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## **International Laws and Policies for Addressing Sexual Harassment in the Workplace**

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### **Abstract**

*Sexual harassment is a complex issue involving women, their perceptions and behaviour, and the social norms of the society. Of all the forms that violence against women can assume, sexual harassment is the most ubiquitous and insidious; all the more so because it is deemed 'normal' behaviour and not an assault on female's. More often than not it expresses itself in the garb of power or desire or both. We cannot understand the issue of sexual harassment at work place unless we pay attention to prevalent socio-cultural issues, of gender and sexuality, and how it impacts upon the status of women.*

*Although there is no specific prohibition on sexual harassment in Committee on the Elimination of Discrimination Against Women and ILO Conventions, both the CEDAW and the ILO's CEACR (Committee of Experts on the Application of Conventions and Recommendations) affirmed that sexual harassment, as a serious manifestation of sex discrimination and a violation of human rights, is to be addressed within the context of the Convention and should be an integral part of a legislative or other policy, independently of policies on discrimination on the basis of sex.*

*Since Sexual Harassment in the workplace was first recognized as a form of sex discrimination, an increasing number of countries in the world have enacted legislative provisions on sexual harassment. Whether provided for or regulated by laws, including anti sexual harassment, equality and non-discrimination, labour, criminal or tort, sexual harassment is considered as crime and prohibited.*

**Key Words: Sexual harassment, ILO conventions, Committee on the Elimination of Discrimination against Women, Workplace, Sex discrimination.**

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*“VIOLENCE AGAINST WOMEN IS PERHAPS THE MOST SHAMEFUL HUMAN RIGHTS VIOLATION. AND IT IS PERHAPS THE MOST PERVASIVE. IT KNOWS NO BOUNDARIES OF GEOGRAPHY, CULTURE OR WEALTH. AS LONG AS IT CONTINUES, WE CANNOT CLAIM TO BE MAKING REAL PROGRESS TOWARDS EQUALITY, DEVELOPMENT AND PEACE”.*

## **1. Introduction:**

*"It is not enough to focus on the harm to women as sexual beings: the law must also focus on women's systematic disadvantages... and facilitate women's equal empowerment... as creative, committed workers. We need an account of hostile work environment harassment that highlights its dynamic relation to larger forms of general hierarchy at work."<sup>1</sup>*

Gender is the culturally shaped expression of sexual difference: the masculine way in which men should behave and the feminine way in which women should behave, whereas sex is a biological category. Gender is a social construct that outlines the roles, behaviors, activities and attributes that a particular society believes are appropriate for men and women. The assignment of these roles and adoption of these traits can create gender inequities — differences between men and women that systematically favour one group to the detriment of the other. On the biological difference, society has constructed an edifice of social attitudes and assumptions, behaviors and activities and specifies gender roles and identities. It is women who has always been assigned unequal and secondary status in human society as compared to her counterpart i.e. men. Women have thus occupied a disadvantageous position. Gender inequities throughout the world are among the most pervasive, though deceptively subtle form of inequality. Gender equality concerns each and every member of the society and forms the very basis of just society but it is the gender bias that we can find in every field of society. We as humans have made progress in many fields but there has been no progress towards gender equality. Some form of gender bias is seen everywhere. Human rights issues, which affect women in particular, play a vital role in maintaining peace and prosperity of a just society. It is an established fact that women represent very kernel of the human society around which social change must take place. Movements from the first UN World Conference on women held in Mexico in 1975 to the fourth World Conference on women held at Beijing in 1995, has been a journey in search of equality, development and grant of rightful place to women throughout the world- success has not been so encouraging but the tide must continue.

The process of gender justice, broadly speaking, covers rights of women against exploitation and victimization. Women have successfully crossed the barriers created by men in name of gender inequality example men say that women cannot do intellectual work or women cannot do stern physical jobs. Women have not only done these jobs successfully but have also fulfilled household duties efficiently; still they are given secondary status by men.

