

INTERNATIONAL LAWS REGARDING SEXUAL HARASSMENT AT WORKPLACE: ROLE OF UN AND ILO AND POSITION IN EUROPE AND U.S.A.

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Abstract

Sexual harassment in the workplace is a hazard encountered in the working place across the world. It reduces the quality of working life, jeopardizes the well-being of both working men and women, and imposes costs on firms and organizations. The issue pertaining to sexual harassment in the workplace has been addressed by several international groups like the United Nations (UN), the International Labour Organization (ILO), the European Union (EU) and the organization of American States (OAS) as a human right violation, a form of violence, and discrimination. Since sexual harassment in the workplace pollutes the working environment and can have a devastating effect upon the health, confidence, morale and performance of the workers, laws and policies that specifically address the problem of sexual harassment in the workplace have been developed by national governments around the world.

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INTERNATIONAL RECOGNITION OF SEXUAL HARASSMENT

Women have long been exposed to workplace harassment which involves conduct of a sexual nature or is premised on the sex of the victim. These kinds of behaviour were not given a name, however, until the 1970s, when women in the United States demanded that sexual harassment be recognized as sex discrimination under the federal anti-discrimination legislation. The term's origins are generally traced to a course on women and work taught by Lin Farley at Cornell University. In 1979, Catherine MacKinnon, a legal scholar from the United States, made the first argument that sexual harassment is a form of sex discrimination prohibited by the constitution and civil rights laws of the United States.¹

The designation "sexual harassment" has since been adopted by women in many other countries who have used it to characterize their experiences, ensure recognition of these forms of conduct and seek to have them prevented. During the last two decades, legislation, court decisions, awareness-raising initiatives, and workplace programs and policies have recognized and responded to the problem. In the last decade in particular, advances have been made in both industrialized and developing countries, including in those in which there had previously been little public recognition of the problem.²

Sexual harassment in the workplace pollutes the working environment and can have a devastating effect upon the health, confidence, morale and performance of those affected by it in the working place. The anxiety and stress produced by sexual harassment in the workplace may lead to those subjected to it taking time off from work due to sickness and stress, being less efficient at work or leaving their job entirely to seek work elsewhere.

There are a few common elements in definitions of sexual harassment worldwide. Generally speaking, behavior constituting sexual harassment in the workplace must:

(1) occur in the place of work or in a work related environment;

¹ See C.A. MacKinnon: *The sexual harassment of working women* (New Haven, Yale University Press, 1979).

² ILO Regional Office for Asia and the Pacific: *Towards gender equality in the world of work in Asia and the Pacific*, technical report for discussion at the Asian Regional Consultation on Follow-up to the Fourth Conference on Women, Manila, 6-8 October 1999 (Bangkok, 1999).

- (2) occur because of the person's sex and/or it is related to or about sex;
- (3) be unwelcome, unwanted, uninvited, not returned, not mutual; and
- (4) affect the terms or conditions of employment (quid pro quo sexual harassment) or the work environment itself (hostile work environment sexual harassment).

The United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination Against Women reaffirms these elements by defining sexual harassment to include “such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”³

A range of initiatives to combat sexual harassment in the workplace have been devised at the international levels. At the international levels, the issue of sexual harassment in the workplace had been taken seriously by the United Nations (UN) and the International Labour Organizations (ILO).

ROLE OF UNITED NATIONS

Within the United Nations, the issue of sexual harassment in the workplace has been addressed as both a manifestation of sex discrimination and a form of violence against women. United Nations conference and committees have treated sexual harassment in the workplace as a form of sex discrimination prohibited under United Nations conventions as a violation of human dignity. This section discusses the international conventions, instruments and reports that directly address or are relevant to sexual harassment in the workplace. These documents include U.N. conventions, U.N. conference documents, the U.N. Declaration for the Elimination of Violence Against Women, reports of the Special Rapporteur for Violence Against Women, and International Labor Organization conventions and guidance. These international agreements,

³ Katharine T. Bartlett et. al, *Gender and Law: Theory, Doctrine and Commentary* 552 (2002);

declarations and reports (1) address sexual harassment as a prohibited form of violence against women or an obstacle to development or (2) guarantee rights which are violated by sexually harassing conduct, i.e., the right to be free from sex discrimination, the right to a healthy and safe working environment and the right to individual dignity in the work place. Even where sexual harassment is directly addressed in these documents, the term may not be precisely defined. Definitions of sexual harassment can be found primarily in law and policy adopted by national governments and regional organizations, such as the European Union.

