Chapter V

Global Perspective of the provisions for Sexual Harassment

1.1 The Equal Employment Opportunity Commission (EEOC) : Concept & Relevance

The Equal Employment Opportunity Commission (EEOC) was established on July 2, 1965, which emphasises that “it is unlawful to harass an applicant or employee of any sex in the workplace. The harassment could include sexual harassment”.

The mandate of EEOC has been specified under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and the ADA Amendments Act of 2008.

The First complainant at EEOC were female flight attendants. Though, EEOC at first ignored sex discrimination complaints, and as such the prohibition against sex discrimination in employment went unenforced for the many years.

The EEOC says that the sufferer and harasser could be of any sex and that the other does not have to be of the opposite gender. The law does not forbid casual remarks, simple teasing, or incidents that aren’t very grave, however “seriousness” of wrong which results into a crime is unjustifiable.

EEOC put emphasis on the fact that if the harassment gets to the point where it creates a harsh work atmosphere, it must be controlled. In 1980, the Equal Employment Opportunity Commission produced a set of rules for defining and enforcing Title VII. Under which the EEOC has defined “sexual harassment” as:

“Unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature when; Submission to such conduct was made either explicitly or implicitly a term or condition of an individual’s employment, Submission to or rejection of such conduct by an individual was used as the basis for employment decisions affecting such individual, or Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

1.2 Quid Pro Quo V/s. Hostile Work Environment

Quid pro quo sexual harassment “this for that” or “something for something”. In a workplace, this might occur when there is “a job benefit” which might be directly tangled to a

1 29 U.S.C. 621 et seq., as amended
worker for submitting to certain undesirable sexual advances. For example, in case a manager promises an worker for promotion if he or she will go out on a date with him or her, or tells an worker that he or she shall be fired if he or she doesn’t sleep with him or her.

Quid pro quo harassment also occurs when “an employee makes an evaluative decision, or provides or withholds professional opportunities based on another employee’s submission to verbal, nonverbal or physical conduct of a sexual nature.” Quid Pro Quo in other words could be said “an act which may or may not be positive or negative. Such kind of harassment is equally unlawful and unjustifiable whether the victim resists and suffers towards the threatened harm or submits and thus avoids the threatened harm.”

Hostile work atmosphere on the other hand refers to “an act when an employee is subjected to comments of a sexual nature, unwelcome physical contact, or offensive sexual materials as a regular part of the work environment.” There is a thin line of difference between “quid pro quo” and “hostile environment” harassment which might also not be clear in number of aspects.

In unfriendly atmosphere harassment shall obtain the features of “quid pro quo” harassment in case the aberrant supervisor abuses his power over service decisions to compel the sufferer to endure or participate in the sexual behaviour.

The Sexual harassment might turn into retaliatory expulsion and in that scenario section 704(a) of Title VII invoked as both harassment and retaliation is termed as the violation of section 704(a) of Title VII for example in situation like where the victim warns the harasser or her employer she will no longer submit to the harassment she might have to face protest in form of termination for the same. Under such circumstances section 704(a) of Title VII is invoked.3

Unwanted sexual advances, desires for sexual favors, and other verbal or physical behavior of sexual nature have a tendency to create a hostile or offensive work atmosphere. The Sexual harassment is a type of Sex Discrimination that take place in the workplace. Persons who are the victims of sexual harassment may sue under Title VII of the Civil Rights Act of 19644, which prohibits sex discrimination in the workplace.

The Courts and employers usually use the meaning of sexual harassment enclosed in the guidelines of the U.S. Equal Employment Opportunity Commission. This word has also shaped the basis for most state laws prohibiting sexual harassment. The guidelines state:

3 SEC. 2000 e-3. [Section 704] (a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings
4 42 U.S.C.A. § 2000e et seq
“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

Sexual harassment in the workplace is usually associated with a heterosexual employee making unwelcome sexual advances to another heterosexual employee of the opposite gender. There are also cases where a homosexual employee harasses an employee of the same sex. But can a heterosexual employee sexually harass another heterosexual employee of the same gender?