Feminism arose as a result of unequal laws created by men through whom women were denied certain fundamental rights. Simone de Beauvoir, a French philosopher, has been the most important feminist thinker. She has shown us how from the earliest times men enslaved women due to their physical structure. Women, as it happened generally became weak due to repeated child birth, so they were thought to be less important than the male members of the group.

This inferior and unequal status of women is the main reason behind sexual violence behind them.

While gender violence is as old as humanity it is only in the past two decades that it has been publically recognized, systematically structured and legislated against to a significant degree. In 1990's such violence was finally admitted on international level with recognition of human rights issue. Internationally, the World Conference on Human Rights (1993) at Vienna, which was one of

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<sup>1</sup> <http://www.cyber.law.harvard.edu/vawoo/shultz.html>, visited on 14.02.16

the main turning points in women's right declared that human rights of women and of the girl child are inalienable, integral and indivisible part of universal human rights. The Vienna Declaration specifically condemned gender based violence and all forms of sexual harassment and exploitation. The Conference concluded that:

*"The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic and social and cultural life at national, regional and international levels, and eradication of all forms of discrimination on grounds of sex are primary objectives of the international community.... The world governmental and non-governmental organisations to intensify their efforts for the protection on human rights urges governments, institutions, intergovernmental and nongovernmental organisations to intensify their efforts for the protection and promotion of human rights of women and the girl-child".*

Through law and policy, women have indeed, over the years, secured for themselves many entitlements, but so far they have not been able to defend themselves from crimes committed against them or societal prejudices. For a women who has undergone a criminal assault, all material wealth and status symbols are meaningless. Eliminating violence against women and girls is not just a matter of punishing individual acts .It is a fight against traditions that have chained them -a fight against attitude that are ingrained in the society.

It is well said that longest journey begins with a single step. This applies here also. All over the world many people have begun to take small steps towards establishing full citizenship for women and girls in the just society.

There has been a remarkable increase in the number of women getting out of the four walls of household and becoming workers worldwide. Economic hardship and social situations have encouraged women to take up employment outside the family. The attitude of women's relatives towards women employment, women's own preference for employment are quite different from earlier beliefs. People are now in favour of women employment.

Today the women have been more empowered, educated and modernized and achieving success in every field and are showing their excellence at workplace. But at the place of work women have to face the bias in the form of sexual harassment.

Perceptions of sexual harassment vary within society. Sexual harassment at the workplace is an extremely sensitive issue. For most it is taboo, due to the limitations of traditional gender hierarchies.

**2. Sexual Harassment A Global Problem:** Without doubt gender in the most significant predictor of Sexual Harassment. Although the number of persons who experience Sexual Harassment at workplaces and who file complaints in accordance with the legal procedure laid down in their respective countries is increasing. Women are overwhelmingly the targets of it and men are most often perpetrators. Thus in many parts of the world, sexual harassment is recognized as a serious problem facing workers in their workplaces. In Germany, a survey indicated that 93% of workingwomen were victims of sexual harassment as of 1998. Nearly 6 out of 10 nurses in Australia have experienced sexual harassment. In the United States over 50% of women employees had been sexually harassed. In Canada 51% of women reported having experienced sexual violence at least once.

