

Cyber stalking can take many ways. Unsolicited e-mail, including hate, obscene or threatening mail, is probably one of the most common forms of harassment. Live chat harassment abuses the victims directly through electronic sabotage. With use net, the cyber stalkers can create evil rumors, which spread through bulletin board. More complex forms of harassment include mail bombs, sending the victim virile or electronic junk mail (spamming). eg. The misuse of MMS technology and publication of certain pictures, taken with hi-tech mobile handset of two Indian Celebrities (Trisha, Anar Gupta) in a newspaper; a sex film was shot by a camera fitted to mobile phone and circulated to friends and put for sale in web sites (bazee.com) – Delhi Public School

2.2.8 Female Work Force Participation Rate (FWFPR)

According to the 1991 Census, the female Work Participation Rate (WPR) registered an increase from 14.20 percent in 1971 to 22.30 percent in 1991. But, at the same time, it was much lower than the male work participation rate with both urban and rural differentials. See table 2.1

### Table 2.1: Work Participation Rates (1971-91)

<table>
<thead>
<tr>
<th>Year</th>
<th>T/R/U</th>
<th>Females</th>
<th>Males</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>Total</td>
<td>14.22</td>
<td>52.75</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>5.92</td>
<td>53.78</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>7.18</td>
<td>48.88</td>
</tr>
<tr>
<td>1981</td>
<td>Total</td>
<td>19.67</td>
<td>52.62</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>23.06</td>
<td>53.77</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>8.31</td>
<td>49.06</td>
</tr>
<tr>
<td>1991</td>
<td>Total</td>
<td>22.27</td>
<td>51.61</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>26.79</td>
<td>52.58</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>9.19</td>
<td>48.92</td>
</tr>
</tbody>
</table>

**Note**
1. Excludes Assam and J&K.
2. 1971 figures are totals of workers and non-workers and non-workers with secondary work whereas, 1981 and 1991 figures are total of main and marginal workers.

**Source:** Census of India, Series-I Register General of India, New Delhi.
Table 2.2: Labour Force in the Organised and Unorganised Sectors in 1991
(Figures in Millions)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Females</th>
<th>Males</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>%</td>
<td>Actual</td>
</tr>
<tr>
<td>Organised</td>
<td>3.78</td>
<td>4.20</td>
<td>22.95</td>
</tr>
<tr>
<td>Unorganised</td>
<td>85.99</td>
<td>95.80</td>
<td>201.41</td>
</tr>
<tr>
<td>Total</td>
<td>87.77</td>
<td>1000.00</td>
<td>224.36</td>
</tr>
</tbody>
</table>

Source: Data based on the Census data and of the DGE&T, Ministry of Labour, GOI, New Delhi.

The Table 2.2 attempts to give the distribution of women work force in the organised and unorganised sectors in comparison to their male counterparts. Of the total women work force of 87.77 million (28.60%) in 1991, their share in the organised sector is only 4.20 percent, while the rest of the 95.80 percent are in the unorganised sector where there are no legislative safeguards.
Table 2.3

Employment of Women in Public and Private Sectors upto 2000

(in lacs)

<table>
<thead>
<tr>
<th>Year</th>
<th>Public Sector</th>
<th>Private Section</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
</tr>
<tr>
<td>1971</td>
<td>98.70</td>
<td>8.60</td>
<td>56.80</td>
</tr>
<tr>
<td>1981</td>
<td>139.80</td>
<td>14.90</td>
<td>61.00</td>
</tr>
<tr>
<td>1991</td>
<td>167.10</td>
<td>23.40</td>
<td>62.40</td>
</tr>
<tr>
<td>1997</td>
<td>168.66</td>
<td>27.28</td>
<td>67.77</td>
</tr>
<tr>
<td>1999</td>
<td>166.04</td>
<td>28.11</td>
<td>66.80</td>
</tr>
<tr>
<td>2000</td>
<td>164.57</td>
<td>28.57</td>
<td>65.80</td>
</tr>
</tbody>
</table>

Table 2.3 shows male and female work force in public and private sectors. It shows that the rate of female work force is less in both the sectors compared to male work force rate.

2.2.9 Extent of Sexual Harassment

What to talk about the ordinary work place employee when the honourable and highest rank of the country Mr. President Bill Clinton of USA being sued for sexual harassment of women, when he was the Governor of the State of Arkanas. Paula Jones claimed that he demanded sex in what she says was a crude and gross
abuse of power as her boss, later on Bill Clinton paid compensation to Paula Jones. Even the highest office of the American country, the President’s Office White House is also not free of sexual harassment threats. The honourable President Bill Clinton was accused of harassment of his personal Secretary Monica Lounisky. The sexual harassment allegations were proved and Bill Clinton paid compensation to Monica.

In comparison with other sectors, I.T. organisations may be offering equal salaries to women and the density of women in technology companies may be relatively high but this does not necessarily ensure a level paying field. For example Microsoft (Established and managed by Bill Gates, US) was sued for the conduct of one of its supervisors over e-mail. The supervisor allegedly made sexually offensive comments via e-mail, such as referring to himself as President of the amateur gynecology club, allegedly referred plaintiff as the Spandex Queen.

