

Perceptions and Legal Outlooks on Workplace Sexual Harassment in Global Setting: A Review Based Study

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DOI: <https://doi.org/10.3126/hj.v14i1.52961>

Abstract

Globally, sexual harassment is a common phenomenon and occurred before formulating its name sexual harassment. ILO focused on it and said that sexual harassment at work will not be tolerated and must end worldwide. The primary objective of this study is to examine the idea of workplace harassment and its legal aspects globally. This is a review-based study and has been grounded on authentic sites such as google scholar, academia, jstor, and electronic libraries to explore the context. Among a few governments Sweden was the first to adopt legislation and organized seminars and highlighted workplace sexual harassment including anti-bullying laws. Likewise, international organizations and conventions such as CEDAW, ILO, and women's conferences have included provisions on sexual harassment in the workplace. Anti-sexual harassment acts have come into effect in many countries such as Pakistan, Afghanistan, the Philippines, Indonesia, Turkey, and Nepal. Additionally, from the global level, the Me-too movement assisted to speak up on sexual harassment. However sexual harassment in the workplace continues. Despite the sexual harassment acts and laws, employers continue to ignore the incidences of harassment. Therefore, both employers and employees need to work towards creating a safer workspace, and free from harassment by formulating and implementing policies based on the country's acts and protocols for prevention.

Key Words: Perception, Workplace, Sexual harassment, Global, Policies & acts.

Introduction

Sexual harassment (SH) of women is a global, common, and insidious phenomenon that occurs in both developed and developing countries. It has spread like a virus in society and affects the educational/professional path or career advancement of a person (Poonia, 2019; Hirachan & Limbu, 2016). Before 1976, women would not complain about sexual harassment because there had no name. During the time people were called by different names; in India and Nepal it was 'eve-teasing' while in Japan the term 'seku-hara' and in the Netherlands, it was said 'unsolicited or undesired intimacies' (International Labour Organization, 2013). Discussions of the 1970s on sexual violence and discrimination gave way to the discussion of sexual harassment's prevalence and legal issues in the mid-1980s.

Since then, exploring the prevalence of sexual harassment in workplaces dominated the global research field (Bondestam & Lundqvist, 2020; ILO, 2013). Historically the role of women has shifted from domestic work to money-making work. Women in the world are upgrading themselves because of the decline in early marriage, increased involvement in leadership and politics, and gender equality. Despite the offense against women, their participation is increasing day by day (Worke et al., 2021; Poonia, 2019).

Globally, unequal gender relation is prevalent in many societies. In Asia and the Pacific region, sexual harassment at work is being recognized as a human rights violation and a workplace hazard that gravely jeopardizes women's and men's equal opportunities and treatment (Chowdhury, 2009). According to ICIMOD, sexual harassment at work constitutes physical and mental abuse that damages the office environment and hinders productivity (International Centre for Integrated Mountain Development, 2020). In June 2019, at the Centenary Conference of the International Labour Organization (ILO), the Violence and Harassment Convention (No. 190) and its Recommendation (No. 206) was adopted. The global community has made it clear that violence and harassment at work will not be tolerated and must end (International Labour Organization). At the moment, workplace sexual harassment has received voluminous attention among academics and professionals (Islam et al., 2020). With increasing technology as a communication tool, women are experiencing violence differently through email, SMS, and social networking sites from an early age and it is more common in high rates of internet accessed countries (Army Headquarters, 2015). During the last 10 years, new concepts and perspectives, new forms of exposure such as online harassment, and experiences of minorities are focused on sexual harassment (Bondestam & Lundqvist, 2020).