Incidents of sexual harassment are increasing exponentially—especially in Asian countries, where over half the world population resides. In India, a woman is sexually harassed every 12 minutes<sup>2</sup>. In China, a survey was conducted by Women’s Watch China in 2009, which found that 20 per cent of the 1,837 female respondents interviewed had experienced sexual harassment at work. The study reported that only 45.6 per cent of the victims took the issue up with the harasser, and only 34.3 percent reported the harassment to managers. Fewer than 20 per cent called the police or took civil legal action. 51.3 per cent of the respondents surveyed said harassment had lowered their work efficiency, whereas 47.8 per cent said they resented going to work, 43 per cent stated that they made more errors at work and 32.7 per cent noted that the harassment had made them skip work more often; 28 per cent of the respondents stated they wanted to change jobs because of the sexual harassment. A survey published in Hong Kong in 2007 showed that nearly 25 per cent of workers interviewed suffered sexual harassment. One-third of the victims were men. While 20 per cent of the female victims reported the harassment to managers, only 6.6 percent of the male victims reported their grievance because they felt too embarrassed to face what they deemed as “ridicule”<sup>3</sup>. An AWARE (Alliance of women for Action and Research) Singapore study in 2008 also indicate that 54.4% of the 500 respondents had experienced some form of sexual harassment; with 58.3% female respondents and 42% male respondents being sexually harassed at the workplace<sup>4</sup>. This underscores the point that sexual harassment is not a problem faced by women alone. Specifically, a recent study by the United Nations Entity for Gender Equality and the Empowerment of Women revealed that 99.3 percent of Egyptian women have experienced some form of sexual harassment in the past year, primarily in the form of physical harassment. A recent public opinion survey conducted by the Egyptian National Council for Women (ENCW), which interviewed 13,500 women across the country, showed that 85 percent of Egyptian women agree sexual harassment is the most urgent problem facing women and girls in transitional Egypt, despite the prevailing political and social instability in the country. Most importantly, harassment has become an impediment for both economic and social development in the country—a critical issue that requires immediate attention from policymakers, legislators, and society as a whole.

Sexual harassment has become a pressing problem facing Egyptian women daily and, more and more, is becoming a formidable obstacle for development in the country. Besides being sexually attacked in the streets and public areas, more than 60 percent of Egyptian women are also harassed at their place of work (reported instances include being asked to stay late without reason and male coworkers insisting on taking their female counterparts out despite repeated refusal)<sup>5</sup>. As a result, victims have reported lower productivity rates, lower levels of social trust, and an overwhelming fear to go out on the street after being violated, according to a UN Women report.

Thus the above statistics affirm that sexual harassment is a pervasive global problem<sup>6</sup>.

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<sup>2</sup> D.K Srivastava (2010) *"Progress of Sexual Harassment Law in India, China and Hong Kong: Prognosis for Further Reform"*, 51 HILJ 172

<sup>3</sup> *Ibid*

<sup>4</sup> *"Survey finds one in five women sexually harassed"*, *China Daily*, 4<sup>th</sup> May 2011

<sup>5</sup> *There are no laws to address the menace of sexual harassment at work in most of the Middle East and North African Region; Algeria and Morocco are the exceptions.*

<sup>6</sup> *ILO, Equality at work: The Continuing challenge* 27(Geneva, 2011)

**3. The Relationship between Sexual Harassment and Bullying:** The majority of the literature on sexual harassment appears to have been published in the 1990s, and in previous years, the emphasis in the research has shifted to the broader issue of bullying. Bullying means repeated, persistent and aggressive behaviour intended to cause fear, distress, or harm to another person's body, emotions, self-esteem or reputation.

Generally bullying is defined as repeated intimidation, over time, of a physical, verbal and psychological nature of a less powerful person by a more powerful person or group of persons. It is repetitive and encompasses an intrinsic power imbalance between the bully and the person being bullied who generally is incapable of self-defense. It can be physical (e.g., punching), verbal (e.g. name). Bullying can be defined in many different ways.

The UK currently has no legal definition of bullying, while some U.S. states have laws against it. Bullying consists of four basic types of abuse – emotional (sometimes called relational), verbal, physical, and cyber.

**3.1 The WBI Definition of Workplace Bullying:** Workplace Bullying is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators. It is abusive conduct that is:

- Threatening, humiliating, or intimidating, or
- Work interference — sabotage — which prevents work from getting done, or Verbal abuse

This definition was used in the 2014 WBI U.S. Workplace Bullying Survey. Its national prevalence was assessed as:

Workplace Bullying...

- Is driven by perpetrators' need to control the targeted individual(s).
- Is initiated by bullies who choose their targets, timing, location, and methods.
- Is a set of acts of commission (doing things to others) or omission (withholding resources from others).
- Requires consequences for the targeted individual.
- Escalates to involve others who side with the bully, either voluntarily or through coercion.
- Undermines legitimate business interests when bullies' personal agendas take precedence over work itself.
- Is akin to domestic violence at work, where the abuser is on the payroll.