Infosys (USA based) official Phaneesh Murthy, Director and Head of Sales and Marketing has been dismissed and tried for sexual harassment. Rekha Maximovitch an American citizen of Bulgarian descent, who worked as the Executive Assistant to Phaneesh Murthy, alleged to have threatened to fire by Phaneesh Murthy for non-compliance of his sexual advances. He was dismissed and a huze amount of fine imposed on him.

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35 William Jefferson Bill Clinton v. Paula Jones, Civil action No.L.R.C.9429
36 Bill Clinton v. Monica Lounisky
37 Indian Express, Dec 19, 2001
In October, 1989 Mukti Dutta, Secretary, Janajagaran Samiti, Delhi alleged to be harassed by the then Union Minister of Environment and Forest, Z.R. Ansari in his private office in Paryavaran Bhavan. Ansari was arrested but later released on bail. On 8th August 1989, the speaker of the Goa Assembly, Dayanand Narvedkar, sexually harassed a 19 year old employee, Sunita in his chamber.\(^38\)

Two nurses of Bara Hindu Rao Hospital, Delhi were molested and harassed by a senior doctor of the hospital in March 1992. There was an agitation by nurses demanding justice. But the case was hushed up.\(^39\)

Jashpur District ex-collector (Raipur) M.R.Sarathi had been suspended and arrested by the police on the directions of Chatishgad Chief Minister. On receiving a letter from the women supervisor, who worked with the District Collector during 2001-02 had been subjected to sexual harassment.\(^40\)

In *N.Radhabai v. D.Ramachandran*, case, when Radhabai was Secretary to D.Ramachandran, the then Social Minister for State protested against the abuse of girls in the welfare institutions, he attempted to molest her, which led to her dismissal. In 1995, the Supreme Court passed the judgment in her favour, directing the offer to pay and perks to her from the date of dismissal.

\(^{40}\) Indo Asian News Service, *Enadu* May 7, 2004
Even policewomen, who are trained to be not only mentally but also physically equally, are not spared. In 1999, over 10 women police officials lodged complaints with a committee set up by the Delhi Police Commissioner to check instances of sexual harassment at work place\textsuperscript{41}.

RAF, Assistant Commandant G.Swarnalatha demanded Central Government to investigate the cases of Sexual harassment by CBI in the CRPF and RAF. She stated that nearly three thousand women workers in RAF have no protection against Sexual harassment in the department\textsuperscript{42}.

The Indian Air Force on April 27\textsuperscript{th} 2005 ordered a court of Inquiry into flying officer Anjali Gupta’s allegations of sexual harassment against her seniors. The inquiry was ordered after Anjali wrote to the Chief of Air Staff, Air Chief Marshal S.P. Tyagi in January 2005 and Ministry of Defence on April 2005 alleging that, she had been sexually harassed by her senior officers. She filed a petition before Karnataka High Court, and Karnataka Women’s Commission. Meanwhile, court martial proceedings were initiated against Anjali on charges of indiscipline, financial irregularities, delinquency and fraud\textsuperscript{43}.

\textsuperscript{41}The Times of India September 15, 1999
\textsuperscript{42}Enadu, 28April, 2004
\textsuperscript{43}Vijay Times News, 28 Apr. 2005.
Sexual harassment in educational institutions is also on increase. Sexual harassment by male students takes the form of eve teasing, molestation and dating violence. Ragging of girls is a recognised mode of sexual harassment in the guise of being fun or normal. Not only University and College Women but also school girls are subjects of sexual harassment by co-students and teachers. For instance, *Tarachand v. State of Rajasthan*\(^{44}\), in this case Tarachand, a teacher in a primary school of village Ramachandra Kabas had indulged in culpable activities of outraging the modesty and molestation of school girls, inviting them to office room, closing the room and misbehaving. Because of such culpable acts of molestation the girls are frightened to go to school and they have stopped attending school. After hearing the parties court imposed 1 year imprisonment and fine of Rs.4,000/- on Tarachand. Sexual harassment in schools and hostels is not uncommon.

The management council of the University of Pune has suspended physics professor Dr. Satischandra Gale in 1996, on charges of sexual harassment of the students. Five Doctors of Maulana Azad Medical College in Delhi charged, Dr. S.N. Reddy head of the department of Dermatology and Veneral disease for sexually harassing them regularly.

According to Justice Wad and Alice Jacob, sexual harassment by heads of department in the University System is a frightening and humiliating experience. It is an invidious form of sex discrimination present in academic institutions. It has

\(^{44}\) 2001, *Cri. LJ* 3604
humiliating, emotional and physical effect upon its victims. It generates a psychologically harmful atmosphere.

It looks strange and pathetic that, some of the budding girls who have been pursuing education with single minded devotion, have their lives cut off by lustful male students. Recent spurt of incidents speak volumes about the gravity of the situation.

Srilakshmi, M.C.A. student in Sharada College Vijayawada was tortured by her classmate Manohar to satisfy his lust. She resisted his advances and gave complaints to the management and the police commissioner of Vijayawada. No action was taken though proved misbehaviour existed on the part of Manohar. She went away to Hyderabad on project work. When she came back to Vijayawada to take her final exams, disgruntled Manohar put an end to her life in the class room. The trial is still going on.

In the same way Prasanna Lakshmi, Intermediate student of J.K.C. College, Guntur was stabbed to death in the college for resisting to marry Subhani a driver. In Tamil Nadu, Tiruchi R.E.C. student Akhila was stabbed to death by a B.E. student on her refusal to his advances.