Referring to the preamble of U.N. Charter which says, “*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, *Whereas* the peoples of the United Nations have in the charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom”, it could be inferred that sexual harassment of women at workplace is against their dignity and is in wholesome violative of their fundamental Human right of Equality.

U.N. Charter was the first document where in the Human rights were elaborated on an official document in the United Nations General Assembly, so there was no specific mention regarding particularly for Sexual Harassment of women at workplace.

Although the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948,⁴ and its implementing covenants, the International Covenant on Civil and Political Rights (ICCPR),⁵ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶ (both entered into force in 1976), does not explicitly mention sexual harassment, it does contain provisions that

⁴ The International Bill of Human Rights protects rights “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Sexual harassment also violates the right to “just and favourable conditions of work”. In addition, the failure to provide a remedy to victims of sexual harassment violates the right to an effective remedy for the violation of fundamental human rights.

⁵ See article 2, 4, and 26 of the International Covenant on Civil and Political Rights (ICCPR).

⁶ See article 2 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

apply to sexually harassing conduct. However, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, has since dealt with the issued on sexual harassment in the workplace.⁷ The Convention is been described as an international bill of rights for women, it came into force on 3 September 1981

But with the passing time the “convention on the elimination of all forms of discrimination against women” was adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979.

This was adopted at the time when awareness of sexual harassment was only beginning to emerge and did not therefore contain a specific prohibition. However, the Committee on the Elimination of Discrimination against Women, set up under the Convention, has since explicitly addressed the problem. It’s General Recommendation of 1989 recognized sexual harassment as a form of violence against women.⁸

Article 11 of the convention specifically discusses about employment conditions for women as:

1. States Parties shall 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, including the application of the same criteria for selection in matters of employment;
- c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- d) The right to equal remuneration, including benefits, 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, particularly in cases of retirement, unemployment, sickness,

⁷ See article 2 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁸ General Recommendation No. 12, 1989.

invalidity and old age and other incapacity to work, as well as the right to paid leave;

f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

By accepting this convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms, including: to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women, to establish tribunals and other public institutions to ensure the effective protection of women against discrimination, and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) is charged in monitoring the convention. It is an expert body established in 1982, which composed of a number of experts on women's issues from around the world. The Committee's mandate is very specific namely it watches over the progress for women made in those countries that are the states parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The committee has describes sexual harassment in the workplace as:

“such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”⁹

The World Conference on Human Rights, held in Vienna in 1993, identified sexual harassment as a human rights violation.¹⁰ Article 2 (b) of the Vienna Declaration and Programme Action stated that violence against women to encompass physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.¹¹

The United Nations Fourth World Conference on Women, held in Beijing in 1995, adopted a Platform for Action, which outlines strategic objectives and actions to be taken by a range of actors, includes provisions on sexual harassment in the workplace.¹² It configures the problem as both a form of violence against women, and a barrier to their equality, stating:

“The experience of sexual harassment is an affront to a worker’s dignity and prevents women from making a contribution commensurate with their abilities.”¹³

The Platform calls on governments, trade unions, employers, community and youth organizations, and NGOs to eliminate sexual harassment.¹⁴ More specifically, governments are

⁹ Article 11 of the General Recommendation No. 19 (11th session, 1992) on Violence against Women.

¹⁰ No. 18 and 38 of the Vienna Declaration and Programme Action, UN Document A/CONF.157/23 12 July 1993

¹¹ Paragraph 114 (b) of the Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

¹² Violence against women is defined in Paragraph 113 to include “Sexual harassment and intimidation at work”.