Bullying is a globally recognised problem reflected in the recent agendas of international organisations such as the International Labour Office (ILO) and the World Health Organization (WHO)<sup>7</sup>.

Historically, research centered on sexual harassment has tended to focus on the person being harassed and the perpetrators' behaviour, including the psychological profile of a harasser. It is however, worth noting that the boundaries between the concepts are somewhat unclear, with unwanted sexual attention, used with the intention of excluding or punishing targets, likely to fit the term bullying. Essentially, sexual harassment is seen as representing an abuse of power<sup>8</sup>. It is argued

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<sup>7</sup> <http://www.workplacebullying.org/res/articles/F6.pdf>, visited on 11.02.16

<sup>8</sup> Brewis, J, " Foucault, politics and organizations :reconstructing sexual harassment", *Gender Work and Organisation*,37-60 [Vol. 8(1),2001]

that harassment is “not about sex, [but] about power...it supports and perpetuates a system in which one class of persons is systematically disempowered”<sup>9</sup>.

Jeff Hearn and Wendy Parkin have written extensively on this theme in their “Sex at Work: The Power and Paradox of Organisation Sexuality”<sup>10</sup>, “Gender Sexuality and Violence”<sup>11</sup> and “Recognition processes in sexual harassment, bullying and violence at work: the move to organizational violations”<sup>12</sup>. For them, “organisations and sexuality simultaneously construct each other”. Their studies reveal that as men remain in positions of power and tend to dominate management structures, they have increased opportunities to exercise their power in a negative manner when compared with women. This may mean that sexual harassment comes within the wider ambit of bullying.

**4. Sexual Harassment Law as A Legal Transplant:** Over the past two decades, activism around sexual harassment has sparked developments around the globe, with differing results as each nation has drawn on its own legal and cultural traditions to fashion its own approach to regulating harassment.<sup>13</sup>

Inspiration and borrowing from other legal systems has always been a major technique in the development of law, known also as “legal transplantation.”<sup>14</sup> This practice has been criticized by scholars pointing to the danger of imposing foreign notions that do not necessarily conform to domestic culture and needs. At the same time, it is obvious that inspiration from other systems also has its virtues, and, at any rate, is part of modern reality<sup>15</sup>. Sexual harassment law is an interesting example of a transplant that was conceptualized and developed originally in the United States<sup>16</sup> and then adopted by many other systems in different forms and degrees<sup>17</sup>. In fact, it represents the

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<sup>9</sup> <http://research.mbs.ac.uk/equality-diversity/portals/0/docs/ESFreport18.06.08.pdf>, p.14, visited on 11.02.16

<sup>10</sup> Jeff Hearn & Wendy Parkin, *Sex at work power and paradox*(Macmillan St Maflin, S. Press, 1987)

<sup>11</sup> In Fitzgerald, L.F and Ormerod, A.J, *Perceptions of sexual harassment : The influence of Gender and Academic Context, Psychology of women Quarterly*,281-294.(Sage Publications, London, 15<sup>th</sup> edn, 1991)

<sup>12</sup> In J.E. Gruber and P. Morgan(edn), *In the Company of Men: Male Dominance and Sexual Harassment*, (Northern University Press, Boston, 2005)

<sup>13</sup> Vicki Schultz et al, *Global Perspective on Workplace Harassment Law: Proceedings of the 2004 Annual Meeting, Association of American Law School Section on Labour Relations and Employment Law*, 8EMP.RTS & EMP. POL'YJ. 151(2004)

<sup>14</sup> Alan Watson, *Legal Transplants :An Approach To Comparative Law* (University Of Georgia Press, Athens, 2nd edn,1993)

<sup>15</sup> Otto Kahn- Freund, "On the uses ad misuses of comparative law", 37MOD. L. REV.1(1974)

<sup>16</sup> Catherine A. MacKinnon *Sexual Harassment Of Working Women* (Yale University Press, New Haven 1979)

<sup>17</sup> Catherine A MacKinnon & Reva B Siegel, *Directions In Sexual Harassment Law 2004* (Yale University Press, New Haven )

hegemonic mode of legal transplantation today. The impact of American law on law reforms in other countries has often been characterized as the “Americanization” of other laws<sup>18</sup>.