Recently Delhi, the capital city of India was declared the most unsafe place for girls. The recent Delhi Public School sex scandal and the rape case involving a

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45 *Enadu*, 23 June 2004
46 *Enadu*, 6 Aug 2004
Swiss diplomat in the moving car during 34th international film festival, coupled with the day light rape of a college girl by the President's body guards in Delhi substantiate the fact that women become hapless victims of man's lust. Women feel insecure in venturing out of their homes even in the national Capital, what to talk about the remote and rural areas. No place, any time is safe for Indian women. Women in any profession or every profession are vulnerable to sexual harassment.

2.3 CAUSES OF SEXUAL HARASSMENT

The reasons behind what has been called “son mania” are both multifaceted and deeply imbedded in Indian culture. They are also against daughters. A son’s birth is likened to “a sunrise in the abode of gods” and “to have a son is as essential as taking food at least once a day,” whereas a daughter’s birth is cause for great sadness and disappointment. “Indian society is patrilineal, patriarchal and patrilocal. Sons carry on the family name. They are also entrusted with the task of supporting their parents in old age. Parents live as extended families with their sons, daughters-in-laws, and grandchildren. Daughters, on the other hand, become part of their husband’s family after marriage and do not make any further contributions to their parents. Indian sayings such as, “Bringing up a girl is like watering a neighbor’s plant”, exemplify the feeling of wasted expenditure on raising a daughter. Indian men are responsible for the funeral rites of their parents and are the only ones who can light the funeral pyre. Some feel that they will only be able to achieve moksha, through their sons. The importance of having

47 Ramanamma, 1980
48 Ibid
49 Jeffery, 1984
sons continues beyond mortal life in Indian tradition. Thus this discriminative attitude is responsible for violence against women.

2.3.1 Social and Cultural Factors

Patriarchal structure was culturally designed and gender behaviour is socially constructed. Sex-roles are cultural directives. It is the cultural system in terms of its social values, norms, customs and institutional arrangements, which directly affects women. Patterned regularity of role relations including gender relations come to comprise social structure. The socially established pattern of thought provides a basic reality knit with the cognitive and normative tools to build a coherent universe to live in. Traditionally specific vested interests of the male were legitimated by such taken-for-granted patterns, which enabled them to shape the social structure to their advantage. The dominant ideologies of dominant sex were accepted as social reality. Patriarchy came to dominate and began to determine what part women shall and shall not play.

Culture includes learned patterns of behaviour, socially acquired traditions, repetitive ways of thinking and acting, attitudes, values and morals. Cultural programming specifies rules for acquiring and transferring information. It standardizes perceptions. It also defines attitudes for intra-group relationships and for dealing with nonmembers. And it sets the institutional parameters that conditions human behaviour and stabilizes social system.
Culture of the society casts profound impact on gender roles as they are learnt through observation, initiation, reinforcement, social participation, modeling and conditioning. A female child observes her mother and imitates her impulsively. She is rewarded for her 'appropriate' and punished for inappropriate behaviour and thus she is conditioned to acquire attitudes and habits of feminine ways of behaving. Thus, "The cultural refinement of any society is vastly determined by the status that a woman enjoys in it"\textsuperscript{50}

In a patriarchal civilization, every institution which is expected to uphold and protect women’s rights and interests, whom they took hopefully for their well being, operates in discriminatory and very often in oppressive fashion. These institutions are the family, society, culture, and religion.

Indian society is based on the family unit and larger kinship grouping. Most women are directly dependent upon their menfolk for support and dare not risk alienating them. They are guided by traditional concepts of proper feminine behavior and aware that their actions are inextricably linked to family honour, prestige and ultimately material rewards. Women typically carry out their roles as chaste daughters and dutiful wives. These time-honoured roles require women of much self-sacrifice.

Being weaker in terms of physical force, a woman can be subjected to physical and sexual assault of man. In India, the vulnerability of the girl to sexual

\textsuperscript{50} Dr. Meera Desai: "Status of women in India" - 52
assault and harassment results in a number of restrictions on her in both the space and time dimension.

Violence against women has its origin in the historically unequal power-relations between men and women. The skewed power relations in which men have an upper hand almost in variably, lead them to dominate over their counter parts, commit violence against them throughout their life cycle, derives essentially from cultural patterns, in particular the disastrous effects of certain traditional practices and all acts perpetuate the lower status accorded to them in the family, at work place or in the community or society.

2.3.2 Religious and Economic Factors

Religious Inequality

Every religion believes that everything living or nonliving is the creation of one and the same God. Every religion preaches love, kindness, service and mercy for every living being. Not withstanding this fact, religious books and scriptures of every religion contain elements, which are highly degrading and discriminatory or at best may be interpreted to this effect. They frequently portray women as the source of evil or chaos. They have lasting influence on the social culture and social psyche. The people continue to follow these norms blindly in the name of religion.
Hinduism

Indian mythology places women on a very high pedestal and they are worshipped and honoured. Goddess of learning is Saraswati; of wealth Laxmi; of power Parvati. These, Goddesses are believed to be the 'Shakti' or strength, power and source of energy. The trinity cannot perform their tasks without their cooperation or assistance. Thus Goddesses have very high place in Hindu religion.