The Supreme Judicial Court of Massachusetts, in *Melnychenko v. 84 Lumber Company*, concluded that “same-sex sexual harassment is prohibited under state law regardless of the sexual orientation of the parties. Leonid Melnychenko and two other employees at a Massachusetts lumberyard were subjected to humiliating verbal and physical conduct by Richard Raab and two other employees. Raab loudly demanded sexual favors from the men, exposed himself, and simulated sexual acts. Eventually the three employees quit their jobs with the lumber company and sued, claiming that sexual harassment was the reason for their departure. At trial, the judge concluded that Raab’s actions were not “true romantic overtures to the plaintiffs, and that they were not inspired by lust or sexual desire.” Raab, who was “physically violent and sadistic,” sought to “degrade and humiliate” the men. The trial judge and the Supreme Judicial Court agreed that Raab’s behavior constituted sexual harassment because it interfered with the three plaintiffs’ work performance by creating an intimidating, hostile, humiliating, and sexually offensive work environment. Raab’s sexual orientation did not excuse the conduct. The unwelcome sexual advances and requests for sexual favors were more than lewd horseplay and raunchy talk. They constituted sexual harassment.

1.3 Laws Enforced by EEOC

1.3.1 Title VII of the Civil Rights Act of 1964 (Title VII)

The law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person
because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also needed that employers logically accommodate applicants’ and employees’ honestly held religious practices, except doing so would inflict an undue hardship on the functions of the employer’s business.

1.3.2 The Pregnancy Discrimination Act

The law amended Title VII to make it “illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.”

1.3.3 The Equal Pay Act of 1963.

The law makes it against the law to pay dissimilar wages to men and women if they carry out equal work in the same workplace. The law also makes it against the law to hit back against a person since the person complained about discrimination, filed a charge of discrimination, or take part in an employment discrimination inquiry or lawsuit.

1.3.4 The Age Discrimination in Employment Act of 1967.

The law looks after people who are 40 or older from inequity due to age. The law also makes it “illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.”

1.3.5 Title 1 of the Americans with Disabilities Act of 1990.

The law makes “it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer’s business.”

1.3.6 Sections 102 and 103 of the Civil Rights Act of 1991

Among other things, this law amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.

1.3.7 Sections 501 and 505 of the Rehabilitation Act of 1973
The law makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer’s business.


Sexual harassment may have a negative impact on any sexually aggravated conduct regarded as offensive by the addressee. Legal remedy is offered in cases that take place in the workplace, while it is very hard to get convictions. In 1994 the Apex Court of the United States ruled that “behavior can be considered sexual harassment and an abridgment of an individual’s civil rights if it creates a hostile and abusive working environment.”

The United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination against Women defines sexual harassment as including:

“Such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”

The International Labour Organization is a specialized United Nations agency that has deal with sexual harassment as a illegal form of sex discrimination under the Discrimination (Employment and Occupation) Convention. The International Labour Organization has made it obvious “that sexual harassment is more than a problem of safety and health, and unacceptable working conditions, but is also a form of violence primarily against women.”

The European Commission of the EU defines sexual harassment as:

“Unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This includes unwelcome physical, verbal or nonverbal conduct”

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7 Britannica Dictionary
The European Commission also make out three types of harassment: physical, verbal, and nonverbal sexual harassment and states that there is a variety of improper behavior:

The conduct of a person is considered sexual harassment if it is

- “Unwanted, improper or offensive;
- If the victim’s refusal or acceptance of the behavior influences decisions concerning her employment or
- The conduct creates an intimidating, hostile or humiliating working environment for the recipient.”

At last, the definition of sexual harassment originated at the international and regional level form the International law that forbids sexual harassment. United States was one of the first countries to define sexual harassment, as a prohibited form of sex discrimination that violates Title VII of the Civil Rights Act, a federal law. The U.S. government body that enforces the Civil Rights Act, the Equal Employment Opportunity Commission (EEOC), defines sexual harassment as

“unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature,” when

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment”.