Sexual harassment at work often starts innocently but ends up being unethical and unpleasant. It almost occurs in a matrix power which means it occurs in a series of incidents over some time. Therefore, each case is unique and should be examined in its context and according to the surrounding circumstances as a whole (Ministry of Women and Child Development, 2015). Another study stated that sexual harassment is often presented on a continuum, from offensive comments to sexual and physical assault. Non-physical sexual discrimination and harassment such as sexual remarks (verbal: the size of a woman's breasts) are the most frequently reported sexual harassment (Karami et al., 2021). Sexually harassed individuals could feel under pressure to perform sexual favors to keep their jobs or advance in their careers. According to the ILO, sexual harassment is a breach of workers' fundamental rights, a form of aggression, particularly against women, a problem for safety and health, discrimination, and an unfavorable work environment (ILO, 2013). Sexual harassment has nothing to do with sex and has everything to do with power. In 1979, Professor Catharine MacKinnon wrote that "economic power is to sexual harassment as physical force is to rape" (Earle & Madek, 1994). The in concern of this study is to analyze the concept and its legal perspectives of workplace harassment on a global level.

Research Methodology

This article reviews the body of literature that results in the constant presence of sexual harassment in the workplace. This study mainly focused on the basic concept and its legal perspectives of sexual harassment at the global level which helps to explore this issue from a wide-ranging point of view in the workplace sectors. For this study, researchers reviewed some global acts and policies regarding workplace sexual harassment and they were Sweden, Turkey, the UK, Srilanka, Indonesia, South Korea, Belgium, Malaysia, and Nepal. This study has been grounded on authentic sites such as google scholar, academia, jstor, and different electronic libraries to explore the context.

Results and Discussions

Historical Overview

The problem of sexual harassment was brought to light by later empirical research in Europe and it illuminated that millions of women experience sexual harassment in their working lives. Such types of research quickly entered the feminist and equality of employment opportunity discourse. This consequently resulted in laws and practices that were adopted in various cultural, legal, and political contexts around the world (McDonald, 2012). To address the workplace sexual harassment problem, several governments have adopted different legislation and organized seminars on action against sexual harassment. For example, in October 2001, the ILO regional office for Asia and the Pacific organized a regional tripartite seminar on action against Malaysia, co-financed by the government of Japan and in-kind assistance by the government of Malaysia (ILO, 2001).

Workplace Sexual harassment affects not only individuals but also has a direct bearing on workplace productivity as well as the development of society, which has shown in the table.

Table 1: Professional and Personal Effects of sexual harassment

Professional effects	Personal effects
Decrease work performance	Depression, Anxiety, panic attacks
Increased absenteeism, loss of pay	Traumatic stress
Loss of promotional opportunities	Sleeplessness
Subject to gossip and scrutiny at work	Shame, guilt, self-blame
Being objectified	Difficulty in concentrating
Becoming publicly sexualized	Fatigue, loss of motivation
Being ostracized	Feeling powerless, loss of confidence and self esteem
Having to relocate	Overall loss of trust in people
Job and career consequences	Problem with intimacy
Weakened support network	Withdrawal and isolation

(Ministry of women and Child Development, 2015).

In Asian countries, many women are now in the labour force as compared with 10 years ago to meet their family needs. However, the low quality of employment and occupational segregation by sex contribute to a large extent to the risk of sexual harassment of too many working women (ILO, 2001). Literature on sexual harassment appears to have been published in the 1990s and before that research shifted to the broader issue of bullying which means aggressive behaviour that is prolonged and repeated with the intent to fear, distress, or harm another's body, emotions, reputation, or self-esteem (Ram, 2015). The book, "Sex at work: the power and Paradox of organization sexuality" written by Jeff and Wendy says that organization and sexuality simultaneously construct each other. When compared to women, men have more possibilities to abuse their power since they continue to hold positions of authority and tend to control organizational systems. This means that sexual harassment comes within the wider sphere of bullying (Asmat & Mehboob, 2016). Some US states have laws against bullying and in 2014, a US workplace bullying survey was conducted under WBI (Workplace Bullying Institute). Sweden was the first nation to pass anti-bullying laws (in 1993), and other Scandinavian nations soon followed. Other nations that have adopted anti-bullying legislation included Belgium (since 2002), Quebec (since 2004), and France (since 2002). (Lippel, 2010). Turkey, South Korea (since 1999), and, more recently, Australia are among the nations with anti-bullying laws since 2014 (Ram, 2015).

