



ISSN Print: 2394-7500  
ISSN Online: 2394-5869  
Impact Factor: 5.2  
IJAR 2017; 3(8): 84-90  
www.allresearchjournal.com  
Received: 14-06-2017  
Accepted: 15-07-2017

**Dr. Virender Sindhu**  
Assistant Prof., U.I.L.M.S.,  
MDU, Rohtak, Haryana, India

## Concept of sexual harassment

**Dr. Virender Sindhu**

### 1. Introduction

The UN Declaration on Elimination of Violence Against women 1993 describes sexual harassment as a glaring instance of violence against women which not only violates the rights of women to life, liberty and equality but also completely negates women's rights to have equal opportunities in terms of employment thereby causing severe detrimental consequences in terms of her economical independence and participation in economic activities of the society. Sexual harassment at workplace, a more pernicious form, strikes at the heart of women's economic self-sufficiency, disrupting women's earning capacity by forcing them out the workplace or educational institution.

Claire Safran describes sexual harassment as 'sex that is one sided, unwelcome or comes with strings attached' [1].

In the words of Catherine A Mackinnon, 'sexual harassment is coercion, unwanted sex under threat or sex that is economically enforced' [2].

According to Lin Farley, sexual harassment is best described as 'unsolicited, non-reciprocal male behavior that asserts a woman's sex roles over her function as a worker' [3].

Sexual harassment is sometimes described as 'little rapes' by feminists [4]. Andrea Media and Kathleene Thompson comment that a gradual erosion of self-respect and privacy of the victim begins when she is subjected to sexual harassment [5].

### 1.1. Sexual harassment of women – meaning

Sexual harassment is any sexually-oriented practice that endangers an individual's continued employment, negatively affects her words performance or undermines her sense of personal dignity [6].

"Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve innuendo and inappropriate affectionate gesture. It can, however, escalate to extreme behavior amounting to attempted rape. Physically the recipient may be the victim of pinching, grabbing, hugging, patting, leering brushing against and touching. Psychological harassment can involve a relentless proposal of physical intimacy, beginning with subtle hints which may lead to overt requests for dates and sexual favors".

Sexual harassment is all about expression of male power over woman that sustain patriarchal relations. It is used to remind women of their vulnerability and subjugated status. In a society where violence against women, both subtle and direct, is home out of the patriarchal values operating in society, face women conformity to gendered roles.

Sexual harassment can be termed as behavior intended or unintended to hurt or embarrass a woman in a sexual manner through various forms of verbal and non-verbal communication. It is a form of sexual attention which can act as pressurizing influence to make the object of sexual attention comply with the aggressor's wishes or intentions. Sexual harassment reflects the inequitable gender status quo in society, unequal power relationship between men and adhere to a rigid code of gender roles and behavior, where conformity is the rule then the exception.

National Commission for Women in its Publication year of Endeavour 2002, New Delhi 2002, lists the contents of sexual harassment. Sexual harassment will include such determined behavior by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as:-

1. Eve – teasing
2. Unsavory remarks.

**Correspondence**  
**Dr. Virender Sindhu**  
Assistant Prof., U.I.L.M.S.,  
MDU, Rohtak, Haryana, India

3. Jokes causing or likely to cause awkwardness or embarrassment.
4. Innuendoes and taunts.
5. Gender – based insults or sexist remarks.
6. Unwelcome sexual overtone in any manner such as over telephone etc.
7. Touching and brushing against any part of the body and the like.
8. Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.
9. Forcible physical touch or molestation and
10. physical confinement against one's will and any other act likely to invade one's privacy and includes any act or conduct by or person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the workplace hostile or intimidating to a person belonging to the other sex, only on the ground of sex.

The word sexual harassment relates only to the working ladies of any age. In other words the woman who do some works either in public or private undertaking in lieu of monetary consideration and attempt is made on her for satisfying the sex instinct of some male person (may be a superior employee or any employee) she is called sexually harassed. Sexual here means the intention to enjoy opposite sex by the male. 'Harassment' means any conduct which results annoyance, physical or mental cruelty, threat, outrage of modesty, headache, sleeplessness, anxious restlessness unwilling intercourse, defamation etc. In short, to do an act or commission which she does not want to accept but she is compelled to accept for saving herself from employment hardships or the domestic or social hardship or victimized to do for some sex entertainments. <sup>[1]</sup>