In legal and cultural environments most like the United States (e.g., Canada, the United Kingdom, Australia, South Africa, and Israel), the American model (as codified by the EEOC i.e. Equal Employment Opportunity Commission and legitimized by the U.S. Congress and the courts) has been adopted almost whole cloth and with similar results<sup>19</sup>. But across Europe, Africa, and Asia, the American approach is culturally and legally incongruent. Increasingly, competitive participation in a globalized economy has demanded a legal environment conducive to the success of multinational organizations and, relatedly, the expectations of a cross-cultural workforce.

## **5. International Laws and Policies for Addressing Sexual Harassment in the Workplace.**

**5.1 *The Convention on The Elimination of All Forms of Discrimination against Women (CEDAW)*:** It was adopted in 1979 when awareness of sexual harassment at workplace was only beginning to emerge; therefore it did not contain a specific prohibition. However, in its General Recommendation No. 19 (11th session, 1992), the CEDAW characterized “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, is discrimination” and therefore a breach of CEDAW. The Recommendation notes that “equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace<sup>20</sup>”. The Recommendation also states that all parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, sexual assault and sexual harassment in the workplace<sup>21</sup>.

**5.2 *Declaration on The Elimination of Violence against Women*:** The 1993 General Assembly Declaration on the Elimination of Violence against Women affirmed that violence against women constitutes a violation of women’s rights and fundamental freedoms<sup>22</sup> and calls on States to condemn it and pursue a policy to eliminate it<sup>23</sup>.

**5.3 *United Nations Fourth World Conference on Women*:** The United Nations Fourth World Conference on Women, held in Beijing in 1995, adopted a Platform for Action, includes provisions on sexual harassment in the workplace. It calls on governments, trade unions, employers, community and youth organizations, and NGOs to eliminate sexual harassment. More specifically, governments are urged to enact and enforce laws and administrative measures on sexual and other forms of harassment in the workplace. Parties at the enterprise level are called upon to develop workplace policies. In addition, the Platform calls for the generation and dissemination of gender-

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<sup>18</sup> M. Langer "From Legal Translations: The Globalisation of Plea Bargaining and the Americanization Thesis In Criminal Procedure", 45 HARV.INT'L L.J 1 (2004)

<sup>19</sup> P. Morgan, *Sexual Harassment: Violence Against Women At Work (From Source Book on Violence Against Women, pp. 209-222, 2001 )*

<sup>20</sup> *General Recommendation No. 19 on Violence against Women, 1992. Paragraph 17*

<sup>21</sup> *Ibid. Paragraph 24(t)(i)*

<sup>22</sup> *Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104 of 20th December 1993, 85th Plenary Meeting.*

<sup>23</sup> *Ibid Article 4.*

disaggregated and sex-specific data and information on all forms of violence against women, including sexual harassment.

**5.4 The Discrimination (Employment And Occupation) Convention, 1958 (No. 111):** It addresses discrimination in employment on a number of grounds, including sex, and requires that ILO member States declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating discrimination. Like CEDAW, the Convention was adopted before widespread awareness of the issue of sexual harassment was achieved. However, in its General survey on the fundamental Convention concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, CEACR affirmed that the Committee has consistently expressed the view that sexual harassment—as a serious manifestation of sex discrimination and a violation of human rights—is to be addressed within the context of the Convention<sup>24</sup>. Moreover, the Committee stated that the elimination of sexual harassment should “be an integral part of a legislative or other policy, independently of policies on discrimination on the basis of sex.

