

## UNIT IV

ISSUES OF VIOLENCE: Sexual Harassment: Say No! Sexual Harassment, not Eve-Teasing-Coping with Everyday Harassment Domestic Violence: Speaking Out Is Home a Safe Place? -When Women Unite [Film], Rebuilding Lives Thinking about Sexual Violence Blaming the Victim-“I Fought for my Life.....”

### 4.1 Sexual Harassment: Say No!

Sexual harassment by strangers, as well as any type of harassment, has been a notoriously difficult crime to prove, as perpetrators often devise discreet ways to harass women, even though Eve teasing usually occurs in public spaces, streets, and public transport. This behavior is sometimes referred to as a kind of "little rape". Some people warn women to avoid attracting the attention of these kinds of men by wearing conservative clothing. However, this harassment is reported both by the conservatively dressed Indian women and by the modern women including women in foreign countries

The problem first received public and media attention in the 1970s. In the following decades, more and more women started going to college and working independently, meaning that they were often no longer accompanied by a male escort as had been the norm in traditional society. In response, the problem grew to alarming proportions, despite this not being the case in other cultures where women go and come as they please. Soon the Indian government had to take remedial measures, both judicial and law enforcement, to curb the practice. Efforts were made to sensitize the police about the issue, and police started rounding up Eve teasers. The deployment of plain-clothed female police officers for the purpose has been particularly effective. Other measures taken in various states by the police were setting up of dedicated women's help lines in various cities, police stations staffed by women, and special police cells. Also seen during this period was a marked rise in the number of women coming forward to report cases of sexual harassment, due to changing public opinion against this practice.

a) Sexual Harassment in the given context, is described in The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013 in Paragraph 2(n) as: “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

1. Physical contacts and advances; or

2. a demand or request for sexual favours; or
3. making sexually colored remarks; or
4. showing pornography; or
- 5.any other unwelcome physical, verbal or non-verbal conduct of sexual nature;”

Sections 294 and 509 of the Indian Penal Code (IPC) prohibit any individual or group of people pass any kind of offensive comment or execute any such gesture towards a girl of any age will be punished.

### Films Make Sexual Harassment A Joke

We as movie goers often consume and laugh at sexual harassment without even noticing it. The harassment here functions as part of the scenery, more or less unaddressed and is purely atmospheric.

Further reading:"Chupulu" Chupulu, a poem translated as 'looks' or sometimes 'stares', written by

Jaya prabha, is a poem about the male gaze. It begins with the poet-person describing the assault of stares she endures daily and ends with the poet hoping for the day when women can return the stares and reclaim public spaces for themselves.

### **Domestic Violence: Speaking Out**

Domestic violence is abuse that happens in a personal relationship. It can happen between past or current partners, spouses, or boyfriends and girlfriends. Domestic violence affects men and women of any ethnic group, race, or religion; gay or straight; rich or poor;teen, adult, or elderly.But most of its victims are women.In fact, 1out of 4women will be a victim at some point. The abuser may use fear, bullying, and threats to gain power and control over the other person. He or she may act jealous, controlling, or possessive. These early signs of abuse may happen soon after the start of the relationship and might be hard to notice at first. After the relationship becomes more serious, the abuse may get worse.

- The abuser may begin making threats, calling the other person names, and slamming doors or breaking dishes.This is a form of emotional abuse that is sometimes used to make the person feel bad or weak.
- Physical abuse that starts with a slap might lead to kicking, shoving, and choking over time.

- As a way to control the person, the abuser may make violent threats against the person's children, other family members, or pets.
- Abusers may also control or withhold money to make the person feel weak and dependent. This is called financial abuse.
- Domestic violence also includes sexual abuse, such as forcing a person to have sex against the will.

### **When Women Unite:**

The story of an Uprising” by Shabna Virmani

It recreates a piece of history that took place in Nellore District, Andhra Pradesh, India, between 1992 and 1995. Arrack, a type of country liquor, was being manufactured by the government and supplied to the villages through middle men. Since arrack was easier to obtain than water, the village men were staying in toxicated and becoming more and more abusive to their families. The women of the villages in Nellore District rallied and got the government to stop the sale of arrack in the villages.

### **Thinking About Sexual Violence :**

What should you do if you're being abused?

It's important to get help. Talk with someone you trust, such as a friend, a help center, or your doctor. Talking with someone can help you make the changes you need. Your first step is to contact a local advocacy group for support, information, and advice on how to stay safe.