### 1.2 sexual harassment of women—definition

According to the Oxford English Dictionary, the word 'harass' comes from the ancient French word 'harer', which means 'to set a dog on'. <sup>[2]</sup>

The American Heritage Dictionary defines 'harass' as 'to disturb or irritate persistently' and states further that 'harass' implies systematic persecution by besetting with annoyances, threats or demands. <sup>[3]</sup>

Black's Law Dictionary defines 'harassment' as a term used to describe words, gesture and action which tend to annoy, alarm and abuse (verbally) another person. <sup>[4]</sup>

Thus, sexual conduct, such as words, physical contact or the display of sexually explicit materials, is used in a workplace or an educational institution, etc., to bully, intimidate or for other similar negative and aggressive purposes, the behavior constitutes sexual harassment.

Rosemarie Tong takes the feminists' definition of non-coercive sexual harassment to that which denotes 'sexual misconduct that merely annoys or offends the person to whom it is directed'. <sup>[5]</sup> Wise and Stantley focus on the idea of intrusion, that is sexual harassment as 'an unwanted intrusion on a woman or women by man or men, and therefore as 'sexism' or 'sexual politics' under another name'. Elizabeth A Stanko sees all violations of women by men in terms of 'intimate intrusions'. <sup>[6]</sup>

Sexual harassment is any sexually-oriented conduct that may endanger the victim's job, negatively affect the victim's job performance or undermine the victim's personal dignity. It may manifest itself physically or

psychologically. Its milder and subtle forms may apply verbal innuendo, inappropriate gestures or propositions for dates and sexual favours. However, it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation. <sup>[7]</sup>

Sexual harassment is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favours. In most modern legal contexts, sexual harassment is illegal. As defined by the US EEOC, "It is unlawful to harass a person (an applicant or employee) because of that person's sex." Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favours, and other verbal or physical harassment of a sexual nature.

Where laws surrounding sexual harassment exist, they typically don't prohibit simple teasing, offhand comments, or minor isolated incidents. In the workplace, harassment may be considered illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted, or when the victim decides to quit the job).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

It includes a range of behavior from mild transgressions to sexual abuse or sexual assault. Sexual harassment is a form of illegal employment discrimination in many countries, and is a form of abuse (sexual and psychological) and bullying. For many businesses and other organizations, preventing sexual harassment, and defending employees from sexual harassment charges, have become key goals of legal decision-making.

Any definition of sexual harassment should be broad enough to encompass both 'sexual' conduct or behavior as well as 'sex-based' behavior. "Disparaging comments on the role of women, their place in the labor market, or their skills and capabilities", "inaccurate criticisms of job performance, obstruction, etc.," could all constitute sex-based harassment. In contrast, sexual conduct refers forms of behavior that are explicitly sexual, as for example, inappropriate touching, sexual comments or jokes, as also sexual violence. <sup>[8]</sup>

Sexual harassment is both a legal and psychological phenomenon. There is no simple or universally accepted definition of sexual harassment. Different attempts have been made to discuss the concept of sexual harassment from a different perspective. For this purpose, sexual harassment includes such unwelcome sexually determined behavior, whether directly or indirectly, as:

- a. physical contact and advances;
- b. a demand or request of sexual favours;
- c. sexually colored 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 where the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work, whether she is drawing salary, or honorarium or voluntary, whether is government, public or private enterprise, such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her

employment or works including recruitment or promotion or when it creates a hostile works environment. Adverse consequences might be visited if the victim does not give consent to the conduct in question or raises any objection thereto. Therefore, while describing sexual harassment we feel that how a woman perceives an action is more significant than the stated intent of the man.

### 1.2.1 International perspective defining sexual harassment

#### (i) EEOC, U.S.A.

In 1980 the American Equal Employment Opportunity Commission produced one of the first set of guidelines dealing with sexual harassment. [9] The commission took the position that sexual harassment was a violation of Title VII of the Civil Rights Act of 1964. U.S. courts including the U.S. Supreme Court have approvingly referred to the EEOC guidelines while deciding Complaints of discrimination on ground of sex under Title VII. The EEOC guidelines have been quoted with approval even by courts and human rights tribunals in Canada. The EEOC guidelines defined "Sexual Harassment" as follows:-

"(a) Harassment on the basis of sex is a violation of sections 703 of Title VII. Unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature constitute sexual harassment when (i) submission to such conduct is made either explicitly or implicitly on term or condition of an individual's employment. (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

