CHAPTER IV

SEXUAL HARASSMENT: INTERNATIONAL EFFORTS AND LEGISLATIONS - AN OVERVIEW

Sexual harassment of women is a global phenomenon. It is pervasive both in developed as well as in developing countries. Cutting across religion, culture, race, caste, class and geographical boundaries it has spread like virus in the society.

Sexual harassment of women at workplace, being offensive to human dignity, human rights and gender equality has emerged as a fundamental crisis the world over. Human dignity and gender equality are universally considered to be not only fundamental human rights but also essential to sustain economic, social, cultural and political progress nationally and internationally. However, discrimination on the ground of sex and gender injustice in political, social, economic and cultural scenarios hampers the growth and development at national and international level. Taking cognizance of the repression and exploitation of women all over the world and considering the necessity of providing gender equality and elimination of sexual harassment of women, a number of efforts have been made at the international level.

A. Efforts at the International Level

1. Under the Auspices of United Nations

(i) United Nations Charter

Taking cognizance of the fact that discrimination against women is a matter of global concern, the need for including a specific statement regarding status of women under international law was seriously questioned at the San Francisco Conference (1945). Therefore, in order to weed it out, the Charter expressed the resolve of the people of the world to strive and uphold fundamental human rights, dignity and worth of human person and equal rights of men and women. Further, in order to articulate this theme into a normative tone, the Charter lays down, inter alia, that the purposes of the United Nations are to achieve international cooperation in solving international

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1 United Nations Charter, Preamble
problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion\textsuperscript{2}. Thus the emphasis is laid on the issue of equality between men and women. In order to achieve the same, the Charter emphasized that United Nations shall place no restrictions on eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs\textsuperscript{3}. But in contrast to the League Covenant which stipulated that all positions under or in connection with the League including the secretariat, shall be open equally to men and women\textsuperscript{4}, Article 8 of the United Nations Charter is phrased in a negative form. It does not provide for equality but merely prohibits any restriction on the rights of men and women.

The Charter further lays down that General Assembly shall initiate studies and make recommendations for the purpose of promoting international cooperation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion\textsuperscript{5}.

Showing great concern for the human rights and fundamental freedoms for all including women, the Charter emphasizes that with a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of people, the United Nations shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion\textsuperscript{6}. For this purpose, the Economic and Social Council (ECOSOC) is empowered to make recommendations for promoting respect and observance of human rights and fundamental freedoms for all\textsuperscript{7}. In pursuance to this power, the ECOSOC in 1946 established a Commission on the status of women, which prepares reports and

\textsuperscript{2} Id., Art. 1 (3).
\textsuperscript{3} Id., Art 8
\textsuperscript{4} Covenant of the League of Nations, 1919, Art. 7
\textsuperscript{5} Supra note 1, Art. 13 (1) ( b)
\textsuperscript{6} Id., Art. 55 (c).
\textsuperscript{7} Id., Art. 62 (2).
make recommendations to the ECOSOC to promote the rights of women in political, economic, civil, social and educational fields.

The trusteeship system also mentions one of its basic objectives as to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.\(^8\)

In order to improve the condition of women, three United Nation bodies: the General Assembly, the Economic and Social Council and the Secretariat, jointly with the special Commission on the Status of Women (1946) introduced the problems of women’s rights into their programmes of activity.\(^9\) For instance, the United Nations Commission on the status of women on numerous occasions considered the participation of women in the work of the organization. At each of its sessions from 1948 through 1955, the Commission on the status of women requested reports from the Secretary General on the subject of the employment of women in the Secretariat and urged him to assure equal opportunity to women therein. In addition to the desirability of appointing more women to senior posts within the Secretariat, the Commission also emphasized that there be no discrimination against women staff members concerning conditions of employment and also that more governments should appoint women to posts on their delegations and asked the Secretary General to supply data on this subject. Secretary General also laid down that in accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex or religion.\(^10\)

The Economic and Social Council also recommended that member States consider women equally with men in appointing delegations to organs and agencies of the United Nations and

to international bodies and conferences and endorsed the appointment of women to serve on visiting mission to trust territories. Thus, at the global level, it was realized that women should be economically independent and there should be no discrimination on

\(^{8}\) Id., Art. 76 (c).
\(^{10}\) Staff Rule 53
the basis of sex in matters of employment. So efforts for the same have been made under the auspices of the United Nations. But the sexual harassment of women at workplace was not explicitly prohibited though implicitly it is prohibited as the discrimination on the basis of sex.

(ii) Universal Declaration of Human Rights

The Universal Declaration of Human Rights\(^{11}\) elaborates the prescription of the Charter’s equal rights and is suffused with the notion of equality. The preamble recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world\(^{12}\) and reaffirms faith ……… in the equal rights of men and women\(^{13}\). Ten of the thirty Articles of the International Bill of Human Rights\(^{14}\) in one way or another explicitly concerned with equality, and other implicitly so. The Universal Declaration of Human Rights mentions that all human beings are born free and equal in dignity and rights\(^{15}\) and everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex etc\(^{16}\). Also mentions that all are equal before the law and are entitled without any discrimination to equal protection of the law\(^{17}\). Everyone is entitled to full equality to a fair and public hearing in the determination of rights of any criminal charges\(^{18}\).

In addition to these explicit references to equality, the right to equality is implicit in various other references also which show that everyone has the right to life, liberty and security of person\(^{19}\), to effective remedies before competent tribunals\(^{20}\) and other rights.

\(^{11}\) Adopted by the General Assembly vld_e Resolution 217 A (III) 10th December, 1948.
\(^{12}\) Universal Declaration of Human Rights, Preamble, Para 1.
\(^{13}\) Id., Para 5.
\(^{14}\) The International Bill of Human Rights comprise of the following: (i) the Universal Declaration of Human Rights, 1948, (ii) the Covenant on Civil and Political Rights, 1966, (iii) the Covenant on Economic, Social and Cultural Rights, 1966 and (iv) the Optional Protocol to the Covenant on Civil and Political Rights, 1966.
\(^{15}\) Supra note 12, Art. 1.
\(^{16}\) Id., Art. 2.
\(^{17}\) Id., Art. 7.
\(^{18}\) Id., Art. 10.
\(^{19}\) Id., Art. 3.
\(^{20}\) Id., Art. 8.
Though the Universal Declaration of Human Rights is not a legally binding instrument as such and some of its provisions depart from existing and generally accepted rules but some of its provisions either constitute general principles of law or represent elementary consideration of humanity. Thus, the Universal Declaration has inspired much of the contemporary activity for the protection of women as it serves as an authoritative guide to the interpretation of the provisions of the Charter of the United Nations.

In pursuance of objectives of United Nations and Universal Declaration, the Commission on the Status of Women in 1966, suggested that the basic objectives of all the programmes for participation of women in all aspects of national and international life should be: to promote the universal recognition of the dignity and worth of the human person and of the equal rights of men and women in accordance with the Charter and the Universal Declaration of Human Rights; to enable women to participate fully in the development of society so that it may benefit from the contribution of all its members; and to stimulate an awareness among both men and women of women’s full potential and of the importance of their contribution to the development of society.\(^{(21)}\)

The two Human Rights Covenants of 1966- the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, reinforce the equality concept and forbid discrimination on account of sex.\(^{(22)}\)

**(iii) Covenant on Civil and Political Rights**

The Covenant on Civil and Political Rights provides that all persons are equal before law and are entitled without any discrimination to the equal protection of law.\(^{(23)}\)

Thus the legally binding provision also incorporates the principle of equality and non-discrimination in order to improve the lot of women.

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21 Supra note 9 at 173-174.
22 Articles 2 and 3 of both the Covenants.
(iv) Covenant on Economic, Social and Cultural Rights

The Covenant on Economic, Social and Cultural Rights also prohibits discrimination on the basis of sex\(^\text{24}\) and in order to improve the economic conditions of women provides that fair and equal remuneration for work is assured and in particular women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work\(^\text{25}\).

Although various provisions have been incorporated under 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 the specialized agencies, and the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women. Because these provisions can come into effect only when State parties ratify and in furtherance of that also adopt national laws to pursue those objectives. But the same is not followed at the national level.

(v) Declaration on Elimination of All Forms of Discrimination Against Women

In pursuance of the consideration that discrimination against women is incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms, with men, in the political, social, economic and cultural life of their countries, and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity and that in situations of poverty, women have the least access to food, health, education, training and opportunities for employment and other needs, the General Assembly of the United Nations adopted the Declaration on Elimination of Discrimination Against Women on 7\(^\text{th}\) December, 1967. By this Declaration, the General Assembly laid down that discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity\(^\text{26}\).

\(^{24}\) Supra note 22.
The Declaration directs that all appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the fields of economic and social life and, in particular: (a) the right without discrimination on grounds of marital status or any other grounds to receive vocational training to work, to free choice of profession and employment advancement, (b) the right to equal remuneration with men and to equality of treatment in respect of work of equal value, (c) the right to leave with pay.

