



BLOCK 5
GENDER, LAW AND SOCIETY

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BLOCK INTRODUCTION BLOCK 5

Gender, law and Society

Block 5 of this Course “Gender Sensitization: Society and Culture” titled as “Gender, law and Society” has two Units. The aim of the block is to introduce the learners the issues related law and society. The first Unit in this Block is Unit 11 is titled as “Gendered Based Violence”. The Unit introduces the concepts of gender based violence and discusses its extend of prevalence in India and elsewhere. It also identifies causes and consequences of gender based violence. Final part of the Unit draws learner’s attention to the ways and means to address gender based violence. The last and final Unit in this block is Unit 12. It is titled as “Sexual Harassment at the workplace”. The Unit starts with introducing the learner “What is sexual harassment at workplace?” It also gives different forms of sexual harassment. The Unit elaborately introduces the learners the causes and features of sexual harassment at the workplace. The learners can also learn about the myth and reality about the sexual harassment. The Unit writer has given few case studies related to sexual harassment which are discussed widely in the media. Finally, the Unit writer explained how law responded with regard to sexual harassment. There is a box at the end of the Unit which gives summary of learning points. We hope two Units in this block briefly explain the laws and legislations related to gendered issues to the learners. Both Units in this Block contain suggested readings. If learners wish to learn further in this area, they can read the books given at the end of the Units.

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UNIT 11 GENDER-BASED VIOLENCE

Structure

- 11.1 Introduction
- 11.2 Objectives
- 11.3 What is Gender- Based Violence?
- 11.4 Categories of Gender –Based Violence
- 11.5 Forms & Magnitude of Gender –based Violence
- 11.6 A Closer look at some major forms of Gender- Based Violence in India
 - 11.6.1 Sexual Offences: Rape, Molestation and Sexual harassment at the Workplace
 - 11.6.2 Dowry-related Deaths and Harassment
 - 11.6.3 Domestic Violence
 - 11.6.4 Trafficking
 - 11.6.5 Acid Attacks
 - 11.6.6 Honour Crimes
 - 11.6.7 Female Sex Selective Abortions
- 11.7 Marginalisation & Increased Vulnerability
- 11.8 Summing Up
- 11.9 Key Words
- 11.10 References & Suggested Readings
- 11.11 Unit End Questions

11.1 INTRODUCTION

Gender-based violence (GBV) is perhaps one of the most widespread and socially tolerated forms of violence prevalent in the world. It is a widespread and persistent challenge in India, linked directly to patriarchy and its foundational belief that men have the privilege and the power to inflict violence upon women. Rooted in women's subordinate status, it is linked both to the institution of patriarchy as well as the concept of masculinity – that a 'real man' is one who inflicts violence against women. GBV is a major obstacle in women's enjoyment of their human rights and fundamental rights as guaranteed by the Indian Constitution.

11.2 OBJECTIVES

After Completing this Unit, you will be able to:

- Know the concept of gender-based violence;
- Illustrate forms of gender-based violence and the extent of their prevalence in India and elsewhere;
- Identify causes and consequences of such violence;
- Highlight various ways of addressing and responding to such violence, including through law and social action.

11.3 WHAT IS GENDER-BASED VIOLENCE?

The term **gender-based violence (GBV)** is used to distinguish violence that targets individuals or groups of individuals on the basis of their gender from other forms of violence by individuals and collectivities. It includes acts that result in, or is likely to result in, physical, sexual or psychological harm. A threat of such acts, coercion and arbitrary deprivation of liberty are also forms of gender-based violence. Such gender-based violence might occur within the family, in the community during “peace times” or times of conflict, or by state agents. It may be perpetrated by family members, acquaintances, strangers or intimate partners including husbands.

While violence is a traumatic experience for anyone – man, woman or child – gender-based violence is predominantly inflicted by men on women and girls by reason of their gender. It impacts women’s dignity, security, sexuality, reproductive capacity and their right to control over their own body (autonomy), apart from its over-arching impact on physical and mental health of women. Gender-based violence stems from the power inequality between men and women, exacerbated by socio-economic, cultural and structural inequalities.

A thin line of distinction exists between gender-based violence (GBV) and violence against women (VAW), though the two terms are often conflated and used inter-changeably. Though VAW includes any act of GBV against women and girls, the term ‘gender-based violence’ acknowledges the gender dimensions of the violence, both from the perspective of perpetrators as well as victims. GBV is a term that is used to distinguish violence that targets individuals or groups of individuals on the basis of their gender from other forms of violence by individuals and groups. Such gender-based violence might occur within the family, in the community during “peace times” or times of conflict, and by state agents or non-state actors. It may be perpetrated by family members, acquaintances, strangers or intimate partners. The term GBV is therefore broader and more inclusive.

Gender-based violence both reflects and reinforces inequities between men and women and compromises the health, dignity, security and autonomy of its victims.¹ It encompasses a wide range of human rights violations. GBV is faced predominantly but not exclusively by women and girls. Men and boys too are sometimes targeted for gender-based violence, though the extent to which GBV impacts them is not clearly known. Violence against lesbians, gays, bisexuals and transgendered people is an illustration of how gender-based violence also results from the tension between mainstream and alternative understandings and practices related to sexuality. While acknowledging the prevalence of GBV against members of the lesbian, gay, bisexual, transgender (LGBT) community in India, and the serious human rights violations perpetrated on members of the community, this unit focusses on gender-based violence on women and girls.