(b) In determining whether alleged conduct constitutes sexual harassment, the commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the content, in which the alleged incident occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis. [10]

In California, the Fair Employment and Housing Act [11], defines the terms 'harassment' as employment in the Act, thus:

Harassment includes but is not limited to:

- a) Verbal Harassment, e.q. epithets, derogatory comments or slurs...
- b) Physical harassment, e.q. assaults impending or blocking movement, or any physical interference with normal work or movement when directed an individual...
- c) Visual forms of harassment, e.q. derogatory posters, cartoons or drawings...
- d) Sexual favors, e.q. unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors..." [12]

#### (ii) U.K.

In the U.K courts have held sexual harassment to be a conduct prohibited by Sex Discrimination Act, 1975. However the term 'Sexual Harassment' is not found in the 1975 Act; nor is such conduct expressly dealt with therein. The 1975 Act is essentially designed to deal with the

mischief of discrimination "on the ground of sex" i.e. gender specific discrimination.

Section 1(1)(a) of the Sex Discrimination Act, 1975 provides:-

"A person discriminates against a woman in any circumstances relevant for the purposes of any provision of this Act if:

(a) On the ground of her sex he treats her less favorably than he treats or would treat a man."

The courts have defined 'sexual harassment' in cases arising out of the Sex Discrimination Act, 1975. They have held it to be a detriment within the meaning of Section 6(2) of the Act. [13]

#### (iii) Canada

In Canada, the Canada Labor code defines 'Sexual Harassment' as follows:

"Section 247-1, 'sexual harassment' means any conduct, comment gesture or contact of a sexual nature.

(a) That is likely to cause offence or humiliation to any employee; or

(b) That might, on reasonable grounds, be perceived by the employee as placing a condition of a sexual nature on employment or any opportunity for training or promotion." [14]

#### (iv) International confederation of free trade unions (ICFTU) 1986

The 'union guide on sexual harassment at works' published by the Women's Bureau of the International Confederation of Free Trade Unions (ICFTU) 1986 defines 'sexual harassment' as under:

#### "What is sexual harassment?"

Sexual harassment is any repeated and unwanted verbal, physical or gestural sexual advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone in the workplace, which are offensive to the worker involved, which cause the worker to feel threatened, humiliated, patronized or harassed or which interfere with the worker's job performance, undermine job security or create a threatening or intimidating works environment.

Sexual Harassment encompasses a wide range of unwanted sexual advances including unnecessary physical contact, touching, patting, suggestive or unwelcome remarks, jokes, comments about appearance and deliberate verbal abuse, leering and compromising invitations; use of pornographic pictures at the workplace; demands for sexual favors or physical assault." [15]

#### (v) United nations

The committee on the elimination of discrimination against women constituted by the United Nations in its General Recommendation No. 19 (Jan.1992) titled "Violence against women" said that "sexual harassment" is a form of gender based violence. It is gender based because "it is directed against a woman because she is a woman or which affects women disproportionately". This includes "acts which inflict physical mental or sexual harm or suffering threats of such acts and coercion". The recommendation defined the terms 'sexual harassment' as follows:-

'Sexual Harassment' includes such unwelcome sexually determined behavior as physical contacts and advances,

sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and constitute a health and safety problem. It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion or when it creates a hostile working environment".<sup>[16]</sup>

### 1.2.2 Indian perspective defining sexual harassment

In India, in the absence of any statutory definition of the terms 'sexual harassment', it was left to the Supreme Court to do the needful.

Relying on International connection and norms, particularly general recommendation No.19(Jan,1992) of the Committee on the Elimination of Discrimination Against Women (CEDAW) constituted by the U.N, the Supreme Court of India defined the terms sexual harassment for the first time in the year 1997 in Vishaka V/s. State of Rajasthan.<sup>[17]</sup> The definition is almost in pari materia with the one proposed by the CEDAW, U.N and reads:-

"Sexual Harassment includes such unwelcome sexually-determined behavior, whether directly or by implication, as:

- a) physical contact and advances
- b) A demand or request for sexual favors
- 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 is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or works whether she is drawing salary or honorarium or voluntary, whether in Govt., public or private enterprise such conduct can be humiliating and may constitute a healthy and safety problem. 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 works including recruiting or promotion or when it creates a hostile works environment. Adverse consequences might be incited if the victim does not consent to the conduct is fustian or raises any objections thereto."