As sexual harassment of women at workplace is fundamentally unjust and constitutes an offence against human dignity as well as amount to discrimination on the ground of sex to free choice of profession and employment advancement, thus it is implicitly prohibited by this Declaration.

To implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations, the General Assembly adopted the Convention on Elimination of All Forms of Discrimination against Women in 1979. This Convention is the most comprehensive instrument on human rights of the women and contains more concrete provisions aimed at the real implementation of the rights already recognized.

(vi) **Convention on Elimination of All Forms of Discrimination Against Women**

The State parties to the present Convention expressed the concern that despite international conventions concluded under the auspices of the United Nations and the specialized agencies and the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women, extensive discrimination against women continues to exist. The Convention has twin objectives: to prohibit discrimination and to ensure equality. The scope of the

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27 Id., Art. 10.
29 Convention on Elimination of All Forms of Discrimination Against Women, 1979, Preamble, Paras 4, 5 and .
30 Id., Arts. 2 and 4.
Convention extends to political, economic, social, cultural, legal, familial and personal fields of activity.

The most important development is that for the first time, the Convention provides an extensive definition of the term “discrimination against women” as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field.\(^{31}\)

The Convention has also laid down provisions for the advancement of women and requires the State parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.\(^{32}\)

In pursuance of the obligation to eliminate discrimination against women, State parties agreed to pursue all appropriate means by undertaking, among other things, to embody the principle of equality of men and women in their national Constitutions; to adopt appropriate legislative and other measures, including sanctions where appropriate prohibiting all discrimination against women, to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation; and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, to repeal all national penal provisions constituting discrimination. It also mandates appropriate

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\(^{31}\) Id., Part I, Art. 1.

\(^{32}\) Id., Art. 3.
measures to eliminate discrimination against women by any person, organization or
enterprise.\(^33\)

The Convention obligates the State parties to take appropriate measures to modify
the social and cultural conduct of men and women, with a view to achieving the
elimination of prejudices and customary and all other practices which are based on the
idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for
men and women.\(^34\) The Convention also requires the State parties to take appropriate
measures to eliminate discrimination against women to enable them to participate in the
political and public life of the country; and to represent their governments at the
international level and to participate in the work of international organizations.\(^36\)

The Convention also mandates the State parties to take all appropriate measures to
eliminate discrimination against women in the field of employment in order to ensure,
on a basis of equality of men and women, the same rights in particular: (a) the right to
work as an inalienable right of all human beings; (b) the right to the same employment
opportunities; (c) the right of free choice of profession and employment, the right to
promotion, job security and all benefits and conditions of service; (d) the right of equal
remuneration and to equal treatment in respect of work of equal value, as well as
equality of treatment in the evaluation of the quality of work; (e) the right to social
security and to paid leave; (f) the right to protection of health and to safety in working
conditions including the safeguarding of the function of reproduction.\(^37\)

The States are enjoined to achieve the objectives of the Convention not merely ‘de
jure’ but ‘de facto’. The Convention provides that temporary special measures aimed at
accelerating de facto equality between men and women shall not be considered
discrimination.\(^38\) The Convention prohibits discrimination not only in public life but in
private life as well.

\(^{33}\) *Id.*, Art.2.

\(^{34}\) *Id.*, Art.5.

\(^{35}\) *Id.*, part II art 7.

\(^{36}\) *Id.*, Art 8.

\(^{37}\) *Id.*, Part III, Art. 11

\(^{38}\) *Id.*, Part 1, Art.4
The phrases “effect” and “any other field” in the definition of discrimination together not only prohibit intentional and unintentional discrimination, but also regulate private and public actions. The Convention also guards against the use of apparently neutral criterion as a pretext for discrimination with an objective to keep the women out as a group. The “effect” criterion avoids the need of proving the discriminatory motives. The prohibition of unintentional discrimination is necessary to achieve systematic change, because policies undertaken with discriminatory motive may perpetuate inequalities established by prior acts of purposeful discrimination, such as already established practices and customs.

The detailed analysis of the provisions of the Convention exhibits that sexual harassment of women at workplace is implicitly prohibited by it as it amounts to discrimination on the ground of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil and other fields. Thus sexual harassment of women at workplace leads to violation of provisions of this Convention as it hampers the achievement of equality between men and women and discrimination against women continue to exist in the society. The specific prohibition of sexual harassment is not contained in this Convention because this was adopted at the time when awareness of sexual harassment was only beginning to emerge. But the adoption of the Convention is significant in itself because it not only acknowledges the prevalence of discrimination against women but alluded to the fact that the world community is gearing up to tackle it and eliminate discrimination in all forms.

The Committee on the Elimination of Discrimination against Women, setup under the Convention, has since explicitly addressed the problem. The General Recommendation of 1989 of the committee recognized sexual harassment as a form of violence against women. Three years later, the General Recommendation of 1992 characterized gender-based violence as a type of sex discrimination and therefore a

39 Supra note 31
41 General Recommendation No. 12, 1989
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breach of CEDAW. The Recommendation defines sexual harassment as unwelcome sexually determined behavior and takes note that equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace. It considers that sexual harassment is a form of gender-based violence. It is gender based because it is directed against a woman because she is a woman or which affects women disproportionately. This includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts and coercion. The work of the committee leads to the development of Declaration on the Elimination of Violence Against Women.

(vii) Declaration on the Elimination of Violence Against Women

By this Declaration, the General Assembly affirms that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. The Declaration considers that violence against women means any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. It also acknowledges that violence against women shall be understood to encompass, but is not limited to physical, sexual and psychological violence occurring in the family, within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, perpetrated or condoned by the State, wherever it occurs. It recognizes that women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field which includes inter-alia – the right to life; the right to be free from all forms of discrimination; and the right to just and favourable conditions of work. The Declaration calls on States to condemn it and pursue a policy to eliminate it and for that

44 Declaration on the Elimination of Violence Against Women, 1993, Preamble, para 5
45 Id., Art. 1
46 Id., Art. 2
47 Id., Art. 3
purpose should inter-alia – exercise above diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women; develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence and should be provided with access to the mechanisms of justice, to just and effective remedies for the harm that they have suffered; develop in a comprehensive way, preventive approaches of legal, political, administrative and cultural nature that promote the protection of women against any form of violence and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions; encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in this Declaration.\textsuperscript{48}

Thus for the first time Declaration recognizes explicitly that sexual harassment and intimidation at work is a form of violence against women and requires the States to condemn it and adopt appropriate laws and policies to eliminate it.

In addition to this explicit provision in Declaration on the Elimination of Violence against Women, the implicit provisions in the following instruments also prohibit sexual harassment of women at work-place.

(viii) Convention on the Rights of the Child

The Convention on the Rights of the Child, 1989\textsuperscript{49} was adopted keeping in view that the child\textsuperscript{50} by reason of his physical and mental immaturity, needs special safeguards and care. The Convention recognizes that every child (including girl child) has inherent right to life\textsuperscript{51} and provides protection from arbitrary or unlawful interference with his or her privacy, honour and reputation\textsuperscript{52}. It requires the State parties to protect the child from all forms of sexual exploitation and sexual abuse in particular to prevent the inducement or coercion of a child to engage in any unlawful sexual activity and the exploitative use of children in pornographic performances and

\textsuperscript{48} Id., Art. 4
\textsuperscript{49} Adopted by General Assembly Resolution 44/25 on 20 Nov. 1989: UN Doc. A/44/49 (1989)
\textsuperscript{50} Convention on the Rights of the Child, 1989, Art. 1 defines child means every human being of the age of 18 years unless under the law applicable to the child, majority is attained earlier.
\textsuperscript{51} Id., Art. 6
\textsuperscript{52} Id., Art. 16
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materials. It provides the Committee on the Rights of the Child to realize the obligations of the Convention.

(ix) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 was adopted keeping in view the situation of their vulnerability. The Convention recognizes that their right to life be protected by Law; protected from arbitrary or unlawful interference with his or her privacy, honour and reputation, protected against violence, physical injury, threats, intimidation, whether by public officials or by private individuals, groups or institutions. It requires the committee on the Protection of the Rights of All Migrant Workers and Members of their Families to review the application of this Convention. This Convention also explicitly protects women against sexual harassment.

(x) Convention on the Rights of Persons with Disabilities

Further keeping in view the vulnerability and special needs of persons with disabilities, the General Assembly adopted the Convention on the Rights of Persons with Disabilities. Recognizing that discrimination against person on the basis of disability is a violation of the inherent dignity and worth of the human person and also that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation; the Convention requires the State parties to take measures to ensure the full enjoyment by them of all human rights and fundamental freedoms, the full development, advancement and empowerment of women, for the purpose of

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53 Id., Art. 34
54 Id., Art. 43
55 Adopted by General Assembly Resolution 45/158 of 18 Dec. 1990
56 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, Art. 9
57 Id., Art. 14
58 Id., Art. 16
59 Id., Art. 72
60 Adopted by the General Assembly Resolution A/RES/61/106 of 13 Dec. 2006
61 Convention on the Rights of Persons with Disabilities, 2006, Preamble, para h and q
guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention\textsuperscript{62}.