11.4 CATEGORIES OF GENDER-BASED VIOLENCE

The UN Special Rapporteur on Violence Against Women has categorized forms of violence against women into violence within the family, violence in the community and violence perpetrated / condoned by the state.² Using these broad forms, violence against women in India can be further disaggregated as follows:

- a) **violence in the family** – such as domestic violence, sexual abuse of children in the household, dowry-related violence, rape and incestual rape by family members, honour crimes, sex-selective abortions and female infanticide, female genital mutilation and other traditional practices that are harmful, violence against lesbian, bisexual and transgender people, and violations of sexual and reproductive rights;
- b) **violence in the community** – including rape, sexual abuse, sexual harassment at workplace and other public places, acid-throwing, ‘witch-hunting’, *sati*, honour crimes, trafficking in women and children, forced prostitution, violence against women with disabilities, communal violence, and violence against *adivasi* and *dalit* women;
- c) **violence perpetrated or condoned by the state** – including custodial rapes, torture and killings, gender-based violence in militarised contexts, violence against women migrant workers, refugees and internally displaced persons, communal violence and other contexts of mass crimes.

These categories of violence against women are not water-tight compartments; some types of violence against women fall under more than one category. The three categories of violence against women are also inter-related and reinforce each other to subvert and subjugate women’s enjoyment of human rights.

11.5 FORMS & MAGNITUDE OF GENDER-BASED VIOLENCE

Gender-based violence has been shrouded by a culture of silence and tolerance for a long time. It is difficult to access reliable statistics on the same, as the violence is under-reported due to stigma, shame and fear of reprisal.

The magnitude of gender-based violence in India is indicated by statistics derived from the National Crime Records Bureau (NCRB), Government of India. These statistics indicate that in among all registered cases of serious crimes against women, the largest share (36%) was under domestic violence - ‘cruelty by husband and relatives; (S. 498A of the Indian Penal Code). The next largest share (24%) was “assault on women with intent to outrage her modesty”.³ The report also said there was a gradual increase in crime figures, with major increases in rape, kidnapping and abduction and assault on women with an intent to outrage their modesty. The data on rapes suggest younger women continued to bear the brunt. In 2014, almost 44 per cent of all victims were in the age group of 18-30 years, whereas one in every 100 victims was under six years of age. Statistics related to reported cases in 2014 were as follows:

Table 1: Major Crimes Against Women in India: 2015 & 2017

Rape	34651	32559
Attempt to commit rape	4,437	4154
Kidnapping and abduction of women to compel her marriage	31778	30614
Dowry deaths	7634	7466
Assault on woman with intent to outrage her modesty	42664	46098

Check Your Progress Exercise 1

Note: i) Use the space given below to answer the questions.

ii) Compare your answer with the Course material of this unit.

1) How is gender-based violence different from other forms of violence?

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2) What is the impact of gender-based violence on women?

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3) Why does GBV occur?

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4) Name some forms of GBV.

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11.6 A CLOSER LOOK AT SOME MAJOR FORMS OF GENDER-BASED VIOLENCE IN INDIA

We will look into some of the major forms of gender –based violence in this section.

11.6.1 Sexual Offences: Rape, Molestation and Sexual harassment at the Workplace

Historically, women have been perceived as the repositories of chastity, virginity, modesty and honour. Patriarchal control over women, including through sexual violence, has been exercised and justified in the name of protecting the honour of the family / community. This notion has led to the targeting of women's bodies through sexual violence to shame and subjugate the woman, her family and her community; equally, this has served to justify the regulation of women's freedoms, choices, and the imposition of dress codes. Sexual violence and rape are tools by which power is exercised to maintain an unequal status quo in society that privileges men over women. This ideology shapes the structures of the family, the community and the state; it combines with castism and communalism to produce subordination of one community by another. Though rape and other forms of sexual violence have been rampant and are on the increase, this issue gained international visibility with the brutal gang rape and murder of a young woman on a moving bus in December 2012. This led to law reforms on rape and other sexual offences.

11.6.2 Dowry-related Deaths and Harassment

Statistics are not required to establish the persisting, disturbing and increasing presence of dowry as a cause for homicide, suicide and harassment of young women. This is because many of these deaths and harassments go unreported, or are classified under deceptive provisions such as accidental deaths. A dowry-motivated killing in October 2012 that shocked the country was that of Pravartika Gupta, a 25 year old technology graduate, who was burnt to death in her bedroom along with her 13 month old child. The young mother and child were killed by her husband and in-laws over a dowry dispute – the woman's parents had agreed to pay Rs. 10,00,000 and a Honda City car for the husband's parents, and while they were struggling to make the payment, the husband's family had allegedly demanded the purchase of a flat for them.⁴ The law related to dowry – Dowry Prohibition Act 1961 – has been made stringent for this reason. Additionally, Section 498A and S. 304B of the Indian Penal Code help to address issues of dowry harassment and dowry-motivated murder respectively.

The rising number of cases of dowry harassment indicates that stringent laws and sustained campaigns against dowry have had little effect in arresting this heinous crime against women, which is practised across caste, class, religious and educational divides in India. However, it is important to remember that all incidents of violence against women within the home are not necessarily dowry-related. Feminist lawyers also point out that the woman's family is responsible for getting her married in the first place (with or without dowry) instead of supporting her to study and work, and for not allowing her to return home from her marital home even when she faces acute harassment due to dowry or other reasons.⁵ The patriarchal perspective of marriage as an end-all for women, and the belief that the rightful place for death of a woman as her husband's place coupled with increasing consumerism, have fuelled the phenomenon of women facing death, violence and harassment in their marital homes.