It is an irony that, in matters of the depiction of women's nature, status, norms of conduct, Hindu religious books especially of post-vedic period are greatly biased and discriminatory. Gender bias is reflected in the holy books of Hindus as follows:

- "Indra himself hath said that the mind of woman brooks not discipline; her intellect hath little weight"\(^{51}\).

- "There is nothing that is more sinful than women, verily women are the roots of all evils"\(^{52}\).

- "The destroyer, the God of wind, death, the nether regions, the equine mouth that roves through the ocean, vomiting ceaseless flames of fire,

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\(^{51}\) Rigveda, VIII-3-17

\(^{52}\) Mahabharat, Anushasan Parv, 38-12
the sharpness of razor, the dreadful poisons, the snakes and the fire—all these exist in a state of union in women" 53.

- Women are—“as whimsical as the leaves of a lotus flower, as sharp as the edges of a sword and as unsettled as the blast of a storm" 54.

During vedic period, women enjoyed equal freedom with men in all matters, social and religious. The great Hindu Law-giver Manu in his famous Manu Dharmashastra or Manu Smrithi says a lot about woman and her status.

“Pitha Rakshathi knowmare Bhartha Raskshathi yowvane Rakshanthi Sthavire Puthra Nasthri Swathanthra Marhathi" 55.

Accordingly, a woman is not eligible to stay free and independent. Father protects her in her childhood. Husband protects her in her youthful days. In old age children protects her.

The two epics Ramayana and Mahabharatha accorded a pitiable position to women. The position of women underwent enormous negative changes during the medieval period. As no resurgence occurred, the norms, beliefs and traditions concerning the women kept on strengthening.

53 Id Parv, 38-29
54 Ramayana, Aranya Kanda, XIII-5-6
55 Manusmrithi, chapter 9, Aphorism 3
Buddhism

Buddhism tried to elevate the status of women by declaring the equality of two sexes. However, this proclaimed equality couldn't survive long in the patriarchal culture, patriarchal social values sneaked into Buddhism. As a result, monks began to get precedence or superiority over the nuns. It was believed that it was more rewarding to donate to the Sangh of monks than to the Sangh of nuns. Discrimination got its way in Buddhist religious norms such as these-a monk can preach in the assembly of nuns but a nun cannot preach in the assembly of monks; a nun must always greet a monk even if he is younger than her in age.

Jainism

Jainism preaches self-restraint, self-denial and self-effacing both for male and female. According to Jainism, any man or woman who strictly follows five great vows can become a Sadhu (Monk) or a Sadhvi (nun). Yet in the religious order, women have their own marks of inferiority. In many Jain writings woman is condemned as seductive, corrupt, fickle-minded deceptive, weak, unreliable and treacherous. The orthodox sect of Jainism-Digambara believes that there is no Nirvana (Salvation) for women without rebirth as a man.

Islam

Islam though gave equal status to man and woman as regard to relation with God. But it too adopted discriminatory attitude towards her by disallowing her from being appointed as Imam or Kazi. Islam stresses on the difference in the
type of education meant for man and woman. A woman’s sphere of activity is the home, therefore, she should be trained primarily in those branches of knowledge which make her more useful in that sphere.

**Christianity**

According to the Bible, God created man at first and later created woman to be his companion and a helper. The mythological story of Eve who persuaded Adam to eat the forbidden fruit has left a lasting impact on the popular mind that woman is the cause of the fall of man. So a husband should keep his wife under control. St. Augustine argued that man, not woman was made in the image of God.

Religion is the most important segment of the culture of a society, it conditions the social values, norms attitudes and behavioral patterns of its followers. In absolute sense, no religion of the world is biased against any sex. They all believe that God is one and every living being, let alone men and women, is his creation and the indiscriminate service of the mankind, love, kindness and mercy are the ‘best ways to worship him. But it is the interpretations of the religion, prescriptions of religious path and religious norms by the followers of each religion, in various scriptures of different times which have had a lasting influence on the gender ideology, roles and status. These interpretations have been influenced by the erstwhile cultures of the interpreter’s society and their individual views. But a common man is greatly influenced by them and follows them ardently in the name of religion.
Since religion has profound influence on the values of a community and society, people keep on following them in the name of religion. Such biased attitude of religion itself becomes a cause to beget and sustain gender bias and violence against women.

**Economic Inequality**

Economic inequality between men and women is a contributory factor to violence against women. In our society, majority of women being economically inactive, are dependent upon their husbands for financial support in whatsoever manner they are treated. It is observed that more women are beaten by their husbands because of their economic dependency than they are hurt in other ways. In our economic system men control the whole economic institutions, own most property, direct economic activity, both within and outside family, and also determine the nature of different productive activities. In contrast, most household work done by women is neither recognised nor paid for. If their productive activities are hired by private employer or contractors, they are poorly paid. Most of the women who have paid work tend to be concentrated in the poor service jobs men are located typically in an immediate supervisory and physically proximate position that provides them an opportunity to exploit their subordinate women both physically and sexually.
2.3.3 Illiteracy and Poverty

Low social status of illiterate women and poverty makes them more vulnerable to all sorts of discrimination and exploitation. It aggravates and prolongs their dependence and subordination by cutting them off from participation in change. Illiteracy is the main reason for economic dependency of women. The percentage of male literacy in 1991 was 64.20, it was only 39.19 in case of female (see table-2.4).