The Convention also requires the State parties to take all appropriate legislative, administrative, social, education and other measures to protect persons with disabilities both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects, gender and age sensitive assistance and protection\textsuperscript{63}. In addition to these provisions, the Convention like other human rights instruments recognizes the inherent right to life\textsuperscript{64}; the right to respect for his or her physical and mental integrity\textsuperscript{65}, the right to privacy and protection from unlawful attacks on honour and reputation\textsuperscript{66}, the right to work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities, just and favourable conditions of work including safe and healthy working conditions and protection from harassment and the redress of grievances\textsuperscript{67}. The Convention requires the Committee on the Rights of Persons with Disabilities to take measures to implement the provision of the Convention\textsuperscript{68}.

Thus, this Convention protects the persons with disabilities from sexual harassment at work-place.

However these above mentioned instruments adopted under the auspices of United Nations lay down the international norms to be adhered by the States at the national and international levels. Although these instruments have laid down various provisions for the elimination of discrimination against women and prohibition of sexual harassment of women at workplace but it is the implementation which is crucial to judge the progress towards the realization of the rights of women. International instruments are merely statements of intent. These instruments may provide the machinery and procedure for the implementation and supervision of various rights of women but they certainly involve the governments through whose machinery these rights percolate to be governed. Thus, it is the domestic aspect which finally gives shape to these rights.

\textsuperscript{62} \textit{Id.}, Art. 6.
\textsuperscript{63} \textit{Id.}, Art. 16
\textsuperscript{64} \textit{Id.}, Art. 10
\textsuperscript{65} \textit{Id.}, Art.17
\textsuperscript{66} \textit{Id.}, Art.22
\textsuperscript{67} \textit{Id.}, Art.27
\textsuperscript{68} \textit{Id.}, Arts. 34,35,36,37,38 and 39
(xi) Some Progressive Steps under the Auspices of United Nations

The General Assembly of the United Nations in 1970, adopted a programme of concerted international action for the advancement of women based on the recommendations of the Commission on the Status of Women. The Assembly also adopted strategy of full integration of women in the total development effort, ratification of or accession to international Conventions relating to the status of women, enactment of legislation to bring national laws into conformity with relevant international instruments, in particular the Declaration on the Elimination of Discrimination Against Women, assessment of women’s contribution to the various economic and social sectors in relation to their countries’ overall development plans and programmes; and study of the effects of scientific and technological changes on the status of women.69

The 27th General Assembly of the United Nations proclaimed the year 1975 as international women’s year and devoted the year to promoting equality between men and women; to ensure the full integration of women in the total development effort; and to recognize the importance of women’s increasing contribution to the development of friendly relations and cooperation among States and to the strengthening of world peace. The motto of the year was “Equality, Development and Peace”.

The General Assembly held that it was not only a stage in the struggle for women’s genuine equality in every country and for the abolition of discrimination against women in countries where it still exists, but it also enhanced the efforts of women in the struggle for peace and comprehensive development of women’s personality.

Based on the theme of Equality, Development and Peace, First World Conference on women sponsored by United Nations, held in Mexico city in 1975.70 The Conference adopted the Declaration of Mexico on the Quality of Men and Women and their

69 Supra note 9 at 174
70 Held from June 19 to July 2, 1975
contribution to Development and Peace, 1975; the World Plan of Action and regional plans for the implementation of the objectives of the year. The Declaration contains 17 principles which among other things, define the meaning of equality between women and men, stress the specific responsibility of the State to find ways and means to enable women to be fully integrated into society.

The World Plan of Action sets out guidelines for improving the status of women and seeks to stimulate national and international efforts to solve the problems of underdevelopment and of the socio-economic structure which place women in an inferior position. The plan recommends among other targets, the achievement of parity in civil, social and political rights and recognition of the economic value of women’s traditionally unpaid work in the home and in domestic food production.

The Second World Conference on Women added three sub themes “Education, Employment and Health. The Third World Conference on Women set the goal for the adoption of forward looking strategies for the advancement of women to the year 2000 and had called for measures to prevent workplace sexual harassment.

In the thirty-third session held at Vienna, the Commission stressed that a drastic effort must be made to review a flagging campaign for women’s advancement because there was sufficient evidence to indicate that advances towards women’s economic and political rights were slow or had actually stopped. The Commission realised that unless something was done, the achievement of the goal was at risk.

In the thirty-seventh session, the Commission on Status of Women unanimously approved a draft declaration on the elimination of violence against women which stated

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71 Supra note
72 Id., at 175
73 Convened in Copenhagen from 14-30 July, 1980.
75 From March 29 to April 7, 1989
76 Held at Vienna from 17-26 March, 1993
that violence against women is an obstacle to the achievement of equality, development and peace, three main goals of the UN to advance the status of women.\textsuperscript{78}

The United Nations Fourth World Conference on Women held in Beijing\textsuperscript{79} adopted a Platform for Action, which outlines strategic objectives and actions to be taken by a range of actors like government, the international community, non-governmental organizations and the private sector and includes provisions on sexual harassment in the workplace.\textsuperscript{80} It considers sexual harassment as both a form of violence against women\textsuperscript{81} and a barrier to their equality\textsuperscript{81} by stating that the experience of sexual harassment is an affront to a worker’s dignity and prevents women from making a contribution commensurate with their abilities.\textsuperscript{82}

The Platform for Action calls on governments, trade unions, employers, community and youth organizations and NGOs to eliminate sexual harassment at workplace.\textsuperscript{83} More specifically the governments are required to enact and enforce laws and administrative measures on sexual and other forms of harassment in the workplace.\textsuperscript{84} In addition to this, the parties at the enterprise level are urged to develop workplace policies.\textsuperscript{85} Further, the Platform for Action also calls for the generation and dissemination of gender disaggregated and sex specific data and information on all forms of violence against women including sexual harassment.\textsuperscript{86} The Beijing Declaration and Platform for Action addresses the problem of sexual harassment of workers at workplace in detail.

At the June special session of the General Assembly on women 2000: Gender equality, development and peace for the twenty first century, governments assessed the achievements and obstacles which have been faced since the Beijing Conference. This session produced a set of further actions and initiatives to implement the Beijing

\textsuperscript{78} Held from 4-15 Sept., 1995
\textsuperscript{80} Para 113 states that violence against women includes sexual harassment and intimidation at work.
\textsuperscript{81} Strategic Objective F. 6, including as a limitation on the harmonization of work and family life
\textsuperscript{82} Para 161
\textsuperscript{83} Para 126(a), Para 178 also requires the women’s organizations, trade unions, employers and employees to take measures to give legal protection against sexual and racial harassment.
\textsuperscript{84} Para 128 and 178 and Strategic Objective F. 6
\textsuperscript{85} Para 178
\textsuperscript{86} Para 206
Declaration and Platform for Action, which also addresses sexual harassment in the workplace\(^\text{87}\).

The World Conference on Human Rights also identified sexual harassment as a human rights violation\(^\text{88}\). The Conference adopted the Vienna Declaration and Programme of Action on Human Rights\(^\text{89}\) which considers sexual harassment as incompatible with dignity and worth of the human person and urges the elimination of all forms of sexual harassment of women\(^\text{90}\). The Commission on Human Rights has also treated it primarily as a form of violence against women and so appointed a special Rapporteur in 1995 to conduct research on sexual harassment at work and devise measures to prevent it\(^\text{91}\).

The World Summit on Social Development\(^\text{92}\) discussed the issues of poverty, unemployment and social integration. At this summit, world leaders pledged, among other things to achieve equality and equity between women and men, with special role of women in development and to recognize and enhance the participation and leadership roles of women in political, civil, economic, social and cultural life and in development. The action plan adopted at the end of the conference, among others, aims at empowering the women\(^\text{93}\). However, the participation in economic life and in development is possible only if women are given environment free from sexual harassment.

Despite various progressive measures taken, the deprivation and discrimination is accorded on the basis of sex which commonly provide women less favourable treatment than men and leads to sexual harassment at workplace. The national conditions, policies and programmes are so structured as to relegate the women to the level of

\(^{87}\) Further actions and initiatives to implement the Beijing Declaration and Platform for Action, General Assembly Resolution A/S-23/10 Rev.1, 16 November 2000, Paras 21 and 59


\(^{89}\) Adopted on 25 June 1993

\(^{90}\) Paras 18 and 38.


\(^{92}\) Held from 6-12 March at Copenhagen.

\(^{93}\) Times of India, p.11 March 13, 1995.
“passive” participants rather than the “active” in all activities. The attitude towards underestimating the human worth of women leads to their exploitation and sexual harassment at workplace.

2. UNDER THE AUSPICES OF INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation (ILO) has also addressed the problems of women. As its paramount concern is social justice and the promotion and protection of the human rights and fundamental freedoms most closely linked to that objective. The ILO adopted three Conventions for the protection of women like on maternity protection, on the limitation of employment of women in night shifts and on the ban on employing women in subterranean work. In addition to this the Discrimination (Employment and Occupation) Convention addresses discrimination in employment on a number of grounds including sex and requires the member States of ILO to declare and pursue a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to eliminating discrimination.