11.6.3 Domestic Violence

Some of the key findings of NFHS-3 on domestic violence, which interviewed 1,25,000 across twenty eight states and the national capital, conducted in 2005-6 are as follows:⁶

- Incidence and categories: Over 40 percent of Indian women have experienced domestic violence at some point in their married lives. 37 percent of ever-married women have experienced spousal physical or sexual violence. 16 percent women have experienced spousal emotional violence. One in ten wives, or 10 percent, have experienced sexual violence like marital rape on at least one occasion;
- Injuries caused: Among all ever-married women who reported ever experiencing physical or sexual violence, 36 percent report cuts, bruises, or aches, 9 percent report eye injuries, sprains, dislocations or burns, 7 percent report deep wounds, broken bones, broken teeth, or other serious injury, and 2 percent report severe burns;
- Co-relation between violence and years of marriage: An overwhelming majority of women who reported domestic violence were first assaulted by their husbands less than two years into their marriage. According to the figures, 62 percent experienced physical or sexual violence within the first two years of marriage, while 32 percent experienced violence in the first five years;
- Seeking help: Only one in four abused women seek help to try and end the violence meted out to them by their husbands. Only 2 percent of women who faced domestic violence sought intervention from the police. A large majority of women who have experienced sexual violence, but not physical violence, have never told anyone about the violence (85 percent), and only 8 percent have ever sought help. Abused women most often seek help from their own families.
- Perceptions among women: Nearly 55 percent think that spousal abuse is warranted in several circumstances; 41 percent of women thought that husbands were justified in slapping their wives if the latter showed disrespect to their in-laws; 35 percent of women thought they deserved a brutal beating at the hands of their spouses if they neglected doing the household chores or looking after their children;
- Perceptions among men: Nearly 51 percent of the 75,000 Indian men surveyed think hitting or beating their wives is acceptable for certain reasons, particularly if she disrespects her in-laws; a smaller number think bad cooking or refusing sex are reasons for physically assaulting their wives;

The Protection of Women from Domestic Violence Act (PWDVA) was enacted in 2005 to address the issue. A key challenge to addressing domestic violence against women, is to change perceptions among women and men that domestic violence is permissible under certain circumstances.

11.6.4 Trafficking

India is a source, a transit point for women and girls trafficked to other countries, as well as a major destination for trafficked women and girls. The forced labour of an estimated 20 to 65 million citizens constitutes India's largest trafficking problem.⁷ India remains the main receiving country in the South Asian region for victim-survivors of trafficking. India's trafficking patterns indicate that 90 per cent of the trafficking is domestic, with only 10 per cent taking place across international borders⁸ and the most disadvantaged social economic strata, including the lowest castes, are most vulnerable.

Those at risk of being trafficked include women and girls living away from families, those living in rural poverty, slums, brothels or on streets, physically and mentally challenged persons, those facing a stigma due to abuse and those in contexts of ethnic and communal violence. Every year, thousands of women and girls are bought and sold, coerced, tricked, drugged, abducted, defrauded, assaulted and forced to live and work in exploitative, servile or slave-like conditions, with little bargaining power. Overt forms of violence, including rape, torture, deprivation of liberty, forced labour and forced marriage, are often perpetrated against girls who seek to assert their rights.

Although provisions on trafficking existed in the IPC for many decades, these were amended in 2013 and the offences were elaborated upon to reflect ground realities and complex practices involving a nexus of persons within and outside the country (Sections 370 and 370A of the Indian Penal Code). Additionally, The Immoral Trafficking (Prevention) Act, 1956 addresses the issue of trafficking.

11.6.5 Acid Attacks

Acid attacks against adolescent girls and young women in India have been regularly reported in the media, increasingly so in recent years. However, India did not have official statistics or any systematic record on the issue until February 2013, when it was recognized as a specific offence in the Indian Penal Code (Sections 326A and B). A study conducted by Cornell University in January 2011 said there were 153 attacks reported in the media from 1999 to 2010.⁹ The Campaign and Struggle Against Acid Attacks (CSAAA), a civil society network, has compiled a list of 56 cases in Karnataka alone, between 1999 and 2007.¹⁰ According to Acid Survivors Foundation India (ASFI), acid violence cases in India could range between 100 and 500 a year.¹¹ Acid attacks were recognised as specific offences in the IPC in 2013 under Sections 326A and B of the Indian Penal Code.

A few cases or threats of such attacks that found prominence in media reports are given below:

Case Study of Acid Attack Survivor Sonali Mukherjee

In 2002, Sonali Mukherjee, a 19-year-old girl from Jharkhand, topped her college and was aspiring to be a professor someday. Within a year of that triumph, her life changed. Three men, whose advances she had been spurning for a while, threw acid on her. With 72 per cent burns, she lost her eyesight and her face and body were disfigured. In 2014, Sonali and her family continue struggling for justice, and for her medical treatment. Her attackers included a 40-year-old married man and an 18-year-old. Two of her attackers were convicted for nine years, which was reduced to four years on appeal. Meanwhile, Sonali continues to struggle to put together the Rs. 15 lakh she still needs for her treatment.¹² In February 2014, she obtained a government job with the Jharkand state government in the welfare department.¹³

Case Study of Acid Attack Survivor Laxmi

In 2009, as Laxmi, a 15 year old girl, walked from her home to her workplace – a bookshop where she worked as a part-time salesperson - she heard her name being called out, and turned to see who the caller was. She looked at two people on a motorbike and walks towards them. The girl on the pillion is

familiar and the man riding the bike is known to her. He wanted to marry her and she had declined. As she reaches them, the girl hurls acid on her. Her face, her chest and arms were burnt beyond recognition and she was in tremendous pain. After several painful corrective surgeries, Laxmi has partially healed and now spearheads a campaign to assist acid survivors, based in Delhi. She filed a public interest litigation in the court, asking for a law that provides exemplary punishment for acid attacks on girls and a sound rehabilitation scheme for victims.¹⁴ The petition resulted in several ground-breaking orders by the Supreme Court, to regulate sale of acid and setting minimum compensation for acid survivors.

11.6.6 Honour Crimes

Recent years have witnessed a spate of attacks and killings in the country, based on the perpetrator's notion that the victim has brought 'dishonour' to the family / community. Honour crimes are directed mostly at young women and girls, but also young couples who choose inter-caste and inter-religious marriages. They are punished because they are perceived to have crossed social boundaries or transgressed social norms, and perpetrated mostly by their male relatives. The notion of 'izzat' (honour) and its contribution to the social and ideological context of violence against women, particularly in marriages of choice, has been elaborately discussed by feminist researchers.