¹³ Paragraph 161.

urged to enact and enforce laws and administrative measures on sexual and other forms of harassment in the workplace.¹⁵ Parties at the enterprise level are called upon to develop workplace policies.¹⁶

The United Nations General Assembly in December 2006, passed a Resolution 61/143 calling for the “Intensification of efforts to eliminate all forms of violence against women.” The Resolution reaffirmed all of the various UN Conventions, Conference Documents and other international instruments and efforts aimed at protecting and promoting human rights and eliminating violence against women, noted the “pervasiveness of violence against women and girls in all its forms and manifestations worldwide,” and reiterated “the need to intensify efforts to prevent and eliminate all forms of violence against women and girls throughout the world.” The Resolution also took note of a recent study by the UN Secretary General on all forms of violence and discrimination against women, and well as the work of the Committee on the Elimination of Discrimination against Women and the Special Rapporteur on violence against women, its causes and consequences.¹⁷

ROLE OF ILO

The 1985 International Labour Conference Resolution on equal opportunity and equal treatment for men and women in employment stated that sexual harassment at the workplace is detrimental to employees’ working conditions and to their employment and promotion prospects.¹⁸

The International Labour Organization (ILO) has addressed sexual harassment in a range of instruments and during discussions at tripartite meetings. It has also conducted research and

¹⁴ Paragraph 126(a). Paragraph 178 also calls on women’s organizations and employees to take measures on sexual and racial harassment.

¹⁵ Paragraphs 128 and 178

¹⁶ Paragraph 178

¹⁷ http://www.stopvaw.org/international_legal_framework3.html

¹⁸ *Official Bulletin* (Geneva), Vol. LXVIII, Series A, No. 2, 1985, pp. 85-95.

training on the issue, and provided information and technical assistance to its constituents. Most recently, it has been stressed that the elimination of sexual harassment and violence at the workplace is a significant element in promoting decent work for women.¹⁹

Six years later, the 1991 International Labour Conference Resolution concerning ILO action for women workers returned to the issue, inviting 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.²⁰

“Sexual harassment undermines equality at the workplace by calling into question individual integrity and the well-being of workers, it damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity. In view of the gravity and serious repercussions of the practice, some countries are now adopting legislation prohibiting it and making it subject to civil and/or criminal penalties.” ...

.....Committee of Experts: Special survey on the application of Convention No. 111 on Discrimination in Employment and Occupation (Geneva, ILO, 1996), p. 16.

The Committee stated that in order to amount to sexual harassment, the behaviour must either “be justly perceived as a condition of employment or precondition for employment or influence decisions taken in this field” and/or “affect job performance”.²¹

SEXUAL HARASSMENT AT WORKPLACE IN USA

For centuries, the legal system in the United States of America routinely ignored or condoned domestic violence, rape and sexual assault, sexual harassment, and other forms of violence against women. One of the major accomplishments of the American feminist movement during

¹⁹ The elimination of sexual harassment and violence was identified as a priority gender issue in ILO: *Decent work for women: An ILO proposal to accelerate the implementation of the Beijing Platform for Action* (Geneva, March 2000), paper presented at the Symposium on Decent Work for Women; Women 2000: Gender equality, development and peace for the twenty-first century (New York, 5-9 June 2000)

²⁰ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_2.pdf

²¹ Paragraph 39

the past four decades has been the enactment of ambitious legal reforms designed to confront this legacy. Legal remedies for violence against women have proliferated and now compose a vast body of law based on various sources: the federal and state constitutions; federal, state and local legislation and administrative regulations; and judge-made case law.

The Organization of American States treats sexual harassment as an issue of violence against women, instead of a discrimination issue. Accordingly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Para) affirms the right of women to be free from violence, including sexual harassment in employment or any other context, and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence. Article 2 states that sexual harassment in the workplace, educational setting, health facilities, or any other place constitutes violence against women.

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 sex discrimination under the federal Civil Rights Act.