In Apparel Export Promotion Council V/s A.K. Chopra<sup>[18]</sup>, DR. A.S. ANAND, C.J. said, "An analysis of the above definition shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonable interfering with her works performance and had the effect of creating an intimidating or hostile working environment for her".

The judgment of the Mumbai High Court in Saudi Arabian Airlines, Mumbai V/s. Shehnaz, Mudbhalkar<sup>[19]</sup> illustrates how a typical case of sexual harassment may include both quid pro quo and hostile environment elements. In this case lady, employed with the Saudi Arabian Airlines as Secretary to the Station Manager, a male was constantly sexually harassed by the same station manager.

The labour court, Mumbai, concludes that the victim had been sexually harassed by her male officer and also victimized for not yielding to his improper sexual advances

by dismissal from service on false and trumped up allegations. The labour court, therefore, directed reinstatement of the victim with full back wages and continuity of services and attendant benefits.

Refining to interfere with the labour court's award, and awarding costs of Rs.1000 to the victim, a single judge of Mumbai High Court (B.M Srikrishna J.) said "An overall view of the case.....brings out that (the victim), a lady was subjected to continuous sexual harassment by her official superior..... The victim has been victimized for her refusing to submit herself to the sexual demands of her superior. The conduct of the male officer would squarely fit in with the concept of 'sexual harassment' as defined by the Supreme Court in the case of Vishaka v/s. State of Rajasthan.<sup>[20]</sup>

In appeal, a Division Bench of the Mumbai High Court comprising, A.V. Sawant and R.J.Kochar, J. declined to interfere with the judgment of the single judge. The Division Bench concurred with the observation of the single judge that the male officer's conduct constituted 'sexual harassment' in terms of the Supreme Court's decision in Vishaka V/s State of Rajasthan.<sup>[21]</sup> While dismissing the letters patent appeal, the Division Bench also imposed costs of Rs.1000 on the appellant company.

### 1.3 Sexual harassment of women – kinds

Sexual harassment can chiefly be classified into two categories:-

- (i) Quid-pro-quo
- (ii) Hostile Environment Harassment.

(i) **QUID-PRO-QUO:** Quid-pro-quo is a Latin phrase which means 'something for something'. Quid-pro-quo sexual harassment refers to a demand of sexual favour and the threat of adverse job consequences if the demand is refused. This is when the employer makes sex a pre-requisite to getting something in the workplace. For example, saying, "If you sleep with me, your works will be done". This also occurs when an employee's submission to unwelcome sexual conduct becomes an explicit condition of employment, or when personal actions such as promotion and transfers are determined on the basis of an employee's response to such conduct.

"Quid-pro-quo sexual harassment" consists of sexual demands accompanied by the threat of adverse job consequences if the demands are refused. It is implicit in the second element that the perpetrator has to be in a position to create adverse job consequences for the woman. Typically such a person would have to be in a position of authority over the victim, although a Quid-pro-quo sexual harassment situation may also exist vis-à-vis a colleague of the same works, e.g. where works evaluation takes into account comments from co-workers, or when a co-worker makes a sexual demand as a condition for co-operating on a team project. Adverse works consequences may be tangible such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, a decision to cause a significant change in benefits, a demotion evidenced by a decrease in wage or salary a less distinguished title, a material loss of benefits and significantly diminished material responsibilities.

Specific examples of Quid-pro-quo sexual harassment includes:-

1. Requiring submission to a supervisor's request for sexual favours a condition of continued employment.

2. Granting specific job benefits such a salary increase or promotion in exchange for sexual favors.
3. Withholding job benefits such as a wage increase or promotion or assigning more arduous tasks to an employee who has rejected a supervisor's request for sexual favors. A refusal to hire a job applicant or outright termination of employment would, of course be actionable in this content.

To establish a prima facie case of Quid-pro-quo sexual harassment, a plaintiff must show that:

- i. The employee belongs to a protected class.
- ii. The employer subjected the employee to unwelcome conduct in the form of sexual advances or request for sexual favors
- iii. The harassment was based upon sex.
- iv. The employee's acceptance or rejection of the harassment was an express or implied condition to the receipt of a job benefit or the cause of a tangible job detriment.

If a plaintiff in a sexual harassment case is able to establish each of the above elements, the burden of proof otherwise shifts to employer. If the employer is able to provide a legitimate reason for its actions, the employee must then establish that the reasons provided by the employer are not real reasons for the employment decision are merely a pretext for unlawful discrimination.