Honour crimes are often under-reported, and are classified as accidents or suicides, making it difficult to understand the magnitude of the crime in India. No official statistics on these crimes are available at the national level as it is not a specific offence under the Indian criminal law. A majority of these killings take place in the agrarian states of Punjab, Haryana, Uttar Pradesh and Rajasthan, where land ownership and caste together help fuelling an 'honour culture' by maintaining caste and gender hierarchies.

Caste Study on Honour Crimes: Elango and Divya

Elango, a Dalit youth eloped and married an upper caste girl, Divya, in November 2012 in Tamil Nadu. They lived in neighbouring villages. Following this, Divya's father committed suicide, apparently because he experienced shame and social stigma. This caused a violent attack against the Dalit village that Elango belonged to. Meetings were held between the two *panchayats* and it was decided that the couple would return to live with their respective families for some time. Thereafter, Elango was not allowed to meet Divya. He filed a habeas corpus petition in court. Divya, initially appeared in court and said she wanted to live with Elango, but later, apparently under pressure and threat, changed her mind and said she had no intention of living with him. Elango's body was found on the railway tracks and the police have treated it as a case of suicide. The outcome of the one-member enquiry committee is awaited. Analysts have said that case reflected the power of local caste and electoral politics.

11.6.7 Female Sex Selective Abortions

India's population has more men than women. The adverse child sex ratio has existed since 1901 (see Table 2 below). This unequal male – female sex ratio in India is the result of several practices - selective elimination of female fetuses through abortion, selection of male-embryo at the pre-conception stage, as well

as the practice of female infanticide. While the focus of public interventions is on the sex ratio figures, these are merely a symptom of a larger problem – gender inequality, discrimination against women in Indian society and the low social status of women and girls.

The role played by an increasingly unethical and commerce driven medical establishment cannot be understated. Foetal sex determination followed by sex-selective abortions is a thriving business, and has grown into an over Rs. 1,000 crore industry (US\$ 244 million) (Alka Gupta 2007) There has been a mushrooming of ultrasound and scanning centres, as well as mobile sex selection clinics that drive into almost any village or neighbourhood. Essentially, the devalued status of women causes the demand, and medical commerce then supplies society with easy technology to act on its anti-female biases.

A worsening of the sex ratio has been linked to increased incidence of sexual violence against girls and women, increase in child marriages, increase in maternal deaths due to abortions and early marriages, and trafficking from other places for marriage. In short, the adverse sex ratio threatens to push women into a vicious cycle of violence and exploitation. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 2003 is a special legislation that addresses this issue.

Table 2: Male-Female Sex Ratio in India 1901-2011

Census Year	National Average Sex ratio (Women per 1000 men)
1901	972
1911	964
1921	955
1931	950
1941	945
1951	946
1961	941
1971	930
1981	934
1991	927
2001	933
2011	940

Source: National Commission on Population, Ministry of Health and Family Welfare, Government of India

11.7 MARGINALIZATION & INCREASED VULNERABILITY

While all women are vulnerable to violence, women and girls from minority communities, marginalised groups and underprivileged sections of society are more vulnerable because of their lower socio-economic status and their reduced power to access and negotiate with systems of law and justice. This includes

women who face physical / mental disability, women from scheduled castes, scheduled tribes, religious minority and lesbian-gay-bisexual-transgender (LGBT) communities, aged women and young girls, trafficked women and women prisoners. The inter-section of gender with other variables such as caste, class, religion, disability, sexuality, profession and political belief results in multiple disadvantages and varied forms of disempowerment, rendering women's experiences less visible, and their quest for justice more challenging.

11.8 SUMMING UP

- Gender-based violence is rooted in women's subordinate status, it is linked both to the institution of patriarchy as well as the concept of masculinity.
- The term **gender-based violence (GBV)** is used to distinguish violence that targets individuals or groups of individuals on the basis of their gender from other forms of violence by individuals and collectivities. It includes acts that result in, or is likely to result in, physical, sexual or psychological harm.
- Such gender-based violence might occur within the family, in the community during "peace times" or times of conflict, or by state agents. It may be perpetrated by family members, acquaintances, strangers or intimate partners including husbands.
- Though rape and other forms of sexual violence have been rampant and are on the increase, this issue gained international visibility with the brutal gang rape and murder of a young woman on a moving bus in December 2012. This led to law reforms on rape and other sexual offences.
- The rising number of cases of dowry harassment indicates that stringent laws and sustained campaigns against dowry have had little effect in arresting this heinous crime against women, which is practised across caste, class, religious and educational divides in India.
- The Protection of Women from Domestic Violence Act (PWDVA) was enacted in 2005 to address the issue of domestic violence, which is rampant. However, a key challenge to addressing domestic violence against women, is to change perceptions among women and men that domestic violence is permissible under certain circumstances.
- Those at risk of being trafficked include women and girls living away from families, those living in rural poverty, slums, brothels or on streets, physically and mentally challenged persons, those facing a stigma due to abuse and those in contexts of ethnic and communal violence.
- Sections 370 and 370A of the Indian Penal Code and The Immoral Trafficking (Prevention) Act, 1956 address the issue of trafficking.
- Acid attacks against adolescent girls and young women in India have been regularly reported in the media, increasingly so in recent years. However, India did not have official statistics or any systematic record on the issue until February 2013, when it was recognized as a specific offence in the Indian Penal Code (Sections 326A and B).

- Honour crimes are directed mostly at young women and girls, but also young couples who choose inter-caste and inter-religious marriages. They are punished because they are perceived to have crossed social boundaries or transgressed social norms,
- The imbalanced sex ratio figures, caused by female infanticide, female sex selective abortions and selection of male embryo at the pre-conception stage are merely a symptom of a larger problem – gender inequality, discrimination against women in Indian society and the low social status of women and girls.
- The adverse sex ratio threatens to push women into a vicious cycle of violence and exploitation.
- The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 2003 is a special legislation that addresses this issue.
- While all women are vulnerable to violence, women and girls from minority communities, marginalised groups and underprivileged sections of society are more vulnerable because of their lower socio-economic status and their reduced power to access and negotiate with systems of law and justice.