In Canada, all labour matters are inside the jurisdiction of the regions, and each territory or region administers its own human rights law. The Canadian Human Rights Act does not exactly define sexual harassment, but the Canadian Labour Code defines it clearly as

“any conduct, comment, gesture or contact of a sexual nature that (a) is likely to cause offence or humiliation to any employee; and (b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on a opportunity for training or promotion.”

We do not have the universal definition of sexual harassment; but there is general consensus about what constitutes illegal behaviour. For an action to be considered sexual harassment it must meet these criteria:

- “the action is related to sex or sexual conduct;
• the conduct is unwelcome, not returned, not mutual; and
• the conduct affects the terms or conditions of employment, in some cases including the
work environment itself”

UN Women states that: “Investing in women’s economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth. In recent years have witnessed various efforts at the international level under the auspices of the United Nations to eliminate sex based discrimination and exploitation from all walks of life. The ‘United Nations Charter 1945’ and the ‘Universal Declaration of Human Rights 1948’ of the United Nations are considered to be the two basic human rights instruments and both these international instruments ensure equality of women with men in variety of ways.”

Besides, the two international Covenants-the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) reinforce the concept of equality, Article 7 of the ICESCR recognizes “the women/s rights to fair condition of work which reflects that the women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment.” Specialized agencies of the United Nations like International Labor Organization (UNESCO) adopted Conventions concerning the problems relating to women. International Labor Organization recognizes that “sexual harassment of women at the workplace was a form of gender discrimination against women.”


Despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human rights and other instruments of the United Nations and

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8 Apparel Export Promotion Council v A.K. Chopra, AIR 1999 SC 625
9 This view was expressed in the year 1993 at the ILO Seminar held at Manila and reiterated in Apparel Export Promotion Council’s case
10Vidushi, “Engendering the Workplace A Social Legal Perspective,” Women’s Link, Vol.10, No.2 at 14(2004). India being a party to it, (The Government of India ratified the resolution of CEDAW on 25.06.1993), obliged to follow its provisions, the Convention maintains (CEDAW, Preamble)
of the specialized agencies and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women.

Further, the Works Conference on Human Rights 1993 held on June 25, 1993, the world conference on Human Rights at Vienna adopted the Vienna Declaration and Programme of Action was a significant step in the struggle for achieving the equality and eliminating all forms of sex based discrimination. The Declaration specifically condemned gender based violence and all form of sexual harassment and exploitation and called upon the General Assembly “to adopt the draft declaration on violence against women”.

The Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW, 1981 and updates) is the most significant binding international agreement to eliminate discrimination including sexual discrimination. It stated that “… Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.”

In March 18, 2005, 180 countries over ninety percent of the members of the United Nations are party to the Convention and an additional one has signed the treaty, binding itself to do nothing in contravention of its terms (CEDAW, 1981). Both Japan and Germany have ratified CEDAW; the United States has signed but not ratified the treaty citing support of the intent of the convention but consternation with the implementation of CEDAW.

Further, it supports the advancement of women and achievement of equality between men and women. While this call for action is non-binding, many countries have incorporated declarations and action items from the Platform to create or enhance gender-related laws. The International Labor Organization, a part of the United Nations, issues binding conventions and non-binding recommendations to improve the workplace and working conditions throughout the world. The Discrimination (Employment and Occupation) Convention No.111 enacted in 1960, addresses discrimination in the workplace though it does not explicitly identify sexual harassment. Sometimes, workers seek compensation under laws to which they are not entitled.

An example of this occurred in 1998 when a Japanese female national, working for the Tokyo Municipal Government (TMG) sued the TMG for sexual harassment. She had been assigned to the TMG’s New York office during a routine rotation in employment. The

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11 Vidushi, “Engendering the workplace-A Socio Legal Perspective” Women’s Link, Vol.10 No.2
13 Article dated March 2015.
14 2003 Convention No.111 by stating “Sexual harassment is a form of sex discrimination and should be addressed within the requirements of the convention: (ILO, 2003)
employee was transferred back to Japan and later returned to New York on medical leave. During the leave, she filed a complaint alleged sexual harassment and retaliation under Title VII of the U.S. Civil Right Act of 1964. TMG entered a motion in U.S. district Court under the Foreign Sovereign Immunities Act of 1976 (FSIA) which the plaintiff appealed. The Court upheld TMG’s position under FSIA and dismissed the case. Even though the alleged discrimination and retaliation occurred on U.S. soil, TMG had sovereign immunity from prosecution. The employee’s only remaining option was to take her claim to Japanese Courts tat in 1998 which were then much less sympathetic than they are in 2005.