**Table 2.4**

**Literacy rate of men and women Percentage to total population**

<table>
<thead>
<tr>
<th>Census year</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>9.83</td>
<td>6.60</td>
</tr>
<tr>
<td>1911</td>
<td>10.56</td>
<td>1.05</td>
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<tr>
<td>1921</td>
<td>12.21</td>
<td>1.81</td>
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<tr>
<td>1931</td>
<td>15.56</td>
<td>2.93</td>
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<tr>
<td>1941</td>
<td>24.90</td>
<td>7.30</td>
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<tr>
<td>1951</td>
<td>24.95</td>
<td>7.93</td>
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<tr>
<td>1961</td>
<td>34.44</td>
<td>12.95</td>
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<tr>
<td>1971</td>
<td>39.45</td>
<td>16.69</td>
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<tr>
<td>1981</td>
<td>46.89</td>
<td>24.82</td>
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<tr>
<td>1991</td>
<td>64.20</td>
<td>39.19</td>
</tr>
<tr>
<td>2001</td>
<td>75.85</td>
<td>54.16</td>
</tr>
</tbody>
</table>


Census of India 2001, provisional population totals.
According to a survey report of National Family Health Survey, in urban areas, the rate of illiteracy among girls in the age group of 6 to 9 years was found to be 25.10 percent, it was 22.50 percent in case of boys. In the age group of 10-14 years, while 15.70 percent girls were illiterate, the illiteracy among boys was only 9.50 percent. Corresponding figures in rural areas presented a more dismal picture where 52.90 percent girls in the age group of 6 to 9 years were found to be illiterate, while the percentage of illiterate boys in the same age group was only 40.20 percent. In the age of group of 10 to 14 years female illiteracy was found to be 42.90 percent while among males, it was only 20.90 percent.

Specially, in rural areas and among the weaker section of society, the rate of female illiteracy is alarmingly high. Daughters of agricultural labourers, small farmers and artisan families are either illiterate or withdrawn from school early and working in low status occupations or in the unorganised sector.

The common rural scene is that a few have a lot and many have very little, where as most have none. Most of the rural population lives below poverty line and women have to do any work, to keep body and soul together. As most of the rural women workers come from deprived sections and they are paid less wages. Land less ness and agricultural unemployment forces the rural families to migrate towards cities and other suburbs in the hope of employment, only to face harsher realities.
As most of the women in the country are illiterate and in low paid jobs, in comparison to males, are ignorant of the basic law. Most of the times, they do not register a case against those persons who violate their rights or commit crimes against them. Lack of awareness poverty, appression and customs place an Indian woman at the receiving end.

2.3.4 Legal Obstacles and Law Enforcing Agencies

The law is too inadequate to give protection to the suppressed women of India and the law-enforcing agency is probably not sufficiently, concerned and awake to the gravity of the situation.

The existing legal system has a tilt towards patriarchal social system despite broad declaration by the constitution about the equality of every citizen. Though the Government is secular, the personal laws of Hindus, Muslims, Christians etc., directly affects women’s lives and status. These laws seem to have a deep-rooted bias against women.

2.3.5 Indecent / Obscene Projection of Women in Media

In the battle for equal status and fair treatment of women an important role is generally attributed to the mass media and in particular television and films have become significant parts of life, in a developing country like ours. But today, the presentation of women in films and television is contradictory to reality and
culture. Women are portrayed as docile, home loving, and objects of male desire. Sex and violence has increased in the main stream cinema of the entire region.

2.3.5.1 Women in T.V. Programmes and Films

Television and films are the most popular and powerful medium of communication in the world today. Television programmes at present are dominated by feature films and film based programmes that exploit the female form and through their socially insensitive approach simply trivialize and debase the image of womanhood. The vulgarity and violence of commercial films projects women in subordinate and exploited roles and ignores their contribution towards economic activity. Films and film based programmes are loaded with derogatory images of women and usually explicitly or implicitly sexist. They play a significant role in reinforcing negative stereotypes.

In commercial films and serials sex is described only with the purpose of providing fun and titillation. Where there are details of lovemaking, description of the sex and indecent representation of women, it will lead to investigation of lust in the minds of youth and shall have a degenerating impact on the minds of young and adolescent viewers. Whatever leads to unhealthy sexual excitement and corruption of mind should be treated as obscene.

The depiction of woman as a sex object is very common now a days in film music. The film songs, 'Tu Cheeze Badi Hai Mast Mast' and 'kya Cheeze Ho
Turn Tumko Bhi Maloom Nai Hai' shows the very concept of women as a Cheeze (object). This tendency makes the people to view women as a Cheeze, in other words, a object to be possessed and to be enjoyed.

There have been instances of advertisements in television, which unnecessarily display the exposed figures of males and females engaged in indecent actions. For the advertisement and promotion of the sale of the product, so much lewd and lascivious display is quite unnecessary. Such advertisement carries implications far beyond the commercial purpose of promotion of sale of their product. They tend to degenerate and corrupt young generation to an immeasurable extent. Such advertisement amounts to obscene projection of women.