11.9 KEY WORDS

National Crime Records Bureau: National Crime Records Bureau (NCRB), New Delhi is part of the Ministry of Home Affairs (MHA), Government of India, New Delhi. The Vision of NCRB is to empower Indian Police with Information Technology to enable them to effectively enforce the law and improve public service delivery. Ministry of Home Affairs has entrusted NCRB with a renewed mandate for the **Crime and Criminal Tracking Network & Systems (CCTNS)** Project. Out of approximately 15000 Police Stations, around 12000 have started registering 100% FIR's online. The application software has been deployed in over 12500 locations.

11.10 REFERENCES & SUGGESTED READINGS

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- Saumya Uma (2010), edited by Vrinda Grover, *Addressing Domestic Violence Through the Law*. New Delhi: Multiple Action Research Group.
- Shankar Sen (2005), *Trafficking in Women and Children in India*. New Delhi: Orient Longman Pvt Ltd. Vol. I
- Smita Narula (1999) *Broken People: Caste Violence Against India's "Untouchables"*. New York: Human Rights Watch.

11.11 UNIT END QUESTIONS

- 1) Write an essay on major forms of gender based violence in India.

UNIT 12 SEXUAL HARASSMENT AT THE WORKPLACE

Structure

- 12.1 Introduction
- 12.2 Objectives
- 12.3 What is Sexual Harassment at the Workplace?
- 12.4 Forms of Sexual Harassment at the Workplace
- 12.5 Causes and Features of Sexual Harassment at the Workplace
- 12.6 Some Commonly held Perceptions about Sexual Harassment: Myths and Reality
- 12.7 Some Case Studies on Sexual Harassment
- 12.8 Responses of the Law
- 12.9 Summing Up
- 12.10 Key Words
- 12.11 Suggested Readings
- 12.12 Unit End Questions

12.1 INTRODUCTION

Sexual harassment at the workplace has remained an issue of serious concern for the women's movement in India, as it affects the woman's right to work and function in a safe environment. Sexual harassment at the workplace is an extension of sexual harassment of women in public and private spaces. As in all other forms of harassment of violence against women, sexual harassment at the workplace is less about sex and more about an expression and exercise of male power over women, that subjugates women and sustains patriarchy. Sexual harassment does not stem from men's inability to control sexual desires; it stems from the need of some men to assert their power and control over women, including in educational institutions, work places and public places, and to demonstrate male superiority. It is yet another weapon to "put women in their place" and to "teach them a lesson" for asserting their right to life with dignity and equality at the workplace.

A Times of India survey conducted in 2012 finds that seven out of ten women are sexually harassed at the workplace, and that over 90% of them do not register a police complaint because they do not think it would serve any purpose.¹ The former Union Minister for Women and Child Development, Smt. Maneka Gandhi, said that in 2014, 526 cases of sexual harassment at the workplace had been reported.² Needless to say, this is only the tip of the iceberg as a majority of the cases go unreported, for reasons discussed more elaborately below. Sexual harassment at the workplace is discriminatory, oppressive, exploitative, causes physical and mental trauma, and thrives in an atmosphere of fear, threat and reprisal. While men too can sometimes become victims of sexual harassment, in a highly patriarchal society such as in India, it is the women who bear the brunt of this form of harassment; hence this unit focusses on sexual harassment of women at the workplace.

12.2 OBJECTIVES

After Completing this Unit, you will be able to:

- Know the concept and meaning of sexual harassment at the workplace;
- Illustrate forms of sexual harassment at the workplace and the extent of their prevalence in India and elsewhere; and
- Highlight various ways of addressing and responding to the same; including through law and social action.

12.3 WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?

Sexual harassment at the workplace includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- Physical contact and advances;
- A demand or request for sexual favours;
- Sexually coloured remarks;
- Showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

There are two key issues in understanding the concept of sexual harassment at the workplace:

- 1) 'Unwelcome' lays focus on the woman's perspective: The focus is on how it affects a woman rather than what was the intention of the act.
- 2) The 'conduct' should be of a sexual nature: For instance, if an employer or superior discriminates against an employee on the basis of gender, and denies her a promotion, but there is no conduct of sexual nature, it will not amount to sexual harassment. Thus only conduct of a sexual nature comes within the ambit of direct sexual harassment. The illustrations below explain what is meant by conduct of a sexual nature.

Illustrations of Sexual Harassment at the Workplace

Verbal Sexual Harassment: asking for / demanding sexual favours, making sexual or obscene comments / jokes / proposals, singing obscene songs, discussing / commenting on women's personal issues such as appearance, marriage, pregnancy etc., saying something sexually demeaning or humiliating, unwanted phone calls

Non-verbal Sexual Harassment: staring, leering, whistling, winking, showing pornography or sexually explicit material, indecently exposing body part, smacking lips, blowing kisses, 'elevator' eyes, sending unwanted sms / mms / emails / letters with sexual propositions / materials / conduct that makes a woman feel uncomfortable (sitting in an obscene manner)

Physical Sexual Harassment: physical contact or advances, unwanted touching, grabbing, holding, pinching, rubbing, blocking a woman's path or cornering her, sexual assault, attempts to molest

12.4 FORMS OF SEXUAL HARASSMENT AT THE WORKPLACE

- **Quid pro quo** – sexual favours as a pre-condition to employment / increment / promotion. This means that a woman would get benefits of being employed or promoted or get an increment or a raise in grade or academic acknowledgement or recommendation, only if she conceded to the harassment. In other words, the consent to the sexual acts was not freely given by the woman; she consented under pressure that she could lose the rightful benefits if she did not concede to the same.
- **Retaliatory** – refusal to provide sexual favours results in a backlash against the employee. This could be in the form of giving low marks / failing the student in an academic institution, or denying increment / promotion / professional opportunities to the woman in a working environment.
- **Hostile working environment** – workplace environment becomes sexualized to an extent that the employee’s ability to work is affected. This is where the perpetrator may not directly harass the woman, but he may put up a gender insensitive poster, insist on gender insensitive computer screens, display pornography, say lewd jokes loudly and so on, which make it extremely uncomfortable for women to work in that environment.