#### **(ii) Hostile environment harassment Harassment Situations**

Sexual harassment may occur in a variety of circumstances. Often, but not always, the harasser is in a position of power or authority over the victim (due to differences in age, or social, political, educational or employment relationships) or expecting to receive such power or authority in form of promotion. Forms of harassment relationships include:

- The harasser can be anyone, such as a client, a co-worker, a parent or legal guardian, relative, a teacher or professor, a student, a friend, or a stranger.
- The victim does not have to be the person directly harassed but can be a witness of such behavior who finds the behavior offensive and is affected by it.
- The place of harassment occurrence may vary from school, university, workplace and other.
- There may be other witnesses or attendances, or not.
- The harasser may be completely unaware that his or her behavior is offensive or constitutes sexual harassment or may be completely unaware that his or her actions could be unlawful.
- The harassment can take place in situations in which the harassed person may not be aware of what is happening, such as during rituals with kids, or when entering limbo.
- The harassment may be one time occurrence but more often it has a type of repetitiveness
- Adverse effects on the target are common in the form of stress and social withdrawal, sleep and eating difficulties, overall health impairment, etc.
- The victim and harasser can be any gender.
- The harasser does not have to be of the opposite sex.

#### **(iii) Sexual harassment in media and literature**

- The *Ballad of Little Jo*, a film based on the true story of a woman living in the frontier west who disguises herself as a man to protect herself from the sexual

harassment and abuse of women all too common in that environment

- *Disclosure*, a film starring Michael Douglas and Demi Moore in which a man is sexually harassed by his female superior, who tries to use the situation to destroy his career by claiming that he was the sexual harasser
- *Disgrace*, a novel about a South African literature professor whose career is ruined after he has an affair with a student.
- *Hostile Advances: The Kerry Ellison Story*: television movie about Ellison v. Brady, the case that set the "reasonable woman" precedent in sexual harassment law
- *In the Company of Men*, a film about two male coworkers who, angry at women, plot to seduce and maliciously toy with the emotions of a deaf subordinate who works at the same company
- *Les Miserables*, a novel by Victor Hugo, and later several film adaptations. During the early stages of the story, Fantine is fired from her job after refusing to have sex with her boss.
- *The Magdalene Sisters*, a film based on the true stories of young women imprisoned for "bringing shame upon their families" by being raped, sexually abused, flirting, or simply being pretty, and subsequently subjected to sexual harassment and abuse by the nuns and priests in the Magdalene asylums in Ireland.
- *Nine to Five*, a comedy film starring Jane Fonda, Lily Tomlin, and Dolly Parton, about three women who are subjected to constant bullying and sexual harassment by their boss
- *North Country*, film depicting a fictionalized account of *Jenson v. Eveleth Taconite Co.*, the first sexual harassment class action lawsuit in the U.S.
- *Oleanna*, an American play by David Mamet, later a film starring William H. Macy. A college professor is accused of sexual harassment by a student. The film deals with the moral controversy as it never becomes clear which character is correct.
- *Pretty Persuasion*, a film starring Evan Rachel Wood and James Woods in which students turn the tables on a lecherous and bigoted teacher. A scathingly satirical film of sexual harassment and discrimination in schools, and attitudes towards females in media and society.
- *War Zone*, a documentary about street harassment
- *Sexual Harassment Panda*, an episode of *South Park* that parodies sexual harassment in schools and the lawsuits which result from lawyers and children using the vague definition of sexual harassment in order to win their lawsuits
- "Sexual Harassment In The Workplace", an instrumental minor-key blues song by Frank Zappa, from the album *Guitar*
- *Hunters Moon*, a novel by Karen Robards deals with a females experience of sexual harassment in the work place

In the pilot episode of the US comedy series *Ally McBeal*, Ally leaves her job at her first firm because of unwanted attention and groping from male co-worker

**Misunderstanding:** It can result from a situation where one thinks he/she is making themselves clear, but is not understood the way they intended. The misunderstanding

can either be reasonable or unreasonable. An example of unreasonable is when a man holds a certain stereotypical view of a woman such that he did not understand the woman's explicit message to stop.