Sexual harassment undermines equality at the workplace by calling into question the integrity, dignity and wellbeing of workers. It damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity. Over the years, the Committee has consistently expressed the view that sexual harassment—as a serious manifestation of sex discrimination and a violation of human rights—is to be addressed within the context of the Convention. Given the gravity and serious repercussions of sexual harassment, the Committee recalls its general observation highlighting the importance of taking effective measures to prevent and prohibit sexual harassment at work. Such measures should address both quid pro quo and hostile environment sexual harassment, and the Committee’s general observation provides further guidance in this regard.

**Source: Committee of Experts:** *General survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalisation, 2008* (Geneva, ILO, 2012), paragraph 789, p. 330.

**5.5 Indigenous and Tribal Peoples Convention, 1989 (No. 169):** Only the Indigenous and Tribal Peoples Convention, 1989 (No. 169) refers to prohibition of sexual harassment in the workplace. It provides that governments shall do everything possible to prevent any discrimination between workers belonging to the peoples to whom the Convention applies and other workers, including taking measures to ensure that they enjoy protection from sexual harassment<sup>25</sup>.

Since sexual harassment in the workplace was first recognized as a form of sex discrimination, an increasing number of countries in the world have enacted legislative provisions on sexual harassment. Whether provided for or regulated by laws, including anti sexual harassment, equality and non-discrimination, labour, criminal or tort, sexual harassment is considered as crime and

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<sup>24</sup> *ILO: General survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalisation, 2008* (Geneva, ILO, 2012), paragraph 789, p. 330.

<sup>25</sup> *Article 20(3) (d).*



prohibited. According to Deirdre McCann<sup>26</sup>, there are mainly adopted approaches. **Firstly**, in many countries, specific acts of harassment have been categorized as a form of some other kind of prohibited conduct, such as sexual assault or defamation, without explicitly referring to “sexual harassment”. This approach was common in many jurisdictions even prior to widespread awareness of the whole range of forms which sexual harassment can take. **Secondly**, in a number of countries, sexual harassment has been explicitly referred and recognized by their courts and tribunals as a distinct form of some broader type of prohibited behavior. Most commonly, it has been recognized as a form of sexual discrimination and prohibited under equality or anti-discrimination laws. **Finally**, legislatures have enacted legislation, or amended existing provisions, to specifically prohibit workplace sexual harassment.

D. McCann also indicates that sexual harassment may be addressed under more than one legal branch in the same jurisdiction. In Canada and New Zealand, for example, sexual harassment is explicitly prescribed under both labour law and human rights law. And in those countries in which sexual harassment is specifically prohibited in legislation, cases may also be brought forward under other branches of the law. In the Netherlands, for example, criminal law provisions have been used despite specific labour law provisions, while in Japan, claims for sexual harassment can be made under both equality legislation and tort law.

In many countries, provisions on sexual harassment have been included in their **equality and sex discrimination laws**, including in: Australia (Sex Discrimination Act); Austria (Equality of Treatment Act); Denmark (Gender Equality [Consolidation] Act); Finland (Act on Equality between Women and Men, 1995); Germany (Act to Establish Equality for Men and Women); Guyana (Prevention of Discrimination Act, 1997); Honduras (Law on Equal Opportunities for Women); Iceland (Act on the Equal Status and Equal Rights of Women and Men); Ireland (Employment Equality Act, 1998); Japan (Equal Employment Opportunity Act); Republic of Korea (Equal Employment Act); Lithuania (Law on Equal Opportunities); Malta (Equality for Men and Women Act); Mauritius (Sex Discrimination Act); Netherlands (Equal Treatment Act); Norway (Gender Equality Act); Romania (Law on equal opportunities); South Africa (Employment Equity Act); Sweden (Equal Opportunities Act, 1991); Switzerland (Law on Equality); and Venezuela (Organic Law on the Rights of Women to Fairness and Equality)<sup>27</sup>. The argument made is that, since sexual harassment is directed primarily at women, they are disproportionately subjected to detrimental treatment in the labour force and it is therefore a form of sex discrimination. The sex discrimination approach is particularly prevalent in countries in which equality or anti-discrimination legislation is the only route available to victims of sexual harassment.