National laws regarding sexual harassment are also being affected by regional legislation such as European Union Directives. Member states must harmonize national laws in order to retain the EU membership: Three recent directives; 2000/43m 2002/78, and 2002/73 all require member states to harmonize anti-discrimination laws by October, 2005. For many, this means enacting specific legislation that embraces the laws and creates significant changes in how nations dealt with these issued previously. Directive 2000/43 addresses equal treatment between persons irrespective of racial or ethic origin; directive 2002/78 puts forth equal treatment in employment and occupation, and directive 2002/73 amends directive 76/207 regarding the principle of equal treatment for men and women in employment.15

These directives will change the fundamental treatment of employees in Germany and possibly other countries. Critics of the directives say that they follow the U.S. model too closely and do not take into consideration the uniqueness of each country’s culture, values, and traditions. The EU governing body argues that the “harmonization” process allows member states to adapt the intent of the directive)(s) into national laws. These directives at least in the case of Germany are in direct conflict, to a large degree, with current laws and practices. For example, when German employers recruit employees, they are not currently allowed to designate a preference by gender but they may indicate a preferred age range for the candidates. The new laws specifically prohibit discrimination related to age. Clearly there are benefits of membership in the EU that make harmonizing with EU directives desirable. While that discussion falls outside the realm of this paper, suffice it to say that membership in the EU will change the cultures of many nations and just as in the U.S., the member stated will be able to maintain some uniqueness while adhering to regional directives for the good of all.

While culture and traditions in Japan and Germany have not discouraged sexual harassment behavior in the workplace in the past, both countries face the daunting task of

15 (Article B).” (Report on Sexual Harassment in the Workplace in EU Member States, June, 2004).
changing their workplace. Japan is doing so because of their commitment to CEDAW and Germany because of directives from the EU. Both of them trying to adapt to a U.S. model for anti-harassment legislations which is built upon individualism. The citizens of the United States value their individualism over the ground and their law focuses on individual rights and independent recourse against wrongs.

Traditionally Japanese society which has stressed idea of a yousal kenbo, meaning “good-wife, wise-mother” created an M-Curve participation of women in the workforce. Women work until they marry and have children, usually ages 20-25 and then return to the workforce again, as part-time workers, between the ages of 35-50. Young, unmarried women were often brought into the workforce by employers with the specific intention of presenting these “office flowers” to eligible bachelors as possible brides. Their duties typically included copying, mailing, preparing tea, answering phones and generally serving the male employees.

In Germany, also a collectivist society, men are often seen as “victims” of women who single them out of the group by making sexual harassment claims. Their cases are usually about claiming back pay or getting reinstated after being punished by their employers for sexual harassment.

The Universal Declaration of Human Rights, 1948

The committee notes that the responsibility of the State to ensure Gender Justice (including protecting women from felony and violence) arises from many sources of International Law.

India was one of the 48 countries which voted in favor of the adoption of the UDHR by the United Nations General Assembly on 10th December, 1948. The UDHR is not an agreement in itself but defines ‘fundamental freedoms’ and ‘human rights’ for the purposes of the UN Charter. The UDHR is generally established to be the base of International Human Rights Law as it motivated the various human rights conventions which followed including the ICCPR and ICESCR. Article 16 of the UDHR should also be mentioned:

“Men and women of full age, without any limitation due to face, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the Natural and Fundamental Group Unit of Society and is entitled to protection by society and the State.”

16 Barrett, P.2. 2004
17 (Cape II. 2004).
The International Covenant on Civil and Political Rights, 1966:

“Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms : Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”

International Covenant on Economic, Social and Cultural Rights, 1966

India is also a member to the ICESCR, which states in its Preamble:

“Recognizing that, in accordance with the Universal Declaration of Human Rights, the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.”