Here are some other things you can do:

- Know your legal rights. Consider asking the police for help.
- Make sure that you know phone numbers you can call and places you can go in an emergency.
- Teach your children not to get in the middle of a fight.
- If you think you may leave, make a plan to help keep you safe. This will help when you are getting ready to leave.
- your plan might include

Putting together and hiding a suitcase of clothing, copies of your car and house keys, money or credit cards, and important papers, such as Social Security cards and birth certificates for you and your children. Keep the suitcase hidden in your home or leave it with friends or family or at work if possible.

Open a savings account or get a credit card, if you can do so in secret. If you are a teen, talk to a trusted adult, such as your parents, family friend, or school counselor.

**Divorce and Domestic Violence:**

Domestic violence affects millions of households each year. Over the past several decades, every state has enacted laws to protect domestic abuse victims. Many laws specifically address how domestic violence or other abuse affects court decisions in divorces.

**I fought for my life:**

Sohaila Abdulia is an Indian born author and journalist who currently lives in the U.S. In 1980, at the age of 17 she survived a violent gang rape in India. Faced with a gang of violent men, Sohaila makes a choice to survive. Three years later she wrote about her experience in the Indian magazine, *Manushi*. She has researched and given numerous public talks on issues of sexual violence is

Eve teasing is a euphemism used throughout South Asia for public sexual harassment or molestation (often known as "street harassment") of women by men.

**Stalking and its impacts on the Society:**

A popular category of Eve teasing is stalking. The general definition of Stalking can be described as repeated harassing or threatening behaviour by an individual, such as following a person, appearing at person's home, person's workplace, making harassing phone calls, leaving written messages or objects or vandalizing person's property.

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She has researched and given numerous public talks on issues of sexual violence. She's Senior Editor at Ubuntu Education Fund, an international NGO working with children in South Africa. Her website is [www.sohailaink.com](http://www.sohailaink.com)

The Caste Face of Violence:

Bhanwari Devi (also spelled Bahveri Devi) is an Indian dalit social-worker from Bhateri, Rajasthan, who was allegedly gang raped in 1992, by higher-caste men, angered by her efforts to prevent a child marriage in their family. Her subsequent treatment by the police, and court acquittal of the accused, attracted widespread national and international media attention, and became a landmark episode in India's women's rights movement. Domestic violence against women: Recognize patterns, seek help

Domestic violence is a serious threat for many women. Know the signs of an abusive relationship and how to leave a dangerous situation.

[By Mayo Clinic Staff](#)

Your partner apologizes and says the hurtful behavior won't happen again — but you fear it will. At times you wonder whether you're imagining the abuse, yet the emotional or physical pain you feel is real. If this sounds familiar, you might be experiencing domestic violence.

Recognize domestic violence

Domestic violence — also called intimate partner violence — occurs between people in an intimate relationship. Domestic violence can take many forms, including emotional, sexual and physical abuse and threats of abuse. Domestic violence can happen in heterosexual or same-sex relationships.

Abusive relationships always involve an imbalance of power and control. An abuser uses intimidating, hurtful words and behaviors to control his or her partner.

It might not be easy to identify domestic violence at first. While some relationships are clearly abusive from the outset, abuse often starts subtly and gets worse over time. You might be experiencing domestic violence if you're in a relationship with someone who:

- Calls you names, insults you or puts you down
- Prevents or discourages you from going to work or school or seeing family members or friends
- Tries to control how you spend money, where you go, what medicines you take or what you wear
- Acts jealous or possessive or constantly accuses you of being unfaithful
- Gets angry when drinking alcohol or using drugs
- Tries to control whether you can see a health care provider
- Threatens you with violence or a weapon
- Hits, kicks, shoves, slaps, chokes or otherwise hurts you, your children or your pets
- Forces you to have sex or engage in sexual acts against your will
- Blames you for his or her violent behavior or tells you that you deserve it
- Threatens to tell friends, family, colleagues or community members your sexual orientation or gender identity

If you're lesbian, bisexual or transgender, you might also be experiencing domestic violence if you're in a relationship with someone who:

- Tells you that authorities won't help a lesbian, bisexual or transgender person
- Tells you that leaving the relationship means you're admitting that lesbian, bisexual or transgender relationships are deviant
- Says women can't be violent
- Justifies abuse by telling you that you're not "really" lesbian, bisexual or transgender

## Don't take the blame

You may not be ready to seek help because you believe you're at least partially to blame for the abuse in the relationship. Reasons may include:

- Your partner blames you for the violence in your relationship. Abusive partners rarely take responsibility for their actions.