**Labour law** is also used to combat sexual harassment in the workplace. In more than one-third of countries, specific provisions on sexual harassment are included in labour legislation, including Belgium (Law on the Wellbeing of Workers, 1996); Canada (Canada Labour Code); Czech Republic (Labour Code); Dominican Republic (Labour Code); France (Labour Code); Latvia (Labour Code); Lesotho (Labour Code); Mauritius (Labour Act); Namibia (Labour Act, 1992); Netherlands (Working Conditions Act 1998); New Zealand (Employment Relations Act, 2000);

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<sup>26</sup> D. McCann. *Sexual harassment at work: National and international responses, Conditions of Work and Employment Programme, ILO, 2005*

<sup>27</sup> D. McCann. *Sexual harassment at work: National and international responses, Conditions of Work and Employment Programme, ILO, 2005.*

Panama (Labour Code); Paraguay (Labour Code); Poland (Labour Code); Slovakia (Labour Code); Spain (Worker's Statute); Thailand (Labour Protection Act, 1998)<sup>28</sup>; and recently Malaysia (Employment [Amendment] Act 2012). The New Zealand Employment Relations Act 2000, for example, contains a set of provisions which address sexual harassment as a "personal grievance" against the victim's employer that can be pursued through a procedure outlined in the Act. In addition to these kinds of specific measures, other prohibitions in labour law may be interpreted to encompass sexual harassment in individual cases. Certain kinds of labour laws have been particularly prevalent in the legal treatment of sexual harassment, most notably in provisions of unfair dismissal, law on contract of employment, and health and safety laws. Unfair dismissal provisions have been interpreted to cover dismissals arising from sexual harassment in three sets of circumstances: when a worker is dismissed for refusing to engage in sexual activity, complaining about sexual harassment or taking legal action; where a victim is forced to resign and claims constructive dismissal; and where an employer is held to be justified in dismissing the harasser. Laws regulating contracts of employment, which specify the contractual rights and duties of employees and employers, are also used to tackle sexual harassment. In some jurisdictions, the rights and duties of the contract of employment have been held to include a duty not to engage in certain forms of sexually harassing behavior. Finally, health and safety laws have been interpreted in ways that protect victims of sexual harassment and indirectly prohibit some of its forms. In Canada, for example, provincial occupational health and safety laws have been applied, and in Trinidad and Tobago, sexual harassment has been recognized and prohibited as a breach of the right to enjoy a safe working environment.

Prohibition of sexual harassment is included in the **national human rights legislation** of three countries: Canada (Canadian Human Rights Act), Fiji (Human Rights Commission Act, 1999) and New Zealand (Human Rights Act, 1993)<sup>29</sup>. These statutes apply to harassment in a range of contexts, including education and housing, but refer specifically to workplace harassment.

Victims of sexual harassment may also have recourse to **tort law** in a significant number of countries. In these jurisdictions, their treatment constitutes a civil wrong for which they can be granted a remedy, usually in the form of damages. Where no specific provisions exist, the only available form of redress is often the interpretation of existing torts, such as personal injury, assault and battery, or defamation, extended to incidences of sexual harassment. Through this approach, tort law is potentially applicable in most countries. In some, it is the primary mechanism through which victims can seek legal redress<sup>30</sup>.