Like CEDAW, the ILO also conducts widespread awareness of the issue of sexual harassment as it is discrimination on the ground of sex in employment and occupation. As a consequence, the Committee of Experts on the Application of Conventions and Recommendations conducted a special survey in 1996 on Convention no. 111 and confirmed that sexual harassment is a form of sex discrimination against women in
employment which undermines equality, damages working relationships and impairs productivity.\(^{103}\)

The Committee defined sexual harassment as any insult or inappropriate remark, joke, insinuation and comment on a person’s dress, physique, age, family situation, etc; a condescending or paternalistic attitude with sexual implications undermining dignity; any unwelcome invitation or request, implicit or explicit, whether or not accompanied by threats; any lascivious look or other gesture associated with sexuality; and any unnecessary physical contact such as touching, caresses, pinching or assault.\(^{104}\)

Thus the definition covers not only the most frequently targeted forms of sexual harassment but also extends to cover condescending and paternalistic attitudes. In order to amount to sexual harassment, the behaviour must either be justly perceived as condition of employment or precondition for employment or influence decisions taken in this field and/or affect job performance. Sexual harassment may also arise from situations which are generally hostile to one sex or the other, thereby including instances of sex-based harassment in addition to those involving sexual behaviour. Moreover, the Committee expressed 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.\(^{105}\)

However, the only international Convention adopted by the ILO which specifically prohibits sexual harassment at work is the Indigenous and Tribal People Convention, 1989.\(^{106}\) The Convention requires the governments to do everything

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104 Id., para 39.

105 Id., para 179.

106 Adopted during the 1989 session of the ILO and came into force on 5 Sept. 1991. The Convention applies to tribal peoples in independent countries where social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who,
possible to prevent any discrimination between workers belonging to the people concerned and other workers, including taking measures to ensure that they enjoy equal opportunities and equal treatment in employment for men and women and protection from sexual harassment\(^{107}\).

Thus ILO specifically recognized sexual harassment at workplace in its binding instrument as early as in 1989. However in addition to binding instruments, the ILO has also enacted a number of non-binding instruments which contain provisions on sexual harassment at work. The International Labour Conference Resolution of 1985 on equal opportunity and equal treatment for men and women in employment mentioned that sexual harassment at the workplace is detrimental to employees’ working conditions and to their employment and promotion prospects\(^{108}\). It recommended that policies for the advancement of equality include measures to combat and prevent sexual harassment. In 1991, the International Labour Conference Resolution concerning ILO action for women workers, invited the Governing Body to request that the office develop guidelines, training and information materials on issues of specific and major importance to women workers including sexual harassment in the workplace. In Nov. 2003, the ILO’s Governing Body adopted the Code of practice on workplace violence in services sectors and measures to combat this phenomenon, a non-binding instrument which offers guidance in addressing workplace violence in this sectors and which makes specific reference to sexual harassment\(^{109}\).

The ILO also considered the issue of sexual harassment in a number of meetings of experts. In 1989, the meeting of experts on Special Protective Measures for women and Equality of Opportunity and Treatment, viewed personal security, including sexual harassment as a health and safety problem which affected women far more than men. The experts felt that special consideration should be given to those occupations and sectors in which men predominate: those in which there is special exposure to the risk

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\(^{107}\) Indigenous and Tribal Peoples Convention, 1989 (C 169 ), Art. 20(3) (d).
\(^{109}\) ILO: Workplace Violence in Services Sectors and measures to combat this phenomenon (Geneva 2004). See 4.1.2 (risk assessment).
of violence; and those in which women have not traditionally been employed. The 1990 Tripartite Symposium on Equality of Opportunity and Treatment for Men and Women in Employment in industrialized countries concluded that prevention is the best approach, emphasized the importance of enterprise level policies and called for the development of awareness, campaigns, information, sessions and educational programmes.

In 1997 Tripartite Meeting on Breaking through the Class Ceilings: Women in Management concluded that the role of governments and employers’ and workers’ Organizations in promoting the advancement of women included promoting policies on the prevention of sexual harassment.  

At regional level, the tripartite seminar held in Manila in 1993 was exclusively devoted to sexual harassment at work. The participants exchanged information and experience of measures taken to combat harassment in their countries and discussed a variety of ways to effectively counter the sexual harassment.

In October, 2003, the meeting of experts again discussed sexual harassment to develop Code of Practice on Violence and Stress at work in services.

Thus ILO with its main objectives as social justice has dealt with the issue of sexual harassment in detail from time to time. It has the core point of meetings, research and advice and information issued to its constituents.

B. EFFORTS AT REGIONAL LEVEL

1. Under the Auspices of European Union

The International Labour Organisation considers that the European communities is one organization that probably has been most active in the field of combating sexual harassment at work. Its Council of Ministers, Parliament and Commission have taken a number of commendable steps in this regard. So within the European Union, concern over sexual harassment in the workplace was first expressed in 1986 when it was

110 Pages 11-12, See ILO Conditions of Work and Employment Series No. 2.
INDIAN WOMEN AND SEXUAL HARASSMENT AT WORKPLACE—NEED FOR A COMPREHENSIVE LEGISLATION AND PRAGMATIC PLANNING

addressed in the European Parliament’s Resolution on Violence against Women.\textsuperscript{113} Further the Council of Ministers of European Communities adopted a Resolution in May, 1990 on the Protection of the Dignity of Women and Men at Work. The Council affirmed inter alia that conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work, including conduct of superiors and colleagues, constitutes an intolerable violation of the dignity of workers or trainees and is unacceptable if:

(a) such conduct is unwanted, unreasonable and offensive to the recipient;
(b) a person’s rejection of or submission to, such conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person’s access to vocational training, access to employment, continued employment, promotion, salary or any other employment decision; and/or
(c) such conduct creates an intimidating, hostile or humiliating working environment for the recipient.\textsuperscript{114}

The following year in November 1991, the European Communities Commission adopted a Recommendation on the Protection of Dignity of Women and Men at Work and a Code of Practice on measures to combat sexual harassment. This Recommendation called upon member States to take actions to promote awareness of sexual harassment and to implement the measures outlined in the Code of Practice.\textsuperscript{115}

The Code defined the term sexual harassment on similar lines as mentioned in the Resolution of May 1990. The Code emphasized that “the essential characteristics of sexual harassment is that it is unwanted by the recipient, that it is for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although one incident of harassment may constitute sexual harassment if sufficiently serious. It is the unwanted

\textsuperscript{113} “Resolution of 11 June 1986 on Violence against women”, in Official Journal of the European Communities, No. C 176, 14 July 1986, p. 79. The Resolution called on the commission to study the cost to both member states and the council of harmonizing national legislation; suggest methods of preventing violence against women; and call for protection and help for its victims.


nature of the conduct which distinguishes sexual harassment from friendly behaviour, which is welcomed and mutual.\textsuperscript{116}

However in 1996, the Commission issued a second report on national legislation in which it mentioned that the Recommendation and Code of Practice had not initiated sufficient progress. Subsequently it proposed that the European –level social partners negotiate a collective agreement to be given legal effect as a Directive. In pursuance of further report on sexual harassment in 1999,\textsuperscript{117} the Commission issued a draft Directive to revise the Equal Treatment Directive.\textsuperscript{118} This Directive defined the term harassment as an unwelcome conduct related to the sex of a person which has the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment, and the term sexual harassment as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating the dignity of the person, in particular creating an intimidating, hostile, degrading, humiliating or offensive environment.\textsuperscript{119}

Thus the emphasis is on the form of the perpetrator’s conduct and its effect on the dignity of the recipient, rather than on the reason or motive for such conduct. The reason could be any-sexual desire or lust, gratification of sexual urges (maniacal/otherwise), demonstration of power whether sexual or economic or authority, sexual stereotyping or sexual orientation whether of the perpetrator or of the recipient. If the form and effect of the perpetrator’s conduct falls within the mischief of the definition, the result would be sexual harassment.\textsuperscript{120}

Thus the directive distinguishes between sex-based and sexual conduct identifying both as forms of discrimination on grounds of sex and prohibiting them.\textsuperscript{121}

\textsuperscript{116} Id., pp. 1-8
\textsuperscript{117} The report evaluates legislation in Member States and recent studies on the extent of sexual harassment and its psychological effects. European Commission: Sexual Harassment at the Workplace in the European Union (Luxembourg office for official publication of the European Communities) 1999.
\textsuperscript{119} Directive 2002/73/EC, Art. 2.\textsuperscript{120} This required the Member States to give effect to the amendments to the Equal Treatment Directive by 5\textsuperscript{th} October 2005.
\textsuperscript{121} Id., Art. 3.
(i) European Social Charter

Even European Social Charter, 1996\(^\text{122}\) recognizes the right to earn living in an occupation freely entered upon\(^\text{123}\); right to just conditions of work\(^\text{124}\); right to safe and healthy working conditions\(^\text{125}\); and the right to dignity at work.\(^\text{126}\) And in order to ensure the effective exercise of the right of all workers to protection of their dignity at work, the Charter requires the parties to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.\(^\text{127}\) Thus this Charter specifically recognizes the right to protection against sexual harassment in the workplace or in relation to work, which is necessary to ensure right to protection of dignity of workers at work.