- Your partner only exhibits abusive behavior with you. Abusers are often concerned with outward appearances, and may appear charming and stable to those outside of your relationship. This may cause you to believe that his or her actions can only be explained by something you've done.
- Therapists and doctors who see you alone or with your partner haven't detected a problem. If you haven't told your doctor or other health care providers about the abuse, they may only take note of unhealthy patterns in your thinking or behavior, which can lead to a misdiagnosis. For example, survivors of intimate partner violence may develop symptoms that resemble personality disorders. Exposure to intimate partner violence also increases your risk of mental health conditions such as depression, anxiety and post-traumatic stress disorder (PTSD).

If health care providers focus on your symptoms, this may worsen your fear that you are responsible for the abuse in your relationship.

- You have acted out verbally or physically against your abuser, yelling, pushing, or hitting him or her during conflicts. You may worry that you are abusive, but it's much more likely that you acted in self-defense or intense emotional distress. Your abuser may use such incidents to manipulate you, describing them as proof that you are the abusive partner.

If you're having trouble identifying what's happening, take a step back and look at larger patterns in your relationship. Then, review the signs of domestic violence. In an abusive relationship, the person who routinely uses these behaviors is the abuser. The person on the receiving end is being abused.

## Pregnancy, children and abuse

Sometimes domestic violence begins — or increases — during pregnancy, putting your health and the baby's health at risk. The danger continues after the baby is born.

Even if your child isn't abused, simply witnessing domestic violence can be harmful. Children who grow up in abusive homes are more likely to be abused and have behavioral problems than are other children. As adults, they're more likely to become abusers or think abuse is a normal part of relationships.

You might worry that telling the truth will further endanger you, your child or other family members — and that it might break up your family — but seeking help is the best way to protect your children and yourself.

## Break the cycle

If you're in an abusive situation, you might recognize this pattern:

- Your abuser threatens violence.
- Your abuser strikes.
- Your abuser apologizes, promises to change and offers gifts.
- The cycle repeats itself.

Typically the violence becomes more frequent and severe over time.

The longer you stay in an abusive relationship, the greater the physical and emotional toll. You might become depressed and anxious, or begin to doubt your ability to take care of yourself. You might feel helpless or paralyzed.

## Unique challenges

- If you're an immigrant, you may be hesitant to seek help out of fear that you will be deported. Language barriers, lack of economic dependence and limited social support can increase your isolation and your ability to access resources.

Laws in the United States guarantee protection from domestic abuse, regardless of your immigrant status. Free or low-cost resources are available, including lawyers, shelter and medical care for you and your children. You may also be eligible for legal protections that allow immigrants who experience domestic violence to stay in the United States.

Call a national domestic violence hotline for guidance. These services are free and protect your privacy.

- If you're an older woman, you may face challenges related to your age and the length of your relationship. You may have grown up in a time when domestic violence was simply not discussed. You or your partner may have health problems that increase your dependency or sense of responsibility.
- If you're in a same-sex relationship, you might be less likely to seek help after an assault if you don't want to disclose your sexual orientation. If you've been sexually assaulted by another woman, you might also fear that you won't be believed.

The only way to break the cycle of domestic violence is to take action. Start by telling someone about the abuse, whether it's a friend, loved one, health care provider or other close contact. You can also call a national domestic violence hotline.

At first, you might find it hard to talk about the abuse. But understand that you are not alone and there are people who can help you. You'll also likely feel relief and receive much-needed support.

## Create a safety plan

Leaving an abuser can be dangerous. Consider taking these precautions:

- Call a women's shelter or domestic violence hotline for advice. Make the call at a safe time — when the abuser isn't around — or from a friend's house or other safe location.
- Pack an emergency bag that includes items you'll need when you leave, such as extra clothes and keys. Leave the bag in a safe place. Keep important personal papers, money and prescription medications handy so that you can take them with you on short notice.
- Know exactly where you'll go and how you'll get there.

## Protect your communication and location

An abuser can use technology to monitor your telephone and online communication and to track your location. If you're concerned for your safety, seek help. To maintain your privacy:

- Use phones cautiously. Your abuser might intercept calls and listen to your conversations. He or she might use caller ID, check your cellphone or search your phone billing records to see your call and texting history.
- Use your home computer cautiously. Your abuser might use spyware to monitor your emails and the websites you visit. Consider using a computer at work, the library or at a friend's house to seek help.
- Remove GPS devices from your vehicle. Your abuser might use a GPS device to pinpoint your location.
- Frequently change your email password. Choose passwords that would be impossible for your abuser to guess.
- Clear your viewing history. Follow your browser's instructions to clear any record of websites or graphics you've viewed.