Lack of knowledge on what types of behaviour constitute sexual harassment, many people are facing sexual harassment issues. For example, in the UK in 2005, the employment equality (sex discrimination) regulations were amended to cover sexual harassment-workplace behaviour that is often difficult to prove to date. Because of the behaviour of sexual harassment, and methodologies used by the researcher, the incidence of sexual harassment varies and affects the level of sexual harassment reported cases and research findings (Hunt et al., 2010). Despite this issue, some international organizations such as the International Labour Organization, the International Confederation of Free Trade Unions, the European Union, and the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) have all highlighted and addressed workplace sexual harassment (McDonald, 2012). CEDAW, 1997 characterized gender-based violence and mentioned in the recommendation notes that when women experience gender-specific violence, such as sexual harassment at work, it can seriously compromise equality in the workplace. Therefore, all parties should take legal actions and other measures for providing effective protection for women against gender-based violence, sexual assault and sexual harassment in the workplace. United Nations Fourth World Conference on Women Beijing 1995, adopted a Platform for Action, which includes provisions on sexual harassment in the workplace. It calls on governments, trade unions, employers, community and youth organizations, and NGOs to eliminate sexual harassment (Asmat & Mehboob, 2016).

Globally, the majority of countries have adopted some form of legislation at the national level to cover sexual harassment. Among them, majority of nations, sexual harassment has been quietly handled as an act that violates a law and addressed a different

topic. For example, human rights, non-discrimination, equal opportunity, and treatment (ILO, 2001).

Review Related Acts and Laws in Global Context

A new sexual harassment prevention law was enacted by the Afghan National Assembly in 2016. In Pakistan, the Protection against Harassment of Women at Workplace Act came into effect in 2010 (ICIMOD, 2020). In Sri Lanka, Penal Code uses unwelcome standards and said that “sexual harassment is a crime that is committed by someone who harasses another person sexually through physical contact or the use of unlawful force, or who harasses that person sexually through their words or actions”. In the Philippines, the Anti-sexual harassment act came into action in 1995 (ILO, 2001).

Similarly, Turkish labour law (2003) obliges employers to protect their employees as part of their duty of care, therefore this also includes protection against harassment. Further, deems sexual harassment in the workplace as a reason for immediate termination of employment. In addition, the Turkish Code of Obligations also requires employers to establish order in the workplace ensuring that the personal rights of employees are protected. However, the actual implications of this obligation, implemented in 2011, have not been well defined by court decisions and therefore it remains relatively theoretical.

In Indonesia, there is no concrete evidence of sexual harassment at work. The feeling of fear, embarrassment, and not knowing where to file a complaint, among other things, are some variables that affect the availability of such records. According to the Criminal Code of Indonesia, sexual harassment is a crime upon formal complaint or accusation (*delik aduan*). Therefore, the victim or any party with knowledge of the incident must file a complaint. The Criminal Code lists the following types of sexual harassment involving *delik aduan* as prohibited:

1. Violence or threat of violence to have sexual intercourse.
2. Unpleasant conduct which violates the decency norm, such as molestation, kissing, groping genital parts, or the breast area (Forum for Women, Law and Development, 2005).

In many countries, provisions on sexual harassment have been included in their equality and sex discrimination laws and some of them are.