(ii) Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union, 2000\(^\text{128}\) also states that human dignity is inviolable and it must be respected and protected\(^\text{129}\) and every worker has the right to working conditions which respect his or her health, safety and dignity.\(^\text{130}\) This Charter also implicitly recognize the right to protection against sexual harassment at workplace because it is covered under right to work with dignity.

2. UNDER THE AUSPICES OF ORGANIZATION OF AMERICAN STATES

In contrast to the EU, within the Organization of American States, sexual harassment has been acknowledged primarily as a manifestation of violence against women rather than as a form of sex discrimination.
(i) **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994\(^{131}\) defines violence against women as physical, sexual or psychological harm or suffering to women rather in the public or the private sphere and also includes sexual harassment in the workplace as well as in educational institutions, health facilities or any other place.\(^{132}\) The Convention recognizes the right of women to be free from violence in both the public and private spheres.\(^{133}\) And imposes a number of duties on the States to protect that right. The States also condemn all forms of violence against women and agree to pursue policies to prevent, punish, and eradicate it by all appropriate means and without delay and undertake to refrain from engaging in violence, to impose penalties and to enact legal provisions. The legal provisions must require perpetrators to refrain from harassing women and establish procedures for victims including reparations and have access to just and effective remedies.\(^{134}\) The Convention by considering sexual harassment as a form of violence against women affirms the right of women against sexual harassment at work place.

### 3. UNDER THE AUSPICES OF THE ORGANIZATION OF AFRICAN UNITY

(i) **African Charter on Human and Peoples’ Rights**

The African Charter on Human and Peoples’ Rights, 1981\(^{135}\) recognizes the right to the respect of the dignity inherent in a human being and protection against exploitation; \(^{136}\) right to work under equitable and satisfactory conditions.\(^{137}\) The Charter also imposes duty on every individual to respect and consider his fellow beings without discrimination and to maintain relations aimed at promoting, safeguarding and

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131 Also known as the Convention of Belem Do Para was adopted on 9 June 1994 and came into force on 5 March 1995.


133 Id., Art. 3.

134 Id., Art. 7.


137 Id., Art. 15.
reinforcing mutual respect and tolerance.\textsuperscript{138} It requires the African Commission on Human and Peoples’ Rights to promote human and peoples’ rights and ensure their protection in Africa.\textsuperscript{139} Thus the Charter implicitly provides protection against sexual harassment of women at workplace but no explicit mention of it is made.

(ii) Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa:

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa\textsuperscript{140} defines ‘women’ as persons of female gender including girls\textsuperscript{141} and ‘violence against women’ means all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.\textsuperscript{142} The Charter affirms the right to dignity of every woman\textsuperscript{143} and right to respect for her life and the integrity and security of her person.\textsuperscript{144}

It requires the States to combat all forms of discrimination against women\textsuperscript{145}; to prohibit any exploitation or degradation of women; to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence particularly sexual and verbal violence\textsuperscript{146} including unwanted or forced sex whether the violence takes place in private or public; to ensure the prevention, punishment and eradication of all forms of violence against women; to identify the causes and consequences of violence against women; and punish the perpetrators of violence against women and implement programmes for the rehabilitation and

\textsuperscript{138} Id., Art. 28.  
\textsuperscript{139} Id., Art. 30.  
\textsuperscript{140} Adopted in Maputo, Mozambique on 11 July 2003.  
\textsuperscript{142} Id., Art. 1(j).  
\textsuperscript{143} Id., Art. 3 (1).  
\textsuperscript{144} Id., Art. 4 (1).  
\textsuperscript{145} Id., Art. 2.  
\textsuperscript{146} Id., Art. 3 (3) and (4).
reparation for victims of violence against women. 147 The States can do this by appropriate and effective measures including legislative, administrative, social and economic measures. 148 Thus although violence against women includes sexual harassment at workplace but the Protocol prohibits it explicitly also. It obligates the States to protect women especially the girl child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices; and provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment. 149 States also undertake to guarantee women equal opportunities in work and career advancement and other economic opportunities and ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace and guarantee women the freedom to choose their occupation and protect them from exploitation by their employers violating and exploiting their fundamental rights. 150 The Protocol incorporates elaborate provisions for the protection of women and girl child from sexual harassment not only at the workplace but in educational institutions as well.

4. UNDER THE AUSPIES OF THE LEAGUE OF ARAB STATES

(i) Arab Charter on Human Rights

The Arab Charter on Human Rights, 1994 151 recognizes the right to life, liberty and security of person 152 ; protection against physical or mental torture or cruel, inhuman or degrading treatment 153 ; right to work 154 ; free choice of work 155 ; and equality of opportunity in order to work 156 . Thus the Arab Charter implicitly prohibits sexual harassment of women at workplace but no explicit mention of it is made.

147 Id., Art. 4 (2).
148 Ibid...
149 Id., Art. 12.
150 Id., Art. 13.
151 Adopted by the Council of the League of Arab States on 15 Sept. 1994.
152 Arab Charter on Human Rights, 1994, Arts. 5 and 8.
153 Id., Art. 13.
154 Id., Art. 30.
155 Id., Art. 31.
156 Id., Art. 32.
5. UNDER THE AUSPICES OF THE INTERNATIONAL LEVEL SOCIAL PARTNERS

In addition to their activities at workplace, national and regional level, the international level social partners have also taken international level action on sexual harassment at work. The ‘Union guide on sexual harassment at work’ published by the Women’s Bureau of the International Confederation of Free Trade Unions (ICFTU) in 1986 defines sexual harassment as any repeated and unwanted verbal, physical or gestural sexual advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive to the worker involved, which cause the worker to feel threatened, humiliated, patronized or harassed, or which interfere with the worker’s job performance, undermine job security or create a threatening or intimidating work environment.

It is a new name for a problem which is certainly not new. It is not sexual flirtation based on mutual consent. Sexual harassment is frequently a display of power, which is intended to intimidate, coerce or degrade another worker. It is a form of victimization about which increasing concern is being expressed in the workplace.

Sexual harassment encompasses a wide range of unwanted sexual advances including unnecessary physical contact, touching or patting; suggestive and unwelcome remarks, jokes, comments about appearance and deliberate verbal abuse; leering and compromising invitations; use of pornographic pictures at the workplace; demands for sexual favours or physical assaults.\(^\text{157}\)

In addition to defining sexual harassment various other efforts are also made by the ICFTU... Like in 1998, the Executive Board of the ICFTU adopted an action programme to combat sexual harassment within the trade union movement. The ICFTU declared its opposition to sexual harassment, and called on its affiliates and regional organizations to adopt effective measures to eliminate it from all trade union activities. It made a number of suggestions on measures which can be taken to tackle harassment, including the inclusion of a statement of principle in union constitutions; the introduction of measures to ensure that participants at all trade union events are made

aware of the policy; and complaints and investigation procedures which covers all trade union activities and workplaces. It also stated that the ICFTU, its regional organization and affiliates should institute internal complaints procedures to deal with cases of sexual harassment in union workplaces; which should be included in collective agreements and discussed in special training programmers’ for all employees, and in basic trade union training courses. International Federations have also taken initiatives on sexual harassment. The International Transport Workers’ Federation (ITF) launched a campaign on sexual harassment in 1997, which highlighted the mistreatment of female airline employees.158

C. EFFORTS AT THE NATIONAL LEVEL IN FOREIGN COUNTRIES: AN OVERVIEW

Sexual Harassment at workplaces has been legally prohibited in various countries of the world. In some countries specific legislative provisions on sexual harassment have been enacted and in some countries existing provisions have been interpreted to combat sexual harassment. Following is the analysis of provisions in some countries:-

1. United States of America

Sexual harassment in the workplace was first addressed through law in the mid-1970s at the culmination of a campaign in the United States to have it recognized as a form of discrimination under the Federal Civil Rights Act.159 Sexual Harassment at workplace violates Title VII of the Civil Rights Act, 1964.160 As Title VII includes, among unlawful employment practices for an employer, all discriminations based on sex which affect the recruitment, terms and work conditions, privileges of employment etc. of the employees.161 Any other discriminatory practices based on sex which limits, segregates or classifies the employees so as to limit their employment opportunities comprises the unlawful employment practice for the employer.162

160  Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labour organization as well as to federal government.
161  Title VII, Civil Rights Act, 1964, Sec., 2000 e-2 [Sec. 703] (a),(b),(c),(d).
162  IbId..
However Title VII of Civil Rights Act, 1964 as amended by the Civil Rights Act, 1991 recognizes unlawful employment practice based on creation of disparate impact on the basis of sex. It is also considered as unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying or participating in any way in an investigation, proceeding or litigation under Title VII.