Sexual harassment is also prohibited under the **criminal law** of some countries. At least eight national-level jurisdictions have enacted criminal provisions, including Bangladesh (Suppression of Violence against Women and Children Act), Costa Rica (Penal Code), Mauritius (Criminal Code), Spain (Penal Code), Sri Lanka (Penal Code), United Republic of Tanzania (Penal Code), and Venezuela (Law on Violence Against Women and the Family, 1998)<sup>31</sup>. In Venezuela, for example, legislation addresses harassment as a form of violence against women. In addition to prohibition

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<sup>28</sup> *Ibid*

<sup>29</sup> D. McCann. *Sexual harassment at work: National and international responses, Conditions of Work and Employment Programme, ILO, 2005.*

<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid*

under criminal law, sexual harassment laws provide for a whole range of remedies and sanctions derived from different branches of the law, including criminal sanctions. In Israel, the Prevention of Sexual Harassment Law of 1998 designates sexual harassment as both a criminal offence and a civil wrong, making the perpetrator liable both to imprisonment and to compensate the victim. In short, whether provided or regulated by laws—including anti sexual harassment, equality and non-discrimination, labour, criminal or tort—sexual harassment is considered as crime and is prohibited.

## **6. Conclusion:**

*"While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless women."*<sup>32</sup>

Sexual harassment at work place is not just a private problem between harasser and victim; it is an issue, which has implications for all employees and management at the work place. Sexual Harassment at workplace covers a wide diversity of behaviors ranging from flirting, verbal remarks to physical contact and sexual advances. Sexual harassment at workplace can take the form of a power display, intimidation or abuse from a superior or co-workers. The contemned segregation of women in low-paid, low status and precarious jobs contributes to this problem. Moreover the perception in different contexts and cultures of what constitutes sexual harassment at work place is extremely diverse. In general, the orientation of a culture or shared beliefs within a sub-culture helps define the limits of tolerable behaviour. To the extent a society does tolerate unwelcome sexual conduct of male members, the values of individuals within that society will develop accordingly. Attitudes of gender inequality are deeply embedded in many cultures and sexual harassment of women at work place can be viewed as a violent expression of the cultural norm. Discrimination against women and gender stereotypes carried in workplace tend to perpetuate sexual harassment of women at work place. The physical, social and economic consequences of sexual harassment at work place are long-term. In many cases sexual harassment brings shame not only to women but to their families and communities. This will bear strongly on women's entitlement to resources, marriage and livelihood.

Sexual harassment violates a woman's right to job security and equal opportunity. It can create working conditions that are hazardous to the physical and psychological well-being of women workers. It also creates a poisoned work atmosphere that can disempower and demoralize women workers.

Besides physical, psychological and social consequences of sexual harassment at work place, the disruption of economic activities and the damage to the environment of work as far as women are concerned has been examined.

Everyone loses when sexual harassment occurs at work place. It lowers morale and productivity and it can result in heavy losses of revenue to the organisation. Many women refrain from complaining against the harassments, out of fear because of the stigma and suffer in silence.

Thus as a general principle, remedies and sanctions should ensure that sexual misconduct is stopped; that its victims are adequately compensated for their financial loss and emotional injury; and should also act as a deterrent to potential harassers, while encouraging employers to introduce preventive policies. Statutory remedies and sanctions may be specific demands of the harasser to

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<sup>32</sup> <http://www.slideshare.net/krishcyb/sexual-harassment-of-working-women-in-india>. visited on 25.02.16

stop his/her behavior or to perform any reasonable act or course of conduct to redress any loss or damage suffered. Provisions in these remedies and sanctions can encourage employers to introduce preventive policies and procedures for addressing sexual harassment in their workplaces and also can allow victims to ensure that all damages—including wage loss or promotion—must be remedied by employers due to failures in protecting their employees from sexual harassment.

Sexual harassment at the workplace is a social challenge that needs to be addressed. It is important to enhance the awareness of employers and employees on the existence of forms of sexual harassment at the workplace, preventive measures, and legal framework on preventing and addressing sexual harassment. Dissemination and awareness raising activities should be regularly conducted and evaluated in order to improve best practice on how to address sexual harassment in the workplace, and also to forewarn and inform of forms of sexual harassment to enable potential victims to avoid them. Enhancing training courses on sexual harassment and providing documentation or a handbook on the prevention of sexual harassment at the workplace can help in combating it. The training can be organized in modular form, including knowledge, skills, education and communication on the prevention of sexual harassment at the workplace, as well as counseling and proper guidance.

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