### Where to seek help

In an emergency, call 911 — or your local emergency number or law enforcement agency. The following resources also can help:

- Someone you trust. Turn to a friend, loved one, neighbor, co-worker, or religious or spiritual adviser for support.
- National Domestic Violence Hotline: 800-799-SAFE (800-799-7233). Call the hotline for crisis intervention and referrals to resources, such as women's shelters.
- Your health care provider. Doctors and nurses will treat injuries and can refer you to safe housing and other local resources.
- A local women's shelter or crisis center. Shelters and crisis centers typically provide 24-hour emergency shelter, as well as advice on legal matters and advocacy and support services.
- A counseling or mental health center. Counseling and support groups for women in abusive relationships are available in most communities.
- A local court. Your district court can help you obtain a restraining order that legally mandates the abuser to stay away from you or face arrest. Local advocates might be available to help guide you through the process.

It can be hard to recognize or admit that you're in an abusive relationship — but help is available. Remember, no one deserves to be abused.

## Addressing Domestic Violence Against Women: An Unfinished Agenda

[Ravneet Kaur](#) and [Suneela Garg](#)

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“Domestic violence is a burden on numerous sectors of the social system and quietly, yet dramatically, affects the development of a nation... batterers cost nations fortunes in terms of law enforcement, health care, lost labor and general progress in development. These costs do not only affect the present generation; what begins as an assault by one person on another, reverberates through the family and the community into the future”. (Zimmerman)([1](#))

Domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. This problem is not only widely dispersed geographically, but its incidence is also extensive, making it a typical and accepted behavior. Domestic violence is wide spread, deeply ingrained and has serious impacts on women's health and well-being. Its continued existence is morally indefensible. Its cost to individuals, to health systems and to society is enormous. Yet no other major problem of public health has been so widely ignored and so little understood.([2](#))

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### What is Domestic Violence?

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Domestic violence can be described as the power misused by one adult in a relationship to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. This violence can take the form of physical assault, psychological abuse, social abuse, financial abuse, or sexual assault. The frequency of the violence can be on and off, occasional or chronic.

“Domestic violence is not simply an argument. It is a pattern of coercive control that one person exercises over another. Abusers use physical and sexual violence, threats, emotional insults and economic deprivation as a way to dominate their victims and get their way”. (Susan Scheter, Visionary leader in the movement to end family violence)([3](#))

The Protection of Women from Domestic Violence Act, 2005 says that any act, conduct, omission or commission that harms or injures or has the potential to harm or injure will be considered domestic violence by the law. Even a single act of omission or commission may constitute domestic violence - in other words, women do not have to suffer a prolonged period of abuse before taking recourse to law. The law covers children also.([4](#)) Domestic violence is perpetrated by, and on, both men and women. However, most commonly, the victims are women, especially in our country. Even in the United States, it has been reported that 85% of all violent crime experienced by women are cases of intimate partner violence, compared to 3% of violent crimes experienced by men.([5](#)) Thus, domestic violence in Indian context mostly refers to domestic violence against women.

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### Problem Statement

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Domestic violence is the most common form of violence against women. It affects women across the life span from sex selective abortion of female fetuses to forced suicide and abuse, and is evident, to some degree, in every society in the world.

The World Health Organization reports that the proportion of women who had ever experienced physical or sexual violence or both by an intimate partner ranged from 15% to 71%, with the majority between 29% and 62%.<sup>(2)</sup>

India's National Family Health Survey-III, carried out in 29 states during 2005-06, has found that a substantial proportion of married women have been physically or sexually abused by their husbands at some time in their lives. The survey indicated that, nationwide, 37.2% of women “experienced violence” after marriage. Bihar was found to be the most violent, with the abuse rate against married women being as high as 59%. Strangely, 63% of these incidents were reported from urban families rather than the state's most backward villages. It was followed by Madhya Pradesh (45.8%), Rajasthan (46.3%), Manipur (43.9%), Uttar Pradesh (42.4%), Tamil Nadu (41.9%) and West Bengal (40.3%).<sup>(6)</sup>

The trend of violence against women was recently highlighted by the India's National Crime Records Bureau (NCRB) which stated that while in 2000, an average of 125 women faced domestic violence every day, the figure stood at 160 in 2005.<sup>(7)</sup>

A recent United Nation Population Fund report also revealed that around two-thirds of married women in India were victims of domestic violence. Violence in India kills and disables as many women between the ages of 15 and 44 years as cancer and its toll on women's health surpasses that of traffic accidents and malaria combined.<sup>(8)</sup>

Even these alarming figures are likely to be significantly under estimated given that violence within families continues to be a taboo subject in both industrialized and industrializing countries.