Name of Countries	Acts/ Laws
Australia	Sex discrimination act
Austria	Equality of treatment act
Denmark	Gender equality (consolidation) act
Finland	Act on equality between women and men, 1995
Germany	Act to establish equality for men and women
Guyana	Prevention of discrimination act

Honduras	Law on equal opportunities for women
Iceland	Act on the equal status and equal rights of women and men
Ireland	Employment equality act 1998
Japan	Equal employment opportunity act
Republic of Korea	Equal employment act
Lithuania	Law on equal opportunities
Malta	Equality for men and women act
Mauritius	Sex discrimination act
Netherlands	Equal treatment act
Norway	Gender equality act
Romania	Law on equal opportunity
South Africa	Employment equity act
Sweden	Equal opportunities act 1991
Switzerland	Law on equality
Venezuela	Organic law on the rights of women to fairness and equality

Table 2: List of Countries Where Sexual Harassment-Related Contents Existed in their Equality and Sex Discrimination Laws (Asmat, & Mehboob, 2016)

In Nepal, the gender equality act 2063 (2006) mentioned that the person committing sexual harassment-related offenses shall be liable to a punishment of imprisonment of up to one year and a fine of up to ten thousand rupees (UN Women, 2006).

Likewise, in more than one-third of countries, specific provisions on sexual harassment are included in labour legislation and they are:

Table 3: List of Countries Where Sexual Harassment-Related Contents Existed in their Labour Legislation

Name of Countries	Acts/ Laws
Belgium	Law on the well-being of workers, 1996
Canada	Canada labour code
Czech Republic	Labour code
Dominican Republic	Labour code
France	Labour code
Latvia	Labour code
Lesotho	Labour code
Mauritius	Labour code
Namibia	Labour act, 1992
Netherlands	Working conditions act 1998
New Zealand	Employment Relations act, 2000

(Asmat, & Mehboob, 2016)

Similarly, in Nepal, the Foreign Employment Policy 2068 (2011) recognizes the problem of sexual harassment faced by female workers in course of foreign employment and states the need to address the concern of female workers in the labour market and ensure their rights in the overall migration cycle. Similarly, The Labour Act, of 2074 (2017) prohibits sexual harassment (ILO, 2019).

In three countries, the prohibition of sexual harassment is included in the national human rights legislation and they are:

Table 4: List of Countries Where Sexual Harassment-Related Contents Existed in their Human Rights Legislation

Name of Countries	Acts/ Laws
Canada	Canadian Human Rights act
Fiji	Human Rights Commission Act, 1999
New Zealand	Human Rights Act, 1993

(Asmat, & Mehboob, 2016).

Review Related Acts and Laws in Nepal

In Nepal, the problem of sexual harassment in the workplace is not brought out publicly because of the social taboo and Nepali women still do not share the problem with their friends though they are aware of sexual harassment in the workplace (Forum for Women, Law and Development, 2005). Sexual harassment is covered under some general laws, such as the 2017 Criminal Code, Some Public Offences and Punishment Act 1970, and the Electronic Transaction Act 2004. Protection from sexual violence and/or exploitation is also enshrined in the Constitution as a fundamental right.

The Public Offences Act has largely been replaced by the Criminal (Penal) Code, which prohibits sexual harassment in several instances. Section 224 explicitly prohibits sexual harassment and institutes a penalty of a maximum jail term of three years and a maximum fine of Rs 30,000 (ICIMOD, 2020).

Some labour laws seek to 'protect' women from dangerous conditions, including sexual harassment. However, these may end up curtailing their right to work under certain conditions. In Nepal, for example, the Foreign Employment Act, of 1985, restricts women from going abroad for employment without the approval of the Government and guardians. This safeguards women against potential exploitation and sexual harassment, which is the basis behind it. Similarly, the Labour Act provides that only under certain circumstances a woman can be employed outside the home from 6 p.m. to 6 a.m. The Nepal researcher proposes that the approach of the law needs to be reoriented towards creating a safe environment rather than restricting the freedom and movement of women (Forum for Women, Law and Development, 2005).