Sexually harassing behaviour is often categorized as either “*quid pro quo*” or “hostile working environment” harassment, a distinction stemming from the jurisprudence of the American courts. *Quid pro quo* sexual harassment takes place when a job benefit — a pay rise, a promotion, or even continuing employment — is made dependent on the victim acceding to demands to engage in some form of sexual behaviour. It was the first kind of sexual harassment to be prohibited when it was recognized by the US District Court for the District of Columbia in 1976.²² The second category, hostile working environment harassment, covers conduct that creates a working environment which is unwelcome and offensive to the victim. It encompasses the range of sexually harassing behaviour that does not involve sexual blackmail: sex-based comments, disparaging remarks about the sex of the target, innuendos, the display of sexually suggestive or explicit material, etc. Hostile working environment harassment was also initially named, legally

²² *Williams v. Saxbe*, 413 F.Supp 654 (DDC 1976).

recognized, and prohibited in the United States, first in guidelines issued by the U.S. Equal Employment Opportunities Commission (EEOC), and subsequently by the courts.²³

In 1994, Congress passed the Violence Against Women Act (VAWA), which was the nation's first attempt at a multipronged legal response to the epidemic of violence against women.²⁴ This lengthy and wide-ranging legislation has subsequently been amended, reauthorized, and expanded.²⁴ It remains both a practical tool for dealing with violence against women and a symbol of national commitment to eradicate the problem.

Advancing sexual harassment jurisprudence under sex discrimination laws was pioneered in the United States in decisions in cases brought under Title VII of its Civil Rights Act.²⁵ The argument which is made is that, since sexual harassment is directed primarily at women, they are disproportionately subjected to detrimental treatment in the labour force and it is therefore a form of sex discrimination. The sex discrimination approach is particularly prevalent in jurisdictions in which equality or anti-discrimination legislation is the only route available to victims of sexual harassment.²⁶

Subsequent Supreme Court decisions have strengthened the incentives for employers to establish programs to prevent and remedy sexually harassing behavior by employees.²⁷ Amid a growing number of sexual harassment complaints and lawsuits, some of which have resulted in large monetary awards, many employers throughout the country have adopted policies prohibiting

²³ Hostile working environment harassment was recognized by the U.S. Supreme Court in 1986 in *Meritor Savings Bank v. Vinson*, 477 U.S. 57(1986).

²⁴ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006); Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1491 (2000)

²⁵ *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

²⁶ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_2.pdf

²⁷ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) (establishing an affirmative defense in certain sexual harassment cases for employers that exercise reasonable care to prevent and correct sexually harassing behavior); *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998) (same).

sexual harassment.²⁸ Training programs to educate workers on how to avoid sexual harassment, which were unheard of twenty-five years ago, are now common.²⁹

The effectiveness of these federal remedies is hampered by restrictive technical requirements. For example, Title VII applies only to employers with fifteen or more employees, establishes short time limits for filing a complaint, and places maximum caps on damage awards.³⁰

Title IX applies only to educational programs or activities receiving federal funding, and the Supreme Court has imposed a high standard for establishing that the school (instead of or in addition to the individual harasser) can be held liable.³¹ Some states have sexual harassment laws that are more generous to plaintiffs than their federal counterparts.³²

SEXUAL HARASSMENT IN EUROPE

The development of EU gender equality law and its transposition in the Member States has been a step-by-step process, starting, at least for the ‘oldest’ EU Member States, in the early sixties. In 1957, the Treaty establishing the European Economic Community, which was the origin of the current EU, contained only one single provision (Article 119 EEC Treaty, now Article 141 EC Treaty) on gender discrimination, namely the principle of equal pay between men and women for equal work.

Since then, however, a whole plethora of directives – a specific form of *binding* EU legislation – which prohibit discrimination on the grounds of sex in particular, have been adopted: the Directive on equal pay for men and women (75/117), the Directive on equal treatment of men

²⁸ Joanna L. Grossman, *The Culture of Compliance*, 26 HARVARD WOMEN’S LAW JOURNAL 3 (2003).

²⁹ [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20\(Sally%20Goldfarb\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Sally%20Goldfarb).pdf)

³⁰ GEORGE RUTHERGLEN, EMPLOYMENT DISCRIMINATION LAW (2d ed. 2007). [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20\(Sally%20Goldfarb\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Sally%20Goldfarb).pdf)

³¹ *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999); *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).