Title IX of the Education Amendments of 1972 deals with complaints of sexual harassment against educational institutions and their employees. Title IX prohibits sex based discriminations in education programs and activities operated by schools that receive federal financial assistance. Thus, educational institutions- colleges and universities are responsible under Title IX to provide students with a non-discriminatory educational environment. The incidence of sexual harassment of a student violates this obligation of the educational institution. Thus these provisions are interpreted to prohibit sexual harassment in United States of America.

In addition to this, the American Equal Opportunity Commission (EEOC) also considers sexual harassment as a violation of title VII of the Civil Rights Act of 1964. The EEOC issued a set of guidelines dealing with sexual harassment. The EEOC guidelines define sexual harassment as;

(a) harassment on the basis of sex is a violation of Section 703 of Title VII. Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when...

(I) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;

(II) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

163 Title VII, Civil Rights Act 1964, 1964, Sec. 2000 e-2 [Sec. 703] (k) (1).
164 Title IX of the Education Amendments, 1972, Sec. 1681.
165 Id., Sec. 1681(a).
(III) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

(b) in determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case by case basis.\(^\text{167}\)

The Federal Criminal Code, 1986\(^\text{168}\) distinguishes between sexual contact and sexual act, and accordingly provides different punishments. Sexual contacts means the intentional touching, either directly or indirectly through the clothing, of genitalia, anus, groin, breast, inner thigh or buttocks of any person with intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.\(^\text{169}\) And sexual act includes, apart from the acts of penetration, the particular kind of sexual contact which is not through clothing, of the genitalia of person who has not attained the age of 16 years.\(^\text{170}\) The sexual contact is also punished differently, depending upon the degree of force of the kind of threat used. If a person knowingly engages in sexual contact with another person without that person’s permission, he will be liable to be punished with fine or imprisonment of not more than 6 months or both.\(^\text{171}\) If the sexual contact had been an aggravated sexual abuse which is carried out by the use of force or threat or fear of death, serious bodily injury or kidnapping, then the punishment may be fine or imprisonment that can extend up to 10 years or both.\(^\text{172}\) If the sexual contact had been a sexual act carried out by generating a fear of lesser injury than death, kidnapping etc. then the punishment may comprise of imprisonment which may extend up to 3 years or

\(^{167}\) 45 Federal Register 74, 677 (10\(^{\text{th}}\) November, 1980) codified in 29 Code of Federal Regulations(CFR), Sec.. 1604.11 .

\(^{168}\) The Federal Criminal Code, 1986 is national in scope and distinguishes sexual offences on the basis of the degree of force or threat of force used by the accused while committing the offence, nature of the sexual activity involved and age of the victim.

\(^{169}\) The Federal Criminal Code,1986, Sec.. 2246(3).

\(^{170}\) Id., Sec.. 2246(2) (D).

\(^{171}\) Id., Sec.. 2244(b).

\(^{172}\) Id., Sec.. 2241(a)(1).
fine or both.\footnote{173} If the sexual contact had been sexual abuse of a minor, then the punishment of up to 2 years imprisonment or fine or both, may be imposed.\footnote{174} And if the sexual contact had been sexual abuse of a ward, then the punishment may extend up to 6 months imprisonment or fine or both.\footnote{175}

However, in case of abusive sexual contact with children, the term of imprisonment will be twice that otherwise is provided in the Section.\footnote{176} Thus in United State of America, both Federal Criminal Code, 1986 and Title VII of Civil Rights Act of 1964 deal with sexual harassment of women at workplace. Both civil and criminal liabilities may be imposed on the accused and he may be punished and compensation may be claimed by the victim.

In California, the Fair Employment and Housing Act deals with sexual harassment. It defines that the term harassment\footnote{177} includes but is not limited to verbal harassment e.g. epithets, derogatory comments, or slurs……; physical harassment e.g. assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual…..; visual forms of harassment e.g. derogatory posters, cartoons or drawings…; sexual favours e.g. unwanted sexual advances which condition an employment benefit upon an exchange of sexual favours. It also lays down that in applying this sub-section, the rights of free speech and association shall be accommodated consistently with the intention of this provision.

2. United Kingdom

In United Kingdom, sexual harassment is prohibited by the Sex Discrimination Act, 1975.\footnote{178} However the term sexual harassment is not expressly found in the Act; nor is such conduct expressly prohibited therein. But as the Act is essentially designed to deal with discrimination on the ground of sex i.e. gender specific discrimination and sexual

\footnotesize{\begin{itemize}
\item Id., Sec.. 2244 (a)(2).
\item Id., Sec.. 2244 (a)(3) ; Sec. 2243(a) deals with sexual abuse of minor.
\item Id., Sec.. 2244(a)(4) ; Sec.. 2243(b) deals with sexual abuse of a ward.
\item Id., Sec.. 2244(c).
\item The Californian Administrative Code, Title 2, Regulation 72876 (1988).
\item The Act covers the provision of goods, facilities or services to the public including educational establishments, clubs with more than 25 members and voluntary agencies. It covers all aspects of employment including recruitment and selection, promotion, transfers, terms and conditions of employment, operation of grievance, disputes and disciplinary procedures.
\end{itemize}}
harassment comprises one of the gravest form of sex discrimination. So sexual harassment is covered under the provisions of this Act.

The Sex Discrimination Act, 1975 provides that a person discriminates against a woman in any circumstances if on the ground of her sex, he treats her less favorably than he treats or would treat a man. The Act also declares that it is unlawful to discriminate against a woman if she is denied or afforded access to employment opportunities. It is also unlawful for a person in relation to employment by him at an establishment to discriminate against a woman by dismissing her or by subjecting her to any detriment. Thus the Act covers the Quid pro quo form of sexual harassment.

The Act makes the Employer liable whether or not the harassment was done with his knowledge or approval. The employer may avoid liability if he took such steps as were reasonably practical to prevent sexual harassment.

Thus the Act considers the harassment unlawful only if the woman’s employment conditions (or educational prospects) suffer as a result of such harassment. Sexual harassment is unlawful or not, under the Act, it is to be judged by the effect it generates on the victim recipient. The compensation can be awarded for the pecuniary loss where the victim has lost income through being dismissed or having to take time off work, or where a person has incurred medical costs or loss of salary through loss of promotion or other benefits as well as for injury to feelings and aggravated damages if the harassment was repeated or continued over a period of time.

In addition to this Act, the Employment Equality (Sexual Orientation) Regulations, 2003 also prohibit direct and indirect discrimination, victimization and harassment on grounds of sexual orientation. This is the most recent enactment on sexual harassment in UK.

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179 The Sex Discrimination Act, 1975, Sec. .1(1)(a).
180 Id. ,Sec.. 6(21)(b).
181 Id. , Sec.. 41(1) provId.es that employers can be liable for an employee’s behavior. Anything done by a person in the course of his employment shall be treated for the purposes of the Act as was done by his employer as well as by him, whether or not it was done with the employer’s knowledge or approval.
182 Id. , Sec.. 41(3) lays down that an employer may avold his liability if he had taken steps to prevent sexual harassment. Such steps include the formulations of policy statements on sexual harassment, complaint procedures, investigation procedures and disciplinary actions.
184 These Regulations are made under Sec.. 2(2) of the European Communities Act ,1972(C. 68), (implement in Great Britain) Council Directive 2000 /78/ EC of 27 Nov. 2000 , to establish a general framework for equal treatment in employment so far as it relates to discrimination on grounds of sexual orientation. This is the most recent enactment on sexual harassment in UK.
the ground of sexual orientation. Sexual orientation is defined as meaning a sexual orientation towards person of the same sex, persons of the opposite sex or both.\textsuperscript{185} And harassment is defined as unwanted conduct of sexual orientation with the effect of violating the dignity of the victim or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.\textsuperscript{186}

These Regulations prohibit discrimination, victimization and harassment in the fields of employment and vocational training.\textsuperscript{187} The Regulations also provide remedies for the victims including compensation in employment tribunals and in the country or sheriff courts.\textsuperscript{188} The Regulation contain special provisions about the burden of proof in those cases, which transfer the burden of proof to the respondent, in a case where the complainant has established facts from which the tribunal or court can conclude in the absence of any adequate explanation, that an act of discrimination or harassment has been committed by the respondent.\textsuperscript{189} Thus the 2003 Regulations contemplate civil remedies in the form of compensation to the victims of sexual harassment.