This is an environment where an employer (a superior or a colleague) does or says things that are uncomfortable and offensive to her as an individual sexual harassment does not need to only include a demand for an exchange of sex for job benefit. It is the creation of an uncomfortable environment. If two employees are sharing sexual jokes and both of them are enjoying it then it may not be termed as sexual harassment. But, if one of the two desires to terminate the relationship and the other uses the unequal relative terms and conditions of employment of the work place to further the relationship, this would be sexual harassment. The conduct can be unwelcome even if the employee does not specifically demand that the conduct stops. This kind of works environment can affect the performance of the employee. This determination of whether a particular act is sexual harassment or not depends on the specific facts, contents of the situation and how the person has been affected by it. Sexual harassment can be possible between two co-workers of the same or different sex an employee and his client. It can be physical, visible or verbal.

Examples of sexual harassment could include various behaviors and are not limited to some of the examples given below:

- I. Acts from male to female, female to male and between or among individuals of the same sex which are sexual in nature and unwelcome sexual harassment may be directed against a particular person, persons or group.
- II. Nonverbal behavior which is sexual in nature and unwelcome, e.g. staring, leering, lewd gestures.
- III. Verbal behavior which is sexual in nature and unwelcome. For examples epithets, jokes, comments, or slurs, repeated requests for dates which are unwelcome.
- IV. Physical conduct which is sexual in nature and unwelcome, e.g. assaults, sexual advances such as touching, patting, pinching, impending or blocking movement or any physical interference with normal works or movement.
- V. Visuals which are sexual in nature e.g. posters or signs, letters, poems, graffiti, cartoons or drawings, pictures, calendars, e-mail and computer programmes.

The most important aspect of workplace sexual harassment is of how the person takes it i.e. if she is mentally affected because of an act which actually would not be so serious in nature, it still would be called sexual harassment. So it is all to say of how she sees the situation.

The following principles may be used to determine if an act is sexual harassment.

To determine if an act or series of acts of the defendant an offence of sexual harassment against the Complainant (the Plaintiff) is caused but for causation test is used. Though this test is ascertained whether plaintiff has suffered discrimination or harassment only because of being a different sex. Answers to some supplementary questions may also be of great help to accurate the findings like (a) would the employer have said or done what he said or did before his wife, parents or colleagues of same sex (b) would he like his behavior to be reported in media and (c) is it necessary to be said or done at all.

1. In order, to determine if the Plaintiff has been harassed only because of being a different sex and standard adopted should be that of objective test, meaning thereby there must be an objective standard from a reasonable person in the similar circumstances, view point.
2. To determine if an act or speech of the Defendant has subjected the Plaintiff to sexual harassment, it is also important that the character of the Plaintiff (Complainant) or her sexual history must not have been made an issue.
3. The workplace cannot be taken as a forum for exchange of ideas and so in order to determine the construction of sexual harassment only requested speech is permissible and not a free speech.<sup>[22]</sup>

To establish a prima facie case of sexual harassment based on a hostile work environment, a plaintiff must show that:

- i) The Plaintiff belongs to a protected class.
- ii) The Plaintiff was subjected to unwelcome sexual harassment.
- iii) The harassment was based on sex.
- iv) The harassment affected a term, condition, or privilege of employment: and
- v) The employer knew or should have known the conduct was occurring.<sup>[23]</sup>

Much of the litigation in the United States has centered on whether conduct was "unwelcome" and whether the harassment was sufficiently severe and persuasive that it affected a term, condition or privilege of employment.

In 1986, the United States Supreme Court addresses the issue of hostile environment sexual harassment under Title VII for the first time in Meritor Savings Bank v/s Vinson.<sup>[24]</sup> In Meritor, the Supreme Court held that a Plaintiff may establish a violation of Title VII by proving that discrimination based on sex created a hostile works environment.

## **1.4 Reasons which make sexual harassment such a big problem**

### **1.4.1 Social factors**

Multiple factors are responsible for the problem. First the foremost factor is status of second class human being ever treated by the male dominated society since centuries, feeble bodily power in women is another cause, centuries old conception that woman is an object of enjoyment only and is created to serve the man. Social set up which includes customs are also in this favor to the woman. The social attitude had ever been passive to the female problems rather it had been suggested that for the sake of prestige of woman as well as her family, the crimes against women should be suppressed. Women themselves are also responsible for the problem because they do not unite and support the female victim. Down grading of moral standards, deteriorating law and order situation, unwillingness to be a witness against such incident, fast life in which there is a shortage of time to initiate any legal action, unemployment which advises the victim to be silent against any harassment because the hunger is more painful than the harassments are several elements which do maintain the problem. In action of the police or other authority is another considerable factor. Lastly, reported cases compromised due to political, social, bureaucratic and family pressures which is the ultimate death of a ray of hope.