On February 20, 2015, the Sexual Harassment at the Workplace Prevention Act of 2015 went into effect in Nepal. The Labour Act, 2074 BS now includes a provision that protects employees from sexual harassment. On 3 March 2019, it amended Nepal's acts to correspond to the constitution 2019. It says, no person shall commit or cause to be committed sexual harassment in the workplace. It defines, sexual harassment is regarded to have been committed if any of the following are done intentionally or with the intent to do so: misusing one's position, power, or authority against a customer or employee in the workplace; producing any sort of pressure, influence, or inducement; or discouraging,

1. To touch or attempt to touch any organ of the body with sexual intent
2. To use or display words, pictures, newspapers, audio, visual, other information technology, medium, object or material related to obscene and sexual activity.
3. To display or express obscene and sexual intent by writing, speaking or gesticulating
4. To make an offer for sexual activity
5. To tease or annoy with sexual intent

Next, anything done in course of educational, informative, research-oriented, treatment or lifesaving activity shall not be considered to be sexual harassment. SH act Nepal mentioned that the Government of Nepal shall frame and introduce the necessary Code of Conduct for the prevention of sexual harassment. Each manager shall, by the nature of the workplace, have to frame and introduce a separate Code of Conduct, subject to the Code of Conduct framed under the sub-section (Nepal Law Commission)

To ensure that all of its staff fully and meaningfully participates in the pursuit of the organization's vision and mission, the International Centre for Integrated Mountain Development (ICIMOD) is committed to establishing and upholding a workplace environment free of violence, harassment, exploitation, and intimidation. In keeping with this objective of gender equality and by ICIMOD's Gender Equality Policy, 2013, ICIMOD is committed to ensuring an environment free from sexual harassment. Sexual harassment of any kind is not tolerated. Further, it also mentioned that all employees operating at all ICIMOD work locations, including the headquarters in Kathmandu, are subject to the anti-sexual harassment policy (ICIMOD, 2020).

Another organization, Kantipur Publication Limited formulated sexual harassment policy for both men and women and implemented it too. This policy has mentioned some guidelines to report harassment incidents and mentioned that "Kantipur Publications Limited is committed to providing a safe environment for all its employees, free from discrimination and harassment, including sexual harassment, at work. Kantipur Publication's harassment policy aims to protect men and women in our company from unwanted provocations and give them guidelines to report incidents. We will also explain how we handle claims, take actions against harassment and help victims recover" (The Kathmandu Post, 2022).

Likewise, ABC (Agro-Forestry, Basic Health and Cooperative) Nepal is a human rights organization and has formulated sexual harassment policy and mentioned that "This

workplace harassment policy applies to all full-time and part-time employees, board members, resource persons, contractors, visitors, beneficiaries and anyone else whom employees come into contact with at work” (ABC Nepal, 2020).

For the last few years, the Me-too movement assisted to speak up about the sexual harassment issue in Nepal however, sexual harassment in the workplace continues. Not only Nepal but despite such acts, laws and policies, developed countries are also facing harassment until the present. Recent studies documented that 54 percent of American women report having been the victim of "inappropriate sexual moves" at some point in their careers. Not only in the US, but More than half (52%) of the women surveyed by UK business organizations also reported being the target of improper sexual advances from their coworkers. Likewise, in Bangladesh, nearly 83 percent of females are somehow sexually assaulted at home or workplace by males (Islam et al., 2020).

Conclusion and Recommendations

Despite the sexual harassment acts and laws, employers continue to ignore the incidences of harassment and abuse and still are not operating sexual harassment policies at an organizational level in most organizations. On the other hand, sexual harassment continues to be taboo, and we still have a long way to go before we reach the intended outcome. Both employers and employees need to work towards creating a safer workspace, and free from harassment by formulating and implementing policies based on the country's acts and protocols for prevention.

Acknowledgements

This research was funded by the University Grant Commission (UGC), Nepal under the faculty research grant 2020 and the authors would like to thank the UGC for granting this research. Similarly, the researchers extended their heartfelt thanks to Patan Multiple Campus for providing consent to conduct this study.

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