Sexual Harassment at workplace is also dealt with by the criminal law in United Kingdom. Till 2003, the Sexual Offences Act, 1956 penalized the sexual harassment occurring in general community under the offence of indecent assault with two years imprisonment.\textsuperscript{190}

The Sexual Offences Act, 2003 repealed the Act of 1956.\textsuperscript{191} The Act of 2003 uses the expression ‘sexual assault’ to describe the sexual touching by the accused without the victim’s consent.\textsuperscript{192} On summary conviction, the imprisonment for a term not exceeding than 6 months or a fine not exceeding the statutory maximum or both is

\textsuperscript{185} The Employment Equality (Sexual Orientation) Regulations, 2003, Regulation 2(1) (a),(b),(c).
\textsuperscript{186} Id., Regulation 5 (1)(a),(b).
\textsuperscript{187} Id., Regulations 6-21 protect employees(Regulation 6), contract workers(Regulation8),office holders(Regulations10 and 11) and partners in firms.
\textsuperscript{188} Id., Regulations 27-34.
\textsuperscript{189} Id., Regulations 29 and 32.
\textsuperscript{190} The Sexual Offences Act, 1956 S. 14 penalized indecent assault on a woman and S.15 penalized indecent assault on a man with 10 years imprisonment.
\textsuperscript{191} Various provisions of the Sexual Offences Act,1956 have been repealed by Sec.tion 140 , Schedule 7 of the Sexual Offences Act ,2003.
\textsuperscript{192} The Sexual Offences Act, 2003 Sec..3.
provided for the commission of sexual assault.\textsuperscript{193} In a case of conviction on indictment, imprisonment for a term not exceeding 10 years can be imposed on the accused.\textsuperscript{194}

The Act defines ‘exposure’ as the intentional exposure of his genitals by the accused with the intent to cause alarm or distress to the victim.\textsuperscript{195} The exposure is punishable on summary conviction with punishment up to 6 months or fine or both.\textsuperscript{196} In case of conviction on indictment, imprisonment up to 2 years.\textsuperscript{197}

Sexual Harassment is also dealt under the offence of voyeurism. Voyeurism is committed where the accused for obtaining sexual gratification observes the victim doing a private act, without his consent.\textsuperscript{198}

Voyeurism is also committed where the accused operates any equipment with the intention of enabling another person to observe, for sexual gratification a third person doing a private act\textsuperscript{199} or where the accused records such activity with the concerned person’s consent.\textsuperscript{200} And the private act is defined as an act exposing victim’s genitals, buttocks or breasts; or where the victim is using lavatory or doing a sexual act.\textsuperscript{201} Voyeurism is punishable on summary conviction with punishment up to 6 months or the statutory maximum fine or both\textsuperscript{202} and on conviction on indictment; the punishment may extend up to 2 years.\textsuperscript{203}

The Act describes the word ‘consent’ as where he agrees by choice and also where he has the freedom and capacity to make that choice.\textsuperscript{204} The word ‘sexual’ is construed as an act of penetration, touching or any other activity that may be considered as sexual due to its nature or surrounding circumstances.\textsuperscript{205}
Thus in United Kingdom sexual harassment is also dealt with by the criminal law of the land by which accused is punished with imprisonment or fine or both.

3. Canada

In Canada, the Canadian Human Rights Act deals with sexual harassment in a range of contents specifically to workplace harassment. The Act provided inter alia that it is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or
(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.206

It is also a discriminatory practice in matters related to employment, to harass an individual on a prohibited ground of discrimination and sexual harassment is also deemed to be harassment on a prohibited ground of harassment.207 Sexual Harassment is considered to be a discriminatory practice against women.

In addition to Anti-Discriminatory Law i.e. Human Rights Act, the Canada Labour Code also deals with sexual harassment. It defines sexual harassment as meaning any conduct, comment, gesture or contact of a sexual nature…

(a) that is likely to cause offence or humiliation to any employee; or
(b) that might on reasonable grounds, be perceived by that employee as placing a condition of sexual nature on employment or any opportunity for training or promotion.208

Thus, it deals with both quid pro quo and hostile work environment form of sexual harassment. The Labour Code provides that all employees are entitled to workplace free from sexual harassment.209

207 Id., Sec.. 14 (1)(c) and (2).
209 Id., Sec. .247.2.
4. **Australia**

In Australia, the Federal Sex Discrimination Act, 1984 \(^{210}\) prohibits sexual harassment. It defines sexual harassment as unwelcome sexual advances or requests for sexual favours or other unwelcome conduct of a sexual nature in relation to the person harassed and 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.\(^{211}\)

Workplace harassment is also considered as discrimination under the Human Rights and Equal Opportunity Commission Act, 1986. It defines discrimination to mean any distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation made on the basis of race, colour, sex, sexual preference, etc.\(^{212}\)

In Queensland, Anti-Discrimination Act, 1991 deals with sexual harassment. It defines sexual harassment as an unsolicited act of physical intimacy or unsolicited demand or request (whether directly or by implication) for sexual favours or remark with sexual connotations or any other unwelcome conduct of a sexual nature in relation to the other person with the intention of offending, humiliating or intimidating or in circumstances where a reasonable person would be offended, humiliated or intimidated by the conduct.\(^{213}\) Physical contact such as patting, pinching, or touching in a sexual way, unnecessary familiarity such as deliberately brushing against a person, sexual propositions, unwelcome and uncalled for remarks or insinuations about a person’s private life, suggestive comments about a person’s appearance or body, offensive telephone calls, indecent exposure etc. can be considered as sexual harassment.\(^{214}\)

The circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct include the sex, age, race, any impairment of the other person and the relationship between the other person and the person engaging

\(^{210}\) The Sex Discrimination Act, 1984, was amended by the Sex Discrimination and other Legislation Amendment Act, 1992.

\(^{211}\) The Sex Discrimination Act, 1984 as amended by Act of 1992, Sec. 28-A.

\(^{212}\) Human Rights and Equal Opportunity Commission Act, 1986, Sec.. 3.

\(^{213}\) Anti-Discrimination Act, 1991, Sec.. 119.

\(^{214}\) IbId.
in the conduct and any other circumstances of the other person.\textsuperscript{215} Thus, this Act defined sexual harassment and provides the circumstances to be taken into consideration for determining the act of sexual harassment.

In Western Australia, the Equal Opportunity Act, 1984 deals with sexual harassment at workplace. The Act makes sexual harassment unlawful whether of an employee, a person seeking employment or any other person i.e. it covers under its purview the commission agents, contract worker or those who are seeking to become agents or contract workers and declares that sexual harassment of such a person is unlawful.\textsuperscript{216} And sexual harassment is defined as unwelcome sexual advances, or an unwelcome request for sexual favours or any other unwelcome conduct of a sexual nature, where refusal to such demands/requests would disadvantage the victim with respect to his employment or work.\textsuperscript{217}

In New South Wales Anti-Discrimination Act, 1977 prohibits sexual harassment.\textsuperscript{218} The Act defines sexual harassment as unwelcome sexual advance or request for sexual favours or other unwelcome conduct of a sexual nature in relation to other person in circumstances in which reasonable person having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated\textsuperscript{219}. The Act makes sexual harassment unlawful whether of an employee or a person seeking employment by the employer, by the fellow employee; of commission agent or contract worker or who is seeking to become a commission agent or contract worker or of fellow commission agent or contract worker; or of a partner in a partnership firm or who is seeking to become a partner; of workplace participant by another workplace participant or by member of either house of Parliament by the workplace participant at a place which is the workplace of both.\textsuperscript{220} For the purpose of this section, place includes a ship, aircraft or vehicle, workplace means a place at which a workplace participant works or otherwise attends in connection with being a workplace participant and in relation to parliament includes the whole of parliament house, any ministerial office or electoral office of the member, any other place that the member otherwise attends in connection

\textsuperscript{215} \textit{Supra note} 213, Sec.. 220.

\textsuperscript{216} Equal Opportunity Act, 1984, Sec.. 24 (2)(a),(b),(c).

\textsuperscript{217} \textit{Id.}, Sec.. 24 (3)(a),(b).

\textsuperscript{218} Anti-Discrimination Act ,1977 ,Part 2A.

\textsuperscript{219} \textit{Id.}, Sec. .22A (a),(b).

\textsuperscript{220} \textit{Id.}, Sec.. 22B (1)(a),(b),(2),(3)(a),(b),(4),(5),(6),(7),(8).
with his or her ministerial, parliamentary or electoral duties and workplace participant means an employer or employee, a commission agent or contract worker, a partner in a partnership, a person who is self-employed, a volunteer or unpaid trainee.\(^\text{221}\)

The provisions of the Act also make sexual harassment unlawful by members of qualifying bodies, harassment in employment agencies, at educational institutions, harassment in the course of receiving or seeking to receive, providing or offering to provide, goods or services or accommodation; or in disposing of or offering to dispose of or acquiring or offering to acquire an estate or interest in land; or of a person engaged in a supporting activity by another who is also engaged in the same; or in the course of performing any function under a State law or for the purposes of State program or carrying out any other responsibility for the administration of a state law or the conduct of a state program.\(^\text{222}\)

Thus the Act makes detailed provisions for the prevention of sexual harassment at workplace.

In addition to Anti-Discrimination Act, the Criminal Law also deals with sexual harassment. The Crimes Act, 1900 punishes indecency of a person under 16 years of age with 2 years imprisonment\(^\text{223}\) and if the act of indecency is committed with respect of a person aged 16 years or above then punishment for 18 months imprisonment\(^\text{224}\).

And the aggravated act of indecency is defined as the one which is committed under circumstances of aggravation when the alleged offender is in the company of another person; or alleged victim is under the authority of alleged offender; or where the alleged victim has serious physical or intellectual disability\(^\text{225}\). The Act punishes aggravated act of indecency, if it is committed with respect to a person under the age of 16 years with imprisonment for 5 years\(^\text{226}\) and if the victim is 16 years or above then imprisonment for

\(^{221}\) Id., Sec. 22B (9),(10)(a),(b),(c).