#### 1.4.2 Other factors

Sexual harassment is an issue that affects all of us at the workplace, when it occurs many individuals who experience sexual harassment suffer physically and psychologically from harassment. Many are forced to quit their jobs or take sick leave to escape from the harassment. Not only is the individual harmed, but all of her co-workers are harmed either by the pervasive feeling that one cannot get ahead in the workplace without giving sexual favors or by creating an environment where co-workers are forced to tolerate offensive conduct and their work suffers.

Reported sexual harassment greatly represents the extent of the difficulty because most individuals are afraid to report the harassment. The very fear of retaliation or being labeled a troublemaker keeps many individuals from reporting such an incident. Added to it is the fear of offending the harasser, who is either a boss or a colleague. This keeps a great majority of both men and women from directly confronting the harasser.

The cases of sexual harassment of woman at work place are alarmingly increasing because of several factors including:

- (1) Increasing number of working woman.
- (2) Poor knowledge of human relations and values.
- (3) Fast deterioration of social and moral standards of people.
- (4) Poor and polluted family atmosphere.
- (5) More talks on feminism and masculinism than on humanism.
- (6) Poor sense of wrong and right in the people.
- (7) Poor law and order position in the society
- (8) No adequate provisions of law to deal with the subject efficiently.

What we eat, what we see and what our parents do or have been doing are very important in this connection, as such things directly or indirectly affect our thinking and in turn actions.

#### References

1. PJ Murray. Employer Beware of Hostile Environment, Sexual harassment. 26, Dug. L.R. 1988, 461.
2. Oxford English Dictionary quoted in Anita M Superson, A Feminist Definition of Sexual Harassment in Sexual Harassment as an Ethical Issue in Academic Life, Leslie Pickering Francis (ed), 2001, 180.
3. Ibid, quoted American Heritage Dictionary at 180. Synonyms for harass include: bully, intimidate, threaten, badger, irritate, disturb, persecute, oppress, humiliate and degrade.
4. Ibid, quoted Black's Law Dictionary. 180.
5. Rosemarie Tong. Women, Sex and the Law. 1994, 68.
6. Elizabeth A. Stanko, Reading Danger: Sexual Harassment, Anticipation and Self Protection in Women, Violence and Male Power, Marianne Hester, Lez Kelly and Jill Radford (ed), 1996, 50-56.
7. Alok Bhasin. Sexual Harassment at workplace, First Edition. 2007.
8. ILO. Sexual Harassment at work: National and International responses, Deirdre McCann, 2005, 20.
9. EEOC, Guidelines on Discrimination Because of Sex, 29 CFR 1604. 1985, 11(a).
10. 45 Federal Register 74, 677 (10th November), codified in 29 code of Federal Regulations (CFR), Section. 1604.11.

11. The Californian Administrative Code, Title 2, Regulation 7287. 1988, 6.
12. ILO. Conditions of Work Digest. Combating Sexual Harassment at Work. 1992; 11(1):161.
13. Strathclyde Regional Council V. Porcelli. 1986 SC 137:ICR. 1986, 564.
14. Canada Labour Code, Part III, Standard Hours, Wages, Vacations and Holidays, Division XV. 1, R.S., c. 9 (1<sup>st</sup> Supp.), S. 17. 1985. Source: www.canlii.org
15. Source ILO. Conditions of Work Digest. Combating Sexual Harassment at Work. 1992; 11(1):275.
16. Source: U.N. Committee on the Elimination of Discrimination against Women: General Recommendations No.19: Violence against Women (11<sup>th</sup> session New York, Jan.) Document No. CEDAW/1992/L.1/Add. 5. 1992.
17. 1997 6, SCC 241.
18. 1999 1 SCC 759 : AIR 1999 SC 625
19. 1999 2 LLJ 109 (Bom.)
20. 1997 6 SCC 241.
21. 1997 6 SCC 241.
22. Article by Srinivas Gupta on Sexual harassment of Women at Workplace: In India and abroad Academy Law Review Vol. 24.
23. Cram Vs. Lamson & Sessions Co. 49 F. 3d 466, 473 (8<sup>th</sup> Cir 1995).
24. 477 U.S. 57.