³² *L.W. ex rel. L.G. v. Toms River Regional Schools Board of Education*, 915 A.2d 535 (N.J. 2007) (rejecting the Title IX liability standard and applying a more lenient standard under state law).

and women in employment (76/207, amended by Directive 2002/73), the Directive on equal treatment of men and women in statutory schemes of social security (79/7), the Directive on equal treatment of men and women in occupational social security schemes (86/378, amended by Directive 96/97), the Directive on equal treatment of men and women engaged in an activity, including agriculture, in a self-employed capacity (86/613), the Pregnant Workers' Directive (92/85), the Parental Leave Directive (96/34), the Directive on equal treatment of men and women in the access to and the supply of goods and services (2004/113) and, finally, the so-called Recast Directive (2006/54).³³

The Charter of Fundamental Rights of the European Union specifically enshrines the right to be free from discrimination on the basis of sex, and Article 23 obligates states to ensure equality between men and women in all areas. This principle has been further elaborated through several directives dealing with sexual harassment, including Directive 2006/54/EC related to equal opportunities in employment and the Directive 2004/113/EC related to equal treatment in access to goods and services. These directives require member states to incorporate into national law the following principles:

- The Charter of Fundamental Rights of the European Union prohibits discrimination on the grounds of sex and enshrines the right to equal treatment between men and women in all areas, including employment, work and pay, vocational training, and access to goods and services;
- Clarify that sexual harassment constitutes discrimination on the grounds of sex;
- Prohibition, at a minimum, of behavior meeting the Directives' definition of sexual harassment in the workplace and in the provision of goods and services;
- Encourage employers to take measures to combat all forms of sexual discrimination and prevent harassment in the workplace.³⁴

³³ Report prepared for the use of the European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, (Decision 1672/2006/EC of the European Parliament and the Council, OJ L 315/1 of 15.11.2006)

³⁴ <http://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html>

The European Union's revised Equal Treatment Directive, however, which must be implemented at national level in all EU Member States, covers both sexual behaviour and harassment related to the sex of a person. The latter form of harassment is defined as occurring "where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment".³⁵

The European Foundation for the Improvement of Living and Working Conditions concludes that, while there is evidence that men may also experience unwanted sexual attention and harassment, [sexual harassment] is still a problem that particularly affects women.³⁶

In relation to the *prohibition of discrimination*, in some countries specific problems arise because words other than discrimination are used.

- In the Netherlands, discrimination was defined in more neutral terms, namely 'distinction'.

The European Commission criticized the use of the term 'distinction' and the fact that the definitions of direct and indirect discrimination are not similar to the definitions in the directives.

- In two Latvia and Norway, discrimination is also defined in terms of differential treatment. Whether this will induce the European Commission to take steps is not clear, however.
- Germany has chosen more 'disapproving' terminology than the making of a distinction, namely *Benachteiligung* (putting at a disadvantage) instead of discrimination.

The definition of *harassment or sexual harassment* encountered some difficulties in national legislation.

³⁵ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (*Official Journal*, Volume L269, 5 October 2002, p. 15), Article 2(2).

³⁶ <http://www.stopvaw.org/What is Sexual Harassment> [From European Foundation for the Improvement of Living and Working Conditions, Preventing Violence and Harassment in the Workplace (2003)(PDF, 5 pages); Sexual Harassment Charges EEOC & FEPAs Combined: FY 1997-FY 2006.]

- In Estonia, it appears that the definition of sexual harassment is stipulated more strictly in the national legislation than in the EU directives. A draft Act to amend the Gender Equality Act, the Civil Service Act and the Labour Contracts Act is currently pending in Parliament, would also introduce a new concept: ‘harassment based on sex’, which means unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of that person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- In Hungary, a somewhat narrower definition of harassment exists and there seems to be some reluctance on the part of the legislator to regulate sexual harassment.
- In Spain it took until 2007 before the concepts of harassment and sexual harassment were included in national law.