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## What Leads to Domestic Violence?

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Domestic violence against women is an age old phenomenon. Women were always considered weak, vulnerable and in a position to be exploited. Violence has long been accepted as something that happens to women. Cultural mores, religious practices, economic and political conditions may set the precedence for initiating and perpetuating domestic violence, but ultimately committing an act of violence is a choice that the individual makes out of a range of options. Although one cannot underestimate the importance of macro system-level forces (such as cultural and social norms) in the etiology of gender-based violence within any country, including India, individual-level variables (such as observing violence between one's parents while growing up, absent or rejecting father, delinquent peer associations) also play important roles in the development of such violence. The gender imbalance in domestic violence is partly related to differences in physical strength and size. Moreover, women are socialized into their gender roles in different societies throughout the world. In societies with a patriarchal power structure and with rigid gender roles, women are often poorly equipped to protect themselves if their partners become violent. However, much of the disparity relates to

how men-dependence and fearfulness amount to a cultural disarmament. Husbands who batter wives typically feel that they are exercising a right, maintaining good order in the family and punishing their wives' delinquency - especially the wives' failure to keep their proper place.(9)

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### Domestic Violence and its Health Implications

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Violence not only causes physical injury, it also undermines the social, economic, psychological, spiritual and emotional well being of the victim, the perpetrator and the society as a whole. Domestic violence is a major contributor to the ill health of women.

It has serious consequences on women's mental and physical health, including their reproductive and sexual health. These include injuries, gynecological problems, temporary or permanent disabilities, depression and suicide, amongst others.

“Many forms of verbal and psychological abuse appear relatively harmless at first, but expand and grow more menacing over time, sometimes gradually and subtly. As victims adapt to abusive behavior, the verbal or psychological tactics can gain a strong ‘foothold’ in victims' minds, making it difficult for them to recognize the severity of the abuse over time.” (Witness Justice, MA, USA)(3)

These physical and mental health outcomes have social and emotional sequelae for the individual, the family, the community and the society at large.

Over both the short term and long term, women's physical injuries and mental trouble either interrupts, or ends, their educational and career paths leading to poverty and economic dependence. Family life gets disrupted which has a significant effect on children, including poverty (if divorce or separation occurs) and a loss of faith and trust in the institution of the family. These sequelae not only affect the quality of life of individuals and communities, but also have long-term effects on social order and cohesion.(9)

In India, one incident of violence translates into the women losing seven working days. In the United States, total loss adds up to 12.6 billion dollars annually and Australia loses 6.3 billion dollars per year.(8)

The physical health consequences of domestic violence are often obscure, indirect and emerge over the long term. For example, women who were subject to violent attacks during childhood are bothered by menstrual problems and irritable bowel syndrome in later life.(9)

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### Domestic Violence and Reproductive Health

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There is enough evidence to support that higher reproductive morbidity is seen among women experiencing domestic violence. Studies conducted in North India have shown elevated odd's ratio of gynecological symptoms, while

comparing women with husbands reporting no domestic violence and women who experienced physical and sexual violence. It may be attributed to the fact that abusive men were more likely to engage in extra marital sex and acquire STDs, thereby placing their wives at risk of acquiring STDs. There was also lesser condom use reported among such men.(10)

These make women more susceptible to HIV infection, and the fear of violent male reactions, physical and psychological, prevents many women from trying to find out more about it, discourages them from getting tested and stops them from getting treatment.(7)

Studies in the northern state of Uttar Pradesh have also shown that unplanned pregnancies are significantly more common among wives of abusive men (OR = 2.62)(11). Besides this, research has shown that battered women are subject to twice the risk of miscarriage and four times the risk of having a baby that is below average weight. In some places, violence also accounts for a sizeable portion of maternal deaths.(9) Reproductive health care that incorporates domestic violence support services is needed to meet the special needs of abused women.

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### Psychological and Emotional Violence

Psychological and emotional violence covers “repeated verbal abuse, harassment, confinement and deprivation of physical, financial and personal resources”.