India is also member to the Beijing Principles of the Independence of the Judiciary (drawn up and agreed to in 1995 by the Chief Justices of countries in the Asia-Pacific region). These values stand for the minimum standards to be essentially adhered to in order to uphold the autonomous and successful working of the judiciary. Under these values the judiciary has a responsibility to make sure that all persons are able to live securely under the Rule of Law.

India is also a party to the Convention on the Political Rights of Women, 1954. The said Convention enjoins State parties to inter alia make sure the safeguard of the political rights of women for example; “Women shall be entitled to vote in all elections on equal terms with men, without any discrimination etc.”

4. International Scenario:- Laws relating to sexual harassment of woman in different countries around the world.

Australia

The Sex Discrimination Act, 1984 defines sexual harassment as “…..unwanted conduct of a sexual nature, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.”

Czech Republic
Undesirable behavior of a sexual nature at the workplace if such conduct is unwelcome, unsuitable or insulting, or if it can be justifiably perceived by the party concerned as a condition for decisions affecting the exercise of rights and obligations ensuring from labor relations.

**Denmark**

Sexual harassment is defined as, when any verbal, non-verbal or physical action is used to change a victim sexual status against the will of the victim and resulting in the victim feeling inferior or hurting the victim’s dignity. Man and woman are looked upon as equal, and any action trying to change the balance in status with the differences in sex as a tool, is also sexual harassment. In the workplace, jokes, remarks, etc., are only deemed discriminatory if the employer has stated so in their written policy. Women are viewed as being responsible for confronting harassment themselves, such as by slapping the harasser in the face.

**France**

Until May 4, 2012, Article 222-33 of the French Criminal Code described sexual harassment as, “The fact of harassing any-one in order to obtain favors of a sexual nature.” Since 2002, it has started recognizing the possibility of sexual harassment between co-workers and not only by supervisors. The French Supreme Court quashed the definition of the criminal code as being too vague.

The 2012 decision resulted from a law on priority preliminary rulings on the issue of constitutionality. As a consequence to this decision, all pending procedures before Criminal Courts are cancelled. Several feminists NGO, such as AFVT criticized this decision. A new law should be voted rapidly according to the declarations of the President Francois Holland, the Minister of Justice (Christine Taubira) and the Minister of Equality (Najat Belkacem). In addition to criminal provisions, the French Labor Code also prohibits sexual harassment. The legislator voted a law on the implementation of the principle of equal treatment for men and women as regards access to employment; vocational training and promotion, and working conditions) definition without modifying the French Labor Code.

**Israel**

The 1998 Israeli Sexual Harassment Law interprets sexual harassment broadly, and prohibits the behavior as a discriminatory practice, a restriction of liberty, an offence to human dignity, violation of every person’s right to elementary respect, and an infringement of the right to privacy. Additionally, the law prohibits intimidation or retaliation that accommodates sexual harassment.

**Pakistan**
Pakistan has adopted a Code of Conduct for Gender Justice in the workplace that will deal with cases of sexual harassment. The Alliance against Sexual Harassment At workplace (AASHA) announced they would be working with the committee to establish guidelines for the proceedings. AASHA defines sexual harassment much the same as it is defined in the U.S. and other cultures.

**Philippines**

The Anti-Sexual Harassment Act of 1995 was enacted “primary to protect and respect the dignity of workers, employees, and applicants for employment as well as students in educational institutions or training centers. This law, consisting of ten sections, provides for a clear definition of work, education or training related sexual harassment and specifies the acts constituting sexual harassment. It provides for the duties and liabilities of the employer in cases of sexual ‘harassment, and sets penalties for violations of its provisions.” It is to be noted that a victim of sexual harassment is not barred from filing a separate and independent action for damages and other relief aside from filing the charge for sexual harassment.

**Russia**

In the Criminal Code, Russian Federation, (CC RF), there exists a law which prohibits utilization of an office position and material dependence for coercion of sexual interactions. However, according to the Moscow Center for Gender Studies, in practice, the Courts do not examine these issues (Sexual Harassment in Russian Workplaces-Sexual Harassment Support Forum).