2.3.5.2 Beauty Contests

A question before the Andhra Pradesh High Court\textsuperscript{56} was, beauty contests, whether indecent? A single judge of the High Court held that if a beauty contest indecently represents any woman by depicting in any manner the figure of a woman, form, body or any part thereof in such a way so as to have the effect of being indecent or derogatory to or degrading women or like to deprive, corrupt or injure the public morality violative of provisions of Indecent Representation of women (prohibition) Act, 1986 and also constitution of India.

\textsuperscript{56} C.Rajakumari v. Commissioner of Police, Hyderabad, 1999 (1) Femi-Juris, SCC. 143
2.3.5.3 Computer Pornography / Internet

In recent years technological development and advances have been enthusiastically embraced by those in the pornography trade to assist them in promoting their wares and the introduction of new communication technologies facilitating the making of new information superhighway. The use of internet is becoming widespread and dissemination of computer pornography\textsuperscript{57}, through internet is posing certain serious problems as regard to its harmful effects which result from the availability generally of pornography, such as negative images and adverse attitude towards women, its contribution towards the commission of sexual crimes, and its direct use by pedophiles to abuse the children. Home Affairs Committee, Computer pornography, First Report\textsuperscript{58}, specifically pointed out that there are special features of computer pornography which makes it likely to cause greater harm than other forms of pornographic material, for eg. Computers are particularly attractive to children, who are often more computer literate than their parents and it is difficult to restrict their access to computer pornography. The addictive nature of the computer technology, coupled with the addictive nature of the pornographic material and imaginary, is a potent reason for distorted view of sexual relationships presented by pornography and the element of control dominance, a feature often associated with the sexual crime is encouraged through computer pornography which, because of its unique and interactive nature enables individuals to exercise control directly in what is happening. Most of the use net news groups are committed to sexual topics. Indeed every new medium of

\textsuperscript{57} Computer pornography deals with scanning of visual images stored in one computer and transmitted to another, in one sense and the visiting or pornographic websites on the net in another. Now the data that stores pornographic dormant till it is actually 'hit' or accessed by the another person; see also Ronald K.L.Collins and David M.Skoven, The Pornographic State, 107 Harv.L.Rev.(1994) at p.1381

\textsuperscript{58} (1994) H.C.12,p.50
vocalization has been used to strew information about sex and this is resulting as a flourishing market of pornography on the information superhighway.

i. Techno-Voyeurism

In September 2004, a news item in the foreign press reported "A SPY camera was discovered from a women's shower at the prestigious Lincoln College in Adelaide. The hostel provides accommodation for almost 250 University students. Australia did not yet have proper legislation to tackle such incidents, the dilemma could be faced by many nations who have surrendered the right of privacy to the techno-voyeurs.

ii. Cyber Sex the New Menace

New Delhi video footage of sex at School cause scandal59.

One of the biggest scandals hit public schools in Delhi a sexually explicit video clip of two school students was shot with a cell phone camera and then distributed among other kids through the Multimedia Messaging Service (MMS). The clip, showing a young girl engaged in oral sex with a boy, was shot with her consent. But the clip was circulated to the others without her permission.

Both the students were expelled from the school. The school has put up a notice warning parents and students against bringing mobile phones.

59 Picture phoning.com; NDTV, Sunday Nov 28, 2004 New Delhi
iii. Anara Gupta Miss Jammu Sex video scandal\textsuperscript{60}.

Anara Gupta, crowned Miss Jammu in 2001, was booked by the Jammu Police in connection with featuring in a pornographic CD case on November 3\textsuperscript{rd} 2004. She was granted bail by the High Court later on.

iv. Lechery and greed\textsuperscript{61}.

The Harda case was more repugnant because a highly respected teacher (Timaranny Coaching Centre teacher) had stooped so low as to sexually exploit his young girl students for base pleasure and profit. He made obscene films with a web camera and stored them in his computer, which he was showing it to a select audience. He had also made CD’s of his sex with girl students and was selling them for profit.

The SP of Harda got a letter by post dated Jan 7, 2005. The letter had been sent by President of the Students Union of the Government College of Timaranny Town. It was the most shameful, shocking serious crime, the exposure of which sent shock waves all over the state and beyond.

Sex tapes, pornographic film CDs offered for sale on internet\textsuperscript{62} exposes deep divisions in Indian culture. These incidents are frightening, sickening and perverted.

\textsuperscript{60} Picture Phoning.com.

\textsuperscript{61} Cyber Sex, "Crime and Detective", April 2005, P.91
2.3.6 Victim's Non-report / Silence

Sexual harassment has long been shrouded in silence, not just at the work place, but in the home, the community and on the roads. In the work place, it has been portrayed as a natural corollary of stepping out of the home and entering the 'big bad world'. Women have been conditioned to believe that they should prepare mentally to face such incidents and not to make a big deal of it. For years, sexual harassment at the work place has been a grey area and due to work place hierarchy, women are reluctant to come out openly and complain against sexual harassment for a number of reasons.