Further Illustrations of Sexual Harassment at the Workplace

At an interview for determining increment and promotion, B – the immediate supervisor of A – started posing questions to A about her sexual history and preferences of sexual acts. It was implicit that if A did not answer these questions, B would not recommend her for increment or promotion. She found the line of questioning undesirable. B has committed quid pro quo sexual harassment.

B – an employer – makes A – a female employee – stay late in the evening at the office, on the pretext of work, long after all other workers leave the office for the day. He would then find excuses to sit near her, and suggest that they could go together to watch a film. A felt uncomfortable and found the sexual advances unwelcome. So she refused to go out with B. B threatened to dismiss her from the job if she does not go out to the movie with him. B has committed retaliatory sexual harassment.

B – the principal of a college – calls A – a girl student – to his cabin repeatedly, and on flimsy pretexts, to discuss studies. In his cabin, he puts up pornographic pictures of women, which make it uncomfortable for A to even step into the cabin. B has sexually harassed A by creating a hostile working environment for her.

Check Your Progress Exercise 1

- 1) Write different forms of sexual harassment at workplace.

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12.5 CAUSES AND FEATURES OF SEXUAL HARASSMENT AT THE WORKPLACE

Sexual harassment at the workplace has been a prevailing practice for decades, if not centuries. It became much more prevalent and visible when women stepped out of their homes, and took up jobs in big numbers. This threatened the male domination and monopoly in the public sphere, as in government institutions, educational institutions, corporate offices and so on. Added to this, women have been increasingly viewed as sexual objects, and as targets of sexual attacks in the private and public spheres.

Sexual harassment is an act that strikes at the root of women's right to life with dignity, and to travel, function, live, study and work in a safe environment that is free of sexual harassment. Though sexual harassment of women and girls is rampant in many places such as public roads and spaces, public transport, in workspaces in public and private offices, and in educational institutions, it is largely normalised with statements that 'men will be men' and 'women should be careful.' Terms used in everyday discourse, such as 'eve-teasing' and 'chhedchaad', aim at trivializing the harm caused to women through such acts, and wrongly implies that the act of sexual harassment is fun and harmless from a societal point of view.

Most women suffer from sexual harassment in silence, as there are adverse consequences faced by women who openly speak up against the perpetrator, who is often a male colleague or superior. Employers have often failed in taking action against the perpetrators because they have not considered sexual harassment to be an issue that is serious enough to warrant intervention. It is a worse state of affairs when employers side with and shield the perpetrators, and either transfer the complaining woman to another office, or discontinue her services, as though she was at fault! Here are a few reasons that contribute to the silent tolerance of sexual harassment by the concerned woman:

- The power dynamics at the workplace (man-woman, employer-employee, superior-subordinate);
- A lack of confidence in the organization that action will be taken upon a complaint;
- The stigma and strong social taboo associated with sexual harassment;
- The societal tendency of victim-blaming – such as saying that the harassment must have taken place because the woman was not wearing appropriate clothes, because she was at the wrong place at the wrong time, or was giving the wrong signals through her body language;
- Peer pressure at the workplace that the women may not get their promotions and increments if they speak up against the perpetrators; and
- the woman's possible financial dependence on the job.

12.6 SOME COMMONLY HELD PERCEPTIONS ABOUT SEXUAL HARASSMENT: MYTHS AND REALITY

There are many myths and commonly held perceptions about sexual harassment of women in the workplace. Such myths are far from reality, and serve to undermine justice for the aggrieved woman.

	Myth	Reality
1.	Women enjoy sexual harassment / 'eve teasing'	Sexual harassment is humiliating, intimidating, painful & frightening
2.	It is harmless flirtation; women who object have no sense of humour	Behaviour that is unwelcome to women cannot be considered harmless or funny. Sexual harassment at the workplace is defined by its impact on the woman, not by intent of the perpetrator.
3.	Women keep quiet about it; that means they like it	Women keep quiet to avoid the stigma attached & retaliation from the harasser, & afraid of being called liars and blamed for the harassment
4.	When women say 'no', they actually mean 'yes'	It's a common myth held by men to justify one-sided advances & sexual aggression; when women mean 'no', they mean 'no'!
5.	Sexual harassment is natural male behaviour; boys will be boys; a man is the hunter & the woman is a prey	Men are not born knowing how to sexually harass others. It's learnt within the context of a sexist and patriarchal environment that perpetuates control over women's sexuality
6.	Women ask for sexual harassment by being provocatively dressed; decent women do not get harassed	This is a classic way of shifting the blame from the harasser to the victim. Not all women who are harassed are provocatively dressed; women have a right to dress, act & move freely without feeling the threat of harassment
7.	If the woman ignores sexual harassment, it will stop	In most cases, the sexual harassment increases as the harasser interprets the silence as silent enjoyment
8.	Women always lie about being sexually harassed	There is much at stake for the woman once she complains about sexual harassment. There is a stigma attached, she is often blamed for it; she faces hostility and harassment at the workplace, sometimes dismissed; so the possibility is minimal.

12.7 SOME CASE STUDIES ON SEXUAL HARASSMENT

K P S Gill case

RupanDeol Bajaj worked as the Special Secretary, Finance as an IAS officer. In 1998, Rupan and her husband went to a party hosted by the then Punjab Financial Commissioner S L Kapoor in Chandigarh, for which they had been invited. At the party, the women invitees were seated in one semicircle and the male invitees in another semicircle facing each other. As Rupan sat and conversed with other women, KPS Gill – the then Director General of Police, Punjab – went and sat at a chair with the ladies. One by one, the women left the place due to his misbehaviour. He then called out to Rupan and asked her to sit with him as he had something to discuss with her. When she approached him and was about to sit, he pulled her chair close to his, so that their chairs were touching each other. She sensed that something was not right and went back to sit with her other women friends.