**Switzerland**

A ban on discrimination was included in the Federal Constitution. The ban on sexual harassment in the workplace forms part of the Federal Act, where it is one of several provisions which prohibits discrimination in employment and which are intended to promote equality. Article 4 of the GEA defines the circumstances, Article 5 legal rights and Article 10 protection against dismissal during the complaints procedure. Article 328, paragraph 1 of the Code of Obligation (OR), Article 198(2) of the Penal Code (StGB) and Article 6, paragraph 1 of the Employment Act (ArG) contain further statutory provisions on the ban on sexual harassment. The ban on sexual harassment is intended exclusively for employers, within the scope of their responsibility for protection of legal personality, mental and physical well-being and health.

Article 4 of the GEA of 1995 defines sexual harassment in the workplace as follows: “Any behavior of a sexual nature or other behavior attributable to gender which affronts the human dignity of males and females in the workplace. This expressly includes threats, the
promise of advantages, the application of coercion and the exercise of pressure to achieve an accommodation of sexual nature.”

**United Kingdom**

Civil Code which states that “the employer is not permitted to discriminate against an employee in an agreement or an action because of his/her sex”. The 1994 Act of Protection of Employees against Sexual Harassment at the Workplace defines sexual harassment as “any deliberate, sexually intended behavior which injures the dignity of employees at the workplace.” The Discrimination Act of 1975 was modified to establish sexual harassment as a form of discrimination of 1986. It states that harassment occurs where there is unwanted conduct on the ground of a person’s sex or unwanted conduct of a sexual nature and that conduct has the purpose or effect of violating a person’s dignity, or of creating an intimidating hostile, degrading humiliating or offensive environment for them.

**Japan**

“Seku-hara” or sexual harassment is a significant issue in Japan. Japan’s first equal employment opportunity law was passed in 1985 to comply with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The law included clauses that asked employers to “endeavor not to discriminate” but did not afford Japanese citizens a private right to action. This Law increased awareness regarding equal employment but did little to reduce discrimination. The 1997 Equal Employment Opportunity Law (EEOL), which was enacted in 1999, eliminated “best efforts” language and actually prohibited discrimination in hiring, assignment of jobs and promotion. It also invoked sanctions for violation of the law. If an employer failed to comply with advisory opinions of the Ministry of Labour, Public announcements would be made regarding the non-compliant company. Just the threat of public embarrassment was enough to ensure, for the most part, compliance by employers.

**Germany**

Currently, the relationship between employer and employee is governed under contract law in Germany and general laws regarding discrimination and harassment do not apply in the workplace. The only provision related to gender discrimination is found in the German. The act provides for a right to file a complaint, however, the German claim for damages in Section 611 BGB is only applicable in harassment by the employer. Civil law damage claims against co-workers can be made but still require fault to be established in order for the Court to find in favor of the plaintiff. Germany has been singled out by the EU as the worst offender in terms of harmonizing the first two: Equal Treatment Between Persons Irrespective of Racial or Ethnic
Origin and Equal Treatment in Employment and Occupation. However, as of December 15, 2004, the German Legislature finally had a draft statute prepared called the Anti-Discrimination Act. This Act prohibits discrimination on the basis of a person’s race, ethnic origin, sex, religion, political views, disability, age of sexual preference and it is actually more inclusive and stringent than required by the EC directives. Sexual harassment is expressly held to be discrimination based on sex.

India

Earlier, the Sexual harassment in India was termed “Eve teasing” and was described as: unwelcome sexual gesture or behavior whether directly or indirectly as sexually colored remarks; physical contact and advances; showing pornography; a demand or request for sexual favors; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature and/or passing sexual offensive and unacceptable remarks. The critical factor is the unwelcome of this behavior, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator. According to the Indian Constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 and her right to life and live with dignity under Article 21. In 1997, the Supreme Court of India, in a Public Interest Litigation, defined sexual harassment at workplace, preventive measures and redress mechanism. The judgment is popularly known as Vishaka judgment.

The Indian Parliament has passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which added protection for female workers in most workplaces.