Quantifying psychological abuse is extremely difficult, and very few studies have been conducted to establish prevalence rates of this type of violence. Qualitative studies that have been undertaken conclude that it is just as damaging to one's health to be continuously psychologically abused as it is to be physically abused. Undermining an individual's sense of self esteem can have serious mental and physical health consequences and has been identified as a major reason for suicide. For some women, the incessant insults and tyrannies which constitute emotional abuse may be more painful than the physical attacks because they effectively undermine women's security and self-confidence.(9)

Violence against women has a far deeper impact than the immediate harm caused. It has devastating consequences for the women who experience it and a traumatic effect on those who witness it, particularly children.(2)

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### Impact of Domestic Violence on Children

Children who witness domestic violence may develop serious emotional, behavioral, developmental or academic problems.

As they develop, children and teens who grow up with domestic violence in the household are:

- more likely to use violence at school or community in response to perceived threats

- more likely to attempt suicide
- more likely to use drugs
- more likely to commit crimes, especially sexual assault
- more likely to use violence to enhance their reputation and self esteem
- more likely to become abusers in later life

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### Why Do Women Stay?

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Economic dependence has been found to be the central reason. Without the ability to sustain themselves economically, women are forced to stay in abusive relationships and are not able to be free from violence. Due to deep-rooted values and culture, women do not prefer to adopt the option of separation or divorce. They also fear the consequences of reporting violence and declare an unwillingness to subject themselves to the shame of being identified as battered women. Lack of information about alternatives also forces women to suffer silently within the four walls of their homes.<sup>(3)</sup> Some women may believe that they deserve the beatings because of some wrong action on their part. Other women refrain from speaking about the abuse because they fear that their partner will further harm them in reprisal for revealing family secrets, or they may be ashamed of their situation.

Violence against women is a violation of basic human rights. It is shameful for the states that fail to prevent it and societies that tolerate and in fact perpetuate it. It must be eliminated through political will, and by legal and civil action in all sectors of society.

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### Addressing Domestic Violence

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An effective response to violence must be multi-sectoral; addressing the immediate practical needs of women experiencing abuse; providing long-term follow up and assistance; and focusing on changing those cultural norms, attitudes and legal provisions that promote the acceptance of and even encourage violence against women, and undermine women's enjoyment of their full human rights and freedoms.

The health sector has unique potential to deal with violence against women, particularly through reproductive health services, which most women will access at some point in their lives. However, this potential is far from being realized. Few doctors, nurses or other health personnel have the awareness and the training to identify violence as the underlying cause of women's health problems.

The health sector can play a vital role in preventing violence against women, helping to identify abuse early, providing victims with the necessary treatment and referring women to appropriate care. Health services must be places where



women feel safe, are treated with respect, are not stigmatized, and where they can receive quality, informed support. A comprehensive health sector response to the problem is needed, in particular addressing the reluctance of abused women to seek help.(2)

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## Role of Public Health Personnel

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Domestic violence against women has been identified as a public health priority. Public health personnel can play a vital role in addressing this issue.

Since violence against women is both a consequence and a cause of gender inequality, primary prevention programs that address gender inequality and tackle the root causes of violence are all essential. Public health workers have a responsibility to build awareness by creating and disseminating materials and innovative audio-visual messages, which project a positive image of girl child and women in the society. An integrated media campaign covering electronic, print and film media that portrays domestic violence as unacceptable is the need of the hour. The role of increasing male responsibility to end domestic violence needs to be emphasized.

Programs are required which intend to address battered women's needs, including those that focus on building self-efficacy and livelihood skills. The significance of informal and local community networks should be acknowledged in this regard. The survivors of domestic violence can be involved in program planning and implementation in order to ensure accessibility and effectiveness.(12) Rather than spotlighting women as victims in non negotiable situations, they should be portrayed as agents capable of changing their own lives. The public health experts have a vital role to play in networking with NGOs and voluntary organizations and creation of social support networks.

The public health experts have a potential to train personnel specialized to address the needs of victims of domestic violence. In the field of research, public health personnel can contribute by conducting studies on the ideological and cultural aspects which give rise to and perpetuate the phenomenon of domestic violence. Similarly, the execution and impact of programs must be assessed in order to provide the necessary background for policy-making and planning. However, the health sector must work with all other sectors including education, legal and judicial, and social services.(2)

In January, India implemented its first law aimed at tackling domestic violence (*The Protection of Women from Domestic Violence Act, 2005*) to protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto. It also defines repeated insults, ridiculing or name-calling, and demonstrations of obsessive possessiveness and jealousy of a partner as domestic violence. The big challenge in front now is to enforce it in true sense.