After some time, he approached the place where she was sitting, stood very close to her, so that his legs were about 4 inches from her knees. He ordered her to get up immediately and go with him. All the women were shocked and speechless. Rupan objected to his behaviour and asked him to go away from the place. When he repeated his command, Rupan tried to leave the place out of fear, but was unable to do so as KPS Gill had blocked her way. She pulled her chair back, and got up and turned backwards to leave the place, KPS Gill slapped her on her posterior, in the presence of all the guests. This became a high profile, publicized case that was talked about for many years.

Rupan informed her superiors including the Chief Secretary, Advisor to the Governor and the Governor of Punjab. After eleven days, when this did not result in the registration of an FIR with the police, Rupan formally lodged a police complaint. KPS Gill used his influence and power as the then Commissioner of Police to stall the investigation. He approached the High Court and obtained an order quashing the complaint made against him. The High Court had said that it was highly unlikely that KPS Gill – a well-respected police official – would outrage Rupan's modesty in the presence of all the guests, and that even if he had done so, the offence was too trivial to lodge a complaint!!!Rupan approached the Supreme Court which reversed the High Court order, so that the investigation could be completed.³

The trial court held KPS Gill guilty of charges under S. 354 IPC (outraging the modesty of a woman) and S. 509 IPC (word, gesture or act intended to insult a woman). The High Court and Supreme Court upheld the trial court's judgment.

The trial court sentenced KPS Gill to a fine of Rs. 2,00,000 (Rupees two lakhs), three months' rigorous imprisonment, two months' simple imprisonment and three years of probation. The High Court modified the sentence by reducing the probation period from three years to one year and keeping the sentence suspended during this period on his undertaking of maintaining good behaviour and not indulge in drinking in public places and parties. Since KPS Gill did not violate terms of the undertaking and had served one year's probation, the

Supreme Court said that the probation was assumed to have been completed by him.⁴

Rupan refused to accept the fine amount, and donated it to a women's organization which could assist women in difficult circumstances. Rupan was praised by the media largely because she had lodged a complaint against a powerful and influential police officer, and refused to be threatened into silence.

Ruchika Girhotra's case

Ruchika Girhotra was a 14 year old girl studying in Class X in Chandigarh. She was a promising tennis player. S.P.S. Rathore was a senior police official and the founding president of the Haryana Lawn Tennis Association. He used the garage of his house as the Association's office and had built a tennis court too. In August 1990, Rathore visited Ruchika's house and met her father S. C. Girhotra. As the head of the Haryana Lawn Tennis Association, Rathore promised to get special training for Ruchika. He requested that Ruchika meet him the following day in connection with this.

The next day, Ruchika, along with her friend Aradhana Prakash, went to play at the lawn tennis court and met Rathore in his office (in the garage of his house). On seeing both of them, Rathore asked Aradhana to call the tennis coach, Mr. Thomas, to his room. Aradhana left, and Rathore had created an opportunity to be alone with Ruchika. He immediately grabbed her hand and waist and pressed his body against hers. Ruchika tried to push him away, but he continued molesting her. In a short while, Aradhana returned and saw what Rathore was doing to Ruchika. On seeing Aradhana, Rathore released Ruchika and fell back in his chair. He then asked Aradhana to go out of his room and personally bring the coach with her. When she refused, Rathore scolded Aradhana loudly, asking her to bring the coach. He insisted that Ruchika stayed in his room, but she managed to run out. She later told Aradhana what Rathore had done with her. The girls initially did not tell their parents what had happened, but when Rathore called them to his office again, they decided to tell their parents and seek their help.

The residents of the area, mostly parents of tennis players, decided to take the matter up with higher authorities. Due to the pressure put by them, DGP R R Singh conducted an inquiry, in which he found Rathore to have molested Ruchika and recommended that an FIR be lodged against him. However, the report, issued in September 1990, never reached the Chief Minister, as Rathore used his influential connections in the government. Instead of filing an FIR as recommended by the report, the government initiated departmental action, and, a year later, in May 1991, it issued a chargesheet against Rathore. However no further action was taken.

Meanwhile, Rathore used his influence to cause extreme harassment to Ruchika and her family members. A few weeks after the incident, Ruchika was expelled from her school – a school she had studied in from Class I. The school authorities claimed that she was expelled because she had not paid the school fees, although it was later admitted that she had been targeted and other students in a similar situation had not been expelled. Her expulsion was used later by Rathore's lawyers to cast aspersions on Ruchika's character. After being expelled, for weeks, Ruchika stayed in her room, and was unable to travel out without being heckled by Rathore's supporters.

Several false complaints of theft, murder and defamation were registered against Ruchika, her father and brother, as well as Aradhana and her parents. Ruchika's brother, Ashu, was illegally detained by the police, tortured, and severely beaten in the presence of Ruchika in order to force her to take back her complaint. Unable to withstand the immense pressure, Ruchika consumed poison and committed suicide in December 1993, days after her brother was paraded in handcuffs by the police in his locality. Rathore refused to release Ruchika's body to her father Subash unless he signed blank sheets of paper. The blank papers were later used by the police to establish that the family had accepted Ruchika's forged autopsy report. Ruchika's father and brother soon moved out of Chandigarh, due to the constant harassment.

Rathore filed ten civil cases against Aradhana – Ruchika's friend and the sole witness in the molestation case. She received abusive and threatening calls for months until she got married and left for Australia. Pankaj Bhardwaj, the lawyer who took up Ruchika's case, was slapped with two court cases by Rathore - a defamation case and a case for compensation. Rathore also filed cases against some journalists who had reported on the case, claiming a huge amount of damages for defamation.