Social Fabric

The social fabric of society which weaves the value of being passive, weak and hand maiden of males. The shame associated with such harassment and the fear of being blamed for it or looked down unknown by others. There is also an overwhelming sense of guilt imbibed over the years through social conditioning. Women feel that some how, they are themselves responsible for what has happened. As in the case of rape, where the victim is made to suffer socially and psychologically, a sexually harassed woman also lives with a number of apprehensions. If they make too much noise about these incidents, they may not get married. The stigma attached to the victim of sexual harassment is enough of a deterrent, which leaves the women with little choice.
Fear of unbelief

In addition to social humiliation, women do not complain because they feel that no one will believe them. It was pointed out by many women\textsuperscript{63}, that both male and female colleagues tend to find fault with the woman complaining of sexual harassment. For instance, they call her aggressive, a trouble maker, a drug addict, etc., A woman who dares to complain against sexual harassment is seen as bold and aggressive – traits which are not regarded as positive for a feminine personality. On the other hand, seniors, bosses and employers when accused of sexual harassment, allege that the woman complainant is inefficient or lazy, and in order to cover up her own faults she is making out a case of sexual harassment.

Fear of Office Gossip

Women who complain of harassment are never taken seriously, instead they are laughed at and become objects of ridicule. If woman complaints against sexual harassment, there is a general presumption that, her character may be dubious, she might have provoked that man, she may have actually been involved with him sexually or she is a kind of bad woman, while good women would never find themselves in such a situation. The respect and dignity of women and a fear of non-acceptance by the society prevent them from reporting such harassment. This makes women believe that if women behave in accordance with the limits set by a male dominated society, they can save themselves from such harassment.

\textsuperscript{63} see A Saheli report October, 1998, p.17
Lack of office support

Lack of support within the office also can be cited as one of the reasons why women do not protest against sexual harassment. Colleagues – both male and female – hesitate to support affected women for fear of inviting the disfavour of their boss, or accused colleague and hence the women are usually isolated and left to fight a battle alone. This difficulty in proving the harassment makes them keep silent.

Lack of Response

Women often believe that no one will do anything about the problem. If women are harassed in an organisation, the management of the organisation does not speak out against that harassment, or does not act quickly on reports of harassment, most victims will be discouraged from acting.

The repercussions of raising the issue of sexual harassment, the attitude of society towards sex and sex related issues, act as a deterrent against complaining.

Fear of stress and strain

Besides the stress and strain following the complaint, they have to deal with criminal cases too. It is followed by a lengthy and cumbersome procedure of law followed by an agonising cross-examination in Court. This non-cooperation and

\[64\text{Ibid}\]
unwillingness shown by the protectors of law deters them to complain\textsuperscript{65}. Working life becomes so uncomfortable once they raise the issue, even it is difficult to continue in the same work place. Especially in small organisations, once they make a complaint of sexual harassment, they have no future. Most working women regard sexual harassment as an “occupational hazard” and thinks it is a normal behavior of a man\textsuperscript{66}.

**Fear of job loss**

Another major reason for not complaining against sexual harassment is the fear of dismissal, lack of job security, transfer, promotion. In the private sector and amongst women working in the unorganised sector, the possibility of losing the job acts as a major deterrent in reporting harassment cases. Women working in garment factories on piece rate basis, agriculture fields, construction work face open and routine harassment. They can not complain, if they do so, the superior fires or rejects their pieces and finds unnecessary fault with their work. The management refuses to listen to their woes and sides with the supervisor, claiming that it must be the women’s fault. Women workers are threatened that they will be checked out of their jobs if they persisted in their complaints. Co-workers, although they witness harassment, do not intervene because of economic necessities and fear of losing the job.


Fear of Media

The exposure of sex behavior by media, which raises anxiety and curiosity among lay public.

Difficulties in proving the crime

Due to lack of awareness among women regarding procedures of Law, it would be very difficult to prove this kind of harassment, given the nature of evidence required. Taking the issue to Court or any redressal committee only adds to the harassment of women, in addition to the trauma of sexual harassment, the woman has to expose herself to everyone she approaches for redressal – the boss, the police, the lawyer, the press and the judges. The endless number of dates and appearances is seen as a source of protracted harassment.

The fear of depersonalizing and humiliating institutional procedures and interpersonal hassles to which victims of rape and other sexual assaults are frequently subjected offers no encouragement to report and pursue a legal complaint. In the case of a workplace assault, the fact that a woman’s livelihood may be jeopardized further exacerbates the tendency not to report to legal authorities, grievance officers or workplace associates.

67 Beldin 1979; Holstrom and Burgess; Macinnon 1979
68 Mackinnon 1979; Silverman 1976
More over there is a general feeling that even after all the bother, nothing comes out of such complaints. There is a strong belief that, if women behave in accordance with the limits set by a male dominated society, they can save themselves from such harassment. Thus the silence of victims triggered the incidents of sexual harassment.

2.4 THE CONSEQUENCES OF SEXUAL HARASSMENT

Sexual harassment in all its forms has been found to have deleterious effects upon its victims. The impact of sexual harassment on victims varies from one victim to another. It also depends upon the kind of sexual harassment behaviour and nature and emotional response of the victim. The perception of one person differs from another person. Hence the physical and psychological impact to a certain extent depends upon the perception.

Sexual harassment has been described as a psychological rape: indeed the literature suggests that the physical, psychological and economic consequences of sexual harassment are similar to those experienced by victims of other forms of trauma.