“A law is as good as its implementability, despite the lofty aspirations. The responses to the enactment are polarized, with one section fearing its misuse by an elite class in metro cities and another segment predicting its futility for the mass of rural women saddled with the yoke of patriarchy to which courts are as yet alien” (Flavia Agnes)(13)

A bill alone will not help in preventing domestic abuse; what is needed is a change in mindsets.

Concerted and co-ordinated multisectoral efforts are key methods of enacting change and responding to domestic violence at local and national levels. The Millennium Development Goal regarding girls' education, gender equality and the empowerment of women reflects the international community's recognition that health, development, and gender equality issues are closely interconnected.

Hence the responses to the problem must be based on integrated approach. The effectiveness of measures and initiatives will depend on coherence and co ordination associated with their design and implementation. The issue of domestic violence must be brought into open and examined as any other preventable health problem, and best remedies available be applied.

## When home is not a safe place: Women and girls at risk for domestic and sexual violence

As our country and communities consider new resources and remedies during this COVID-19 crisis, it is important that the needs of those most vulnerable to domestic and sexual abuse are not forgotten.

By Melissa Scaia



*Photo by Jon Eric Marababol on Unsplash*

April 2, 2020

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Now that Minnesotans have been directed to stay at home during the COVID-19 pandemic, we should all be aware that this is a terrifying prospect for many. For women and girls at risk for domestic and sexual violence, their fear is warranted; being trapped at home is dangerous.

COVID-19 is not the cause of domestic violence, but it can escalate an already abusive situation. Those who use violence do so because they believe they are entitled to power and control in a relationship. Social isolation is a common tool used to maintain this dominance. Some tactics may include withholding medical care, monitoring access to technology, and not allowing them to speak to friends and family.

Abusers frequently hold deep-seated beliefs that their will should prevail over all others in a household. Because women and children are spending more time near the abuser, their daily demands to do things “their way” and the “right way” will be intensified. Resistance or perceived “misbehavior” will likely lead to increased incidents of domestic violence. In addition to the risk of physical injuries, research shows that stress and anxiety on domestic violence victims increases their risks for long-term health problems.

The impacts of this on women who cannot find safety or respite from abuse are profound.

ARTICLE CONTINUES AFTER ADVERTISEMENT

Today we are experiencing a pandemic within a pandemic. Violence against women is the most common form of violence in the world. The United Nations reports that every day, 139 women worldwide are killed by their intimate partners or family members.

As our country and communities consider new resources and remedies during this crisis, it is important that the needs of those most vulnerable to domestic and sexual abuse are not forgotten. As other services are shut down, domestic and sexual violence programs are one of the few resources still available offering assistance. These programs are trying to do more with less and are underfunded.



Melissa Scaia

Advocacy organizations throughout the country have signed a letter calling on Congress to include provisions in the COVID-19 emergency legislation and stimulus package to address these dire needs by investing more resources to address the unique needs of violence survivors, and securing needed policy changes and increased resources as a matter of urgency.

We call on community leaders and representatives to prioritize aid to women and children to support their human right to live free from violence.

We can all also reach out to vulnerable people in our social circles and serve as a lifeline during periods of isolation. We can deepen our conversations about healthy relationships and equality.

If you or a loved one is at risk or experiencing sexual and domestic violence, there are resources available. In the United States, contact the National Domestic Violence Hotline at 1-800-799-7233 or the Sexual Assault Hotline at 1-800-656-4673.

*Melissa Scaia is the director of international training at [Global Rights for Women](#) in Minneapolis.*



SEXUAL HARASSMENT: FREE WORKPLACE;

“SAY NO TO SEXUAL HARASSMENT”

GOURI D/O APPASAMY

Pensyarah Pengurusan dan Perniagaan

NORAZLINA BT ABDUL AZIZ

Pensyarah Undang-Undang

Universiti Teknologi MARA, Cawangan Johor

ABSTRACT

In recent years work places has change drastically, more and more man and woman have learn to work together on

equal basis and their rights. Now, our society has begun to focus on the question of mutual respect, tolerance and

acceptable human behaviour. In this Borderless world we shouldn't ignore the self-respect, our right and our freedom as a human being. But if Sexual Harassment domain the working environment it will give a great impact on the management and social negatively. In this case, Sexual Harassment should be view as a disease, which affect the individual right, self-respect and human's freedom as a human being. Sexual Harassment can no longer be view as a normal issue; it is serious issues that have to get everyone's attention in terms of their rights and on the legal view. Sexual Harassment is a problem that happens everyday. It exists in every state, in every city, it is a problem could exist in our organization, office or it probably touch us personally. By reading this article, you should be able to understand Sexual Harassment and identify who is the victim and harasser. This article also will help us to identify and recognise the legal actions that should be taken in our organization if Sexual Harassment exist. Finally we should be able to have "Sexual Harassment Free Workplace" by saying "NO TO SEXUAL HARASSMENT".