In 1998, there was finally a CBI inquiry, after eight years of inaction by the government due to Rathore's misuse of his power and influence to threaten and silence those who supported Ruchika. Aradhana's parents supported and followed up the case consistently. Rathore adopted many delaying tactics to prolong the trial. Finally, in 2009, 19 years after the incident, Rathore was convicted and given a sentence of six months' imprisonment, and released on bail a few minutes later. He was stripped off the police medal for meritorious service awarded to him earlier by the central government.

Both Rupan's and Ruchika's cases have some similarity – they are both cases of sexual harassment against influential and powerful police officials. In both cases, the concerned molesters tried to misuse the law to scuttle justice for the women concerned. In both cases, the act was trivialized, and the women pursuing justice were made to seem as if they were at fault. In both cases, the sentence given was minimal even though the consequence of the act on the concerned women was large.

In Ruchika's case, she was unable to handle the extreme harassment that Rathore subjected her and her family members to, as a result of which she committed suicide. In Rupan's case, being an adult and an IAS officer, with the strong support of her husband, she was more successful in her pursuit of justice.

12.8 RESPONSE OF THE LAW

Bhanwari Devi's case

Bhanwari Devi was a Dalit woman who worked as a 'saathin' – a grassroots worker employed by the Women's Development Project run by the government of Rajasthan. In discharge of her responsibilities at work, she would go from village to village, and prevent child marriages. In 1992, when she stopped a child marriage in the village of Bhatari, the upper caste men who were in favour of child marriages, decided to teach her a lesson and gang-raped her. While her

gang rape led to a criminal trial that resulted in acquittal of accused persons, Bhanwari Devi's rape also became a flash point for the women's movement to demand protection from the employers for discharging their responsibilities at work. A non-governmental organization by the name of Vishaka filed a public interest litigation in the Supreme Court, seeking guidelines in this regard.

Guidelines Issued by the Supreme Court Judgment in *Vishakha vs. State of Rajasthan*⁵

In 1997, the Supreme Court of India passed a landmark judgement observing that sexual harassment at the workplace is a violation of a woman's fundamental right to pursue a trade, occupation or profession of her choice, as guaranteed by the Indian Constitution. This is because she is deprived of a 'safe' working environment. The Supreme Court also emphasized that right to life means right to life with dignity.

The primary responsibility for ensuring such safety and dignity was through a suitable legislation by the legislature, and the creation of a mechanism for its enforcement. However, as a stop gap arrangement, till such a law was passed by the legislature, the Supreme Court laid down some guidelines that should be followed with regard to sexual harassment at the workplace in order to protect women's rights. The guidelines laid down employers' responsibility for taking due steps to prevent, prohibit and redress grievances of sexual harassment, by establishing a Sexual Harassment Complaints Committee.

S. 354A of the Indian Penal Code

Sexual harassment was criminalized in 2013 and spelt out as a punishable offence in S. 354A of the Indian Penal Code (IPC). It includes sexual offences in public spaces (such as roads, trains, buses) as well as private spaces (such as educational institutions and workplaces).

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

Sixteen years after the Vishaka judgement was pronounced, in 2013, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed. It has been enacted with the stated objective of providing protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and related matters. This is a civil law that lays down measures to prevent and prohibit sexual harassment at the workplace and to provide redress of complainants. It provides for the establishment of complaints committees to investigate and redress grievances. The IPC provision on sexual harassment, discussed above, complements the civil legislation, and provides an option to women and girls to pursue remedies under criminal or civil law or both. Both the IPC provision as well as the 2013 Act consider woman to be the victim and man to be the perpetrator. After the enactment of the 2013 law, the Vishaka guidelines are no longer operational.

12.9 SUMMING UP

- Sexual harassment does not stem from men's inability to control sexual desires; it stems from the need of some men to assert their power and control

over women, including in educational institutions, work places and public places, and to demonstrate male superiority.

- There are two key aspects of what amounts to sexual harassment at the workplace: a) 'unwelcome' behaviour from the woman's perspective and how it affects her rather than the intention of the harasser; and b) the conduct in question should be of a sexual nature.
- Sexual harassment could be non-verbal, verbal or physical in nature;
- It could be in the form of quid pro quo, retaliation or creating a hostile working environment;
- Most women who face sexual harassment at the workplace are intimidated into silence, due to the power dynamics at the workplace, a lack of confidence in the organization that action will be taken upon a complaint, the stigma and strong social taboo associated with sexual harassment, the societal tendency of victim-blaming and the woman's financial dependence on the job.
- There are many myths and commonly held perceptions about sexual harassment of women in the workplace. Such myths are far from reality, and serve to undermine justice for the aggrieved woman;
- In 1997, the Supreme Court issued guidelines on preventing, prohibiting and redressing grievances related to sexual harassment at the workplace in the landmark judgment – Vishaka vs. State of Rajasthan;
- In 2013, the Parliament inserted S. 354A in the Indian Penal Code (IPC) recognizing sexual harassment as a criminal offence;
- It also enacted a civil legislation - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013;
- The IPC provision on sexual harassment complements the civil legislation, and provides an option to women and girls to pursue remedies under criminal or civil law or both; and
- Both the IPC provision as well as the 2013 Act consider woman to be the victim and man to be the perpetrator.

12.10 KEY WORDS

Case Studies: It is a research method in which the researcher documents a process of development of a particular situation, a person or a group over a period of time.

12.11 SUGGESTED READINGS

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Vibhuti Patel, A Brief History of the Battle Against Sexual Harassment at the Workplace, available at <http://infochangeindia.org/women/analysis/a-brief-history-of-the-battle-against-sexual-harassment-at-the-workplace.html>

12.12 UNIT END QUESTIONS

- 1) Explain two case studies of sexual harassment on women
- 2) Explain different forms of sexual harassment



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