Member States have the obligation to ensure that judicial procedures are available to all persons who consider them to have been wronged by a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended. According to the ECJ’s case law, national courts must provide effective judicial protection and access to the judicial process must be guaranteed.³⁷

In May 2002, the European Union Council and Parliament amended a 1976 Council Directive on the equal treatment of men and women in employment to prohibit sexual harassment in the workplace as a form of sex discrimination and violation of dignity. This Directive requires all Member States of the European Union to adopt laws on sexual harassment or amend existing laws to comply with the Directive by October 2005; as a result, national sexual harassment law in Europe is in the process of undergoing significant change. More information on the Council Directive is available in the discussion of regional sexual harassment law.

Legal approaches to sexual harassment vary widely. The forms of harassment are addressed on the national level through a variety of civil provisions—anti-discrimination law, labor law, and tort law—as well as through criminal codes. The remedies applied in the context of sexual harassment depend in large part on the legal approach taken. Because sexual harassment can

³⁷ Case C-222/84 *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR I-01651.

occur in different forms and in different environments, the most effective way to combat it may require a combination of legal strategies.

National legal systems also have developed different legal standards by which to determine employer liability for the sexual harassment experienced by its employees in the work environment, the appropriate burden of proof to be applied in civil sexual harassment cases, and whether to require proof of injury in sexual harassment cases.

Governments and non-governmental organizations have also established various

- mechanisms for monitoring employers and enforcing sexual harassment law,
- policies and strategies that encourage individual employers, employees, unions and the media to take steps to prevent sexual harassment, and
- guidance for drafting sexual harassment laws.

The relationship between European human rights law and domestic law is very specific. Virtually all Council of Europe (COE) member States have incorporated the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) into national law. The Council of Europe has also made clear that the European Court of Human Rights, in Strasbourg, is not a substitute for national courts, but is subsidiary to national systems that safeguard human rights. In contrast, the European Court of Justice of the European Union (EU) serves a very different function. Until 1999, its jurisdiction did not include alleged human rights abuses. The Treaty of Amsterdam, however, incorporates the European Convention into European Union Law. The relationship between the European Court of Human Rights and the European Court of Justice is somewhat complicated. Although they both handle human rights issues, they are two distinct courts and have distinct jurisdictions.³⁸

In addition to these complaint mechanisms, the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe (OSCE) all perform monitoring of the human rights situation in the region. In the Council of Europe, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European

³⁸ <http://www.lawgazette.co.uk/opinion/joshua-rozenberg/eu-accession-echr-will-change-european-legal-framework>

Committee of Social Rights have specific mandates to monitor implementation of the treaties that address these specific issues- torture and degrading treatment and economic and social rights. The European Union allows individuals and groups to submit communications to the European Commission and the European Parliament about specific incidents of human rights violations and non-compliance with European Union Law.

CONCLUSION

Sexual Harassment is more of an idea which knows no boundaries and prevails in every society however developed or backward. There are laws internationally and individually, as discussed in the paper, and there even exists an implementation mechanism. But to follow those laws is in the hands of the society itself and no sovereign can do more than to make law through a sanction. Besides building up strong legislation for offences of sexual harassment, individual states must try to invent and implement such policies of EDUCATION and AWARENESS in the society so that not only the abuser is punished openly but the social hesitatory phobia of the sufferer even decreases. In most of the instances, the sufferers, i.e., the women are afraid of society's reaction in such cases. This hesitation, fear, trauma or weak attitude of women must be put aside. One must be prepared and aware of the worst circumstances that might follow, when moving out of the four corners of security in the open social jungle.

To acknowledge the complains CEDAW i.e., Convention for Elimination of all form of Discrimination Against Women, must have an implementation mechanism, which presently it fails to provide. Further, there are many countries that have not progressed enough to have a separate legislation to address the issues regarding the above subject, for them, there must be a provision in the convention of individual communication system. The developed nations need to be more specific regarding the terminology and its definition and the same should be made strict accompanied with stricter punishments for such offence so that, this evil thinking is targeted from every possible method. It is only then we can imagine a harassment free equal society of men and women.