\(^{222}\) Id., Sec. 22C (1),(2); 22D (a)(b); 22 (E)(1)(a),(a2)(a)(3)(4)22F(a),22G, 22H(a)(b)22I(i) 22J(1)(a)(2)(b)

\(^{223}\) The crimes Act 1900

\(^{224}\) Sec.61 N (1)

\(^{225}\) Id., Sec. 610

\(^{226}\) Id., Sec.610(1)
The Act also defines indecent assault as the assault accompanied with an act of indecency and punishes it with imprisonment for 5 years for its commission. And aggravated indecent assault is defined as the assault accompanied with an act of indecency, committed under the circumstances of aggravation where the alleged offender is in the company of another person; or the alleged victim is under the age of 16 years; or the alleged victim is under the authority of the alleged offender; or where the alleged victim has a serious physical or intellectual disability. This is punishable with imprisonment for 7 years and in case the victim is under the age of 10 years, the punishment extends to imprisonment for 10 years.

5. NEW ZEALAND

In New Zealand, the sexual harassment of women at workplace is prohibited under the Human Rights Law. Besides this it is also prohibited under the Labour Law. The New Zealand Employment Relations Act, 2000 considers sexual harassment as a “personal grievance” against the victim’s employer that can be pursued through a procedure outlined in the Act. The Act explicitly prohibits sexual harassment by non-employees.

The New Zealand Employment Contracts Act, 1991 defines sexual harassment made by employer or his representatives by request for sexual intercourse, sexual contact or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment in that employee’s employment or an implied or overt threat about the present or future employment status of that employee or by the use of words (whether written or spoken) of a sexual nature or physical behavior of a sexual nature, subjects the employee to behavior which is unwelcome or offensive to that employee and which is either repeated or of such a
significant nature that it has a detrimental effect on that employee’s employment; job performance or job satisfaction. However it is not essential that the behavior which is unwelcome or offensive to the employee must be conveyed to the employer or his representative. It is sufficient if it is unwelcome or offensive to the employee. Thus in New Zealand, sexual harassment is prohibited under the Human Rights Act as well as the employment under the Employment Relations and Employment Contracts Act. It covers both quid pro quo and hostile environment harassment.

6. Philippines

In Philippines, the Anti-Discrimination Act also prohibits sexual harassment of women at workplace. It declares that the offensive act may be actionable regardless of whether recipients have indicated their disagreement to the offender or not. But conduct that is not inherently offensive may require a rejection or other negative communication by the recipient to the offender to be actionable once the clear rejection has been made, any repetition of that same or similar conduct could be deemed unwelcome.

In Philippines, the Anti-Sexual Harassment Act provides that in relation to work, education or training related, sexual harassment is committed by an employer, employee, manager, supervisor, agent of employer, teacher, instructor, professor, coach, trainer, or any person who having authority, influence or moral ascendancy over another in a work or training or education environment demands requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of the said act.

However in (a) work related or employment environment, sexual harassment is committed: (1) when sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual or in granting said individual favorable compensation, terms, conditions, promotions or privileges or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee.

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235 New Zealand: Employment contracts Act 1991 Sec. 29(1)
236 Ibid.
237 Philippines: Anti Discrimination Act
(2) the above acts impair the employee’s rights or privileges under existing labour laws and would result in an intimidating hostile or offensive environment for the employee.

In an (b) education or training environment, sexual harassment is committed: when the sexual favor is made a condition to the giving of a passing grade or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or when the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice. 238

Thus both quid pro quo and hostile working environment type of harassment is prohibited under the Philippines Act. Regarding quid pro quo harassment, it will constitute sexual harassment whether or not it is acceptable to the person to whom it is addressed.

The Act punishes not only the person who directs or induces another to commit any act of sexual harassment as herein defined but also the person who co-operates in the commission thereof by another without which it would not have been committed 239.

The Philippines Republic Act provides for three kinds of remedies for every case of sexual harassment like filing a criminal complaint for sexual harassment, following the criminal procedure; filing an administrative complaint for sexual harassment within the workplace, school, or training institution, specifically with the committee on decorum and investigation; filing a civil case for damages to enforce the solidary liability of the employer or head of office or institution, where it applies. At the same time, the law does not preclude the victim of sexual harassment from instituting a separate and independent action for damages and other affirmative relief 240.

The Act also sets out the obligations of employers and heads of office of educational institutions in addressing sexual harassment. It provides that every employer or head of office must undertake steps to prevent sexual harassment and promulgate rules and regulations defining the procedure for the investigation, prosecution and resolution of sexual harassment cases and the administrative sanction therefor. In addition, every employer or head of office must create a Committee on Decorum and Investigation

238 Philippines: Republic Act No. 7877, also known as anti sexual harassment Act 1995 Sec. 5
239 Ibíd.
240 Supra note 238
(CDI) that will investigate and resolve sexual harassment cases as well as conduct initiatives to increase understanding and prevent incidents of sexual harassment. In the workplace, the CDI shall be composed of at least one representative each from the management, the union (if any), the employees of supervisory rank and the rank and file employees.241

The penalty prescribed for the violation of the provisions of this Act extends from minimum one month to maximum six months imprisonment or fine from 10,000 pesos to 20,000 pesos or both, such fine and imprisonment at the discretion of the court.242

The Act also makes employer or head of office, educational or training institutions solidarily liable for damages, arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institutions is informed of such acts by the offended party and no immediate action is taken thereon.243

In pursuance to this Act, Civil Services Commission244 and Department of Labour and Employment (DOLE) issued policy regarding sexual harassment in workplace.245

7. Sri Lanka:

In Sri Lanka, the Sri Lanka Penal Code, 1883 prohibits sexual harassment in workplace and sexual harassment that does not constitute rape. The new offence substituted246 in place of original offence of using criminal force to offend the modesty of a woman. It defines that sexual harassment is committed by assault or use of criminal force or by the use of words or actions which cause sexual annoyance or harassment to other person. Also unwelcome sexual advances by words or actions used by a person in authority to a working place or any other place constitute sexual harassment.247 However assault may include any act that does not amount to rape under Section 363 or

241 Id. Sec. 4
242 Id. Sec. 7
243 Id. Sec. 5
244 MC no. 19, s of 1994 CSC Resolution No. 94-2854 dated 31 may 1994 and resolution no 9561161
245 Administrative Labour and Employment Amending order No. 80 series of 1991
246 The new offence substituted by penal Code amendment no. 22 of 1995
247 Sri Lanka Penal Code 1883 Sec. 345
grave sexual abuse under Section 365 –B. \(^{248}\) And injuries include psychological or mental trauma.\(^{249}\) The person who commits sexual harassment is liable to punishment up to 5 years imprisonment or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries cause to such person.\(^{250}\)

The Code also punishes the grave sexual abuse\(^{251}\) which does not amount to rape with punishment of rigorous imprisonment from 5 years to 20 years and with fine and also to pay compensation to the victim as determined by the courts\(^{252}\) and in case it is committed on a person under 18 years of age then rigorous imprisonment from 7 years to 20 years and with fine and compensation to be paid to the victim.\(^{253}\)

Thus the Code in addition to imprisonment and fine also provides for compensation to be paid to the victim for not only physical injury but also for psychological injury or mental trauma caused to the victim as a result of sexual harassment. The Code also prohibits publication of name, identity etc. of the victim of sexual harassment except under authority and punishes the contravention of this provision with imprisonment up to 2 years or with fine or both.\(^{254}\)

From the analysis of above efforts made at the international ,regional and national level , inference can be drawn that the victim of sexual harassment can take recourse to civil and Criminal remedies besides claiming the violation of anti- discrimination laws and human rights violation of the victim. In India also, the provisions of the Constitutional law, criminal law and other special legislations can be gleaned through to provide remedy to the victim but in the absence of specific legislation, the problem of sexual harassment of Indian women largely remains unaddressed.

\(^{248}\) substituted by Penal Code Act no 16 of 2006, Sec. 345 explanation 2  
\(^{249}\) Id. explanation 3  
\(^{250}\) Supra note 247  
\(^{251}\) Sri Lanka Penal Code 1883 as amended by act no 22 of 1995 and act no 16 of 2006, Sec. 365 defined sexual abuse as that act which is committed by a person for sexual gratification by the use of his genitals or other part or any instrument on any orifice which does not amount to rape without consent of other or part of the body of any other person which is under 16 yrs of age, with the consent when the person was in lawful or unlawful detention or where consent has been obtained by use of force or intimidation or threat of detention, or by putting other person in fear of death or hurt or where the person was of unsound mind or was in a state of intoxication induced by alcohol or drugs  
\(^{252}\) Id. Sec. 365 B (2)(a)  
\(^{253}\) Id. Sec. 365 B (2)(b)  
\(^{254}\) Supernova 247, Sec. 365 C