2.4.1 Health Conditions

2.4.1.1 Individual Outcomes

Individuals who experienced sexual harassment ranging from offensive language to sexual assault have exhibited a deterioration of both their psychological or emotional health: physical ailments reported by victims of sexual
harassment include gastrointestinal disorders, headaches, anxiety attacks, insomnia and other problems associated with high levels of stress. Most sexually harassed women exhibit an immediate distress response following their victimisations that psychologists describe as a state of psychological shock. Other emotional responses include anger, depression, feelings of vulnerability, humiliation and alienation, physical health symptoms reported by individuals who have been sexually harassed include inability to sleep, appetite disturbances, crying spells, weight loss and nausea.

2.4.1.2 Organisational Outcomes

An increase in employee’s health problems for organisations is associated with an increase in the costs of sick leave, medical insurance and disability for employers. Additionally, the deterioration of employees physical or emotional health may also partially cause a decrease in an individual and work group productivity.

2.4.2 Work Role Attitudes
2.4.2.1 Individual Outcomes

Employee work role attitudes are caused by and have been related to a variety of individual and organizational variables including organizational stressors, (eg., sexual harassment, uncertainty of work role tasks, working conditions) disposition and work tasks. Specifically, sexual harassment has been

69 Crull 1982; Salisbury, 1986
70 working women’s Institute 1979; Gutek 1985
71 Supra Note 69; Webb 1994
72 US, Merit Systems protection Board, 1988
found to have a negative impact on satisfaction with coworkers and supervisors\textsuperscript{73} and organisational commitment\textsuperscript{74}. Sexual harassment affects personal and academic development and work becomes worse as a result of sexual harassment.

\textbf{2.4.2.2 Organisational Outcomes}

The logical outcomes of work role attitudes caused by sexual harassment include the negative effect on work group attitudes, the reputation or image of the organisation. The aftermath of the harassment affects the work group of the individual who was harassed, including lowered morals\textsuperscript{75}.

The negative attitudes can result in reduced productivity including a reduction on job efficiency and effectiveness. They can have an indirect negative effect on work performance resulting from a lack of sharing of knowledge or support from coworkers or supervisors for individuals who experience sexual harassment.

\textbf{2.4.3 Job Withdrawal}

\textbf{2.4.3.1 Individual Outcomes}

The ubiquity of sexual harassment and its after effects means that women are controlled economically and socially. In 1981, the U.S Merit Systems protection Board found that one in ten women had quit her job in response to sexual harassment and another two years study found that sexual harassment had

\textsuperscript{73} Grubes and Bjorn, 1982  
\textsuperscript{74} Kewely and Magnusson, 1992  
\textsuperscript{75} See Supra Note 72
led to the transfer, termination or reassignment of more than 36,000 federal employees\textsuperscript{76}. It is also estimated that at least 20\% of women students drop a class in response to harassment and others may alter their career goals to avoid specific harassers or hostile environment. Due to the scope of severity of harassment, women are frequently put in the position of reevaluating educational and career decisions.

2.4.3.2 Organisational Outcomes

Talented women may quit jobs, efficiency and growth of organisation would be affected.

2.4.4 Litigation

2.4.4.1 Individual Outcomes

Legal procedure and legal costs of a lawsuit may prohibit an employee from pursuing this response. Additionally, individual career advancement\textsuperscript{77} or career interference can occur while they engage in legal activities. Many women because of a deep sense of shame do not question the harasser. Lack of awareness or illiteracy keep some women away from trials. The repercussions following the lodging of a complaint usually add to the mental torture of the women who is sexually harassed.

\textsuperscript{76} Ibid

\textsuperscript{77} Gutek, 1985
2.4.4.2 Organisational Outcomes

Legal suits can affect the reputation and market value of the organisation.

2.4.5 Other Unacceptable Consequences to Victim:

- Lack of increments
- Disrepute
- Litigation by abuser alleging defamation
- Aggravated harassment, including threats to life
- Transfers to remote areas
- Ostracism and isolation
- Financial hardship
- Non-co-operation of family

2.4.6 Unacceptable Victimisation

- Threatening harm to victim and her family
- Giving bad Annual Confidential Reports
- Defaming on refusal
- Making physical threats and attacks
- Terminating services
- Stopping increments, promotion
- Troubling and involving relatives and friends
- Conducting bogus inquiries
• Intimidating or threatening the peers in whom the victim confided
• Filing defamation suits
• Threatening witnesses

2.4.7 Unacceptable Employer Response

• To be dismissive
• To not take the complaint of sexual harassment seriously
• To bring pressure upon the complainant to settle or not press her complaint
• To be intentionally inactive or to “wish away” the situation at hand
• To shield the perpetrator
• If the woman is unmarried, to intimidate the family members of the complainant
• To resolve the situation by transferring both the abuses as well as the complainant rather than by penalizing the abuser.

The victim-blaming atmosphere surrounding sexual harassment seems to have life altering consequences for women in all realms of their daily experience. Sexual harassment in all its forms, has been metamorphically described as the ‘dripping tap’ of sexual violence and exploitation \(^78\) a constant and strong reminder of the status of women and sexual atrocities in contemporary cultures.

\(^78\) Wise and Stanely 1987
In view of the above discussion, the problem of sexual harassment of women at work place is a multidimensional and hampering the morality of the individual as well as the entire women-folk. It is a hurdle for individual economy (especially women), institutional economy and national economy also. So it requires a thorough attitudinal change in the men-folk and gender discrimination is to be eliminated from the minds of people.

Hence an attempt is made in the succeeding chapter to have a thorough discussion on gender discrimination with special reference to sexual harassment.