## 1.0 INTRODUCTION

Lately, Sexual Harassment became common issue to discuss. What is Sexual Harassment all about? Is that regarding comments about your appearance, unwanted touching or other comments, sexual advances, exposure to pornographic pictures, experienced of any unwanted verbal or physical conduct of sexual nature. Well, all the behaviour is considered as sexual Harassment. Sexual Harassment means different thing to different individual. It is becoming a mouth-to-mouth story and being ignored by most women and men. Is your home is safe for you and your children from Sexual Harassment? Is your working place is safe

from Sexual Harassment? Or, How about in public do you think you are safe from sexual

harassment? Sexual Harassment and raping case is become common case in Malaysia. Whenever we turn on the Television or radio news, definitely there will be case on Sexual Harassment or raping every week. Do you think, the public is aware on sexual harassment? Do you know sexual harassment is the initial stage for rapist? By knowing this situation, we should aware on sexual harassment and the circumstances that cause to sexual harassment. We also should know the legal action to be taken if you are the victim. As an individual you also should make sure your behaviour is not as Harasser of sexual harassment. This is because most of the individual are not sure on sexual harasser's behaviour. They are not sure whether their behaviour is consider as sexual harassment, because of the modern life style they might think it is common to be socialize.

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In this modern world, women and men are working together to achieve successful life. In order to succeed they have expected safety life, especially in workplace environment. They would aspect "Sexual Harassment Free Workplace".

## 1.1 DEFINITION OF THE TERMS

To understand Sexual Harassment better, we should understand the basic terms in Sexual

Harassment it self;

### i) Harassment

Cambridge International. Dictionary of English (2004) define "harassment as a behaviour that annoys or upsets someone".

Wikipedia The Free Encyclopaedia (2004), define harassment; "Harassment is a term defined by law to refer to many types of behaviour that are found threatening or disturbing and beyond those that are sanctioned by society."

### ii) Sexual

Compact Oxford English dictionary (2004) define sexual as ;

1) “Relating to the instincts and activities connected with physical attraction or intimate physical contact between individuals.

2) Relating to the sexes or to gender

Encarta ® World English Dictionary, North American Edition (2004) define sexual as;

1) Relating to sex, sexuality or the sexual organs

2) Relating to either sex; relating to the two sexes or to either of them

3) Biology involving reproductive union: relating to the union of male and female gametes in reproduction.

iii) Sexual Harassment

Wikipedia The free Encyclopaedia (2004) defines Sexual Harassment as; which involves persistent and unwanted sexual advances, typically in the workplace or other setting where the consequences of refusing are potentially very disadvantaging to the victim.”

Malaysia Code of Practice on Sexual Harassment in the workplace has defined sexual Harassment as (Navaratnam, 2001) :

“Any unwanted behaviour of sexual nature having the effect of verbal, nonverbal, visual, psychological or physical harassment:

(1) That might, on reasonable grounds, be perceived by the recipient as an offence or humiliation or a threat to his/her employment. Or

(2) That might, on reasonable grounds, be perceived by the recipients as an offence or humiliation or a threat to his/her well being, but has no direct link to his/her employment.”

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The Equal Employment Opportunity Commission (EEOC - US) defines sexual harassment as “Unwelcome sexual advances request for sexual favours and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (situation) ;

1) Submission to conduct is made either exclusively or implicitly a term or condition of an individual’s employment.

2) A submission to or a rejection of such conduct is used the basis for employment decisions.

3) Such conduct has the purpose or effect of unreasonably creating an intimidating



hostile or offensive working environment.

Benjamin (1996) defined sexual harassment as offensive, unsolicited, and unwelcome conduct of a sexual nature that another person finds objectionable. Even a single act can be considered sexual harassment if it is violent, such as rape or physical assault or if it is a demand for sexual favour that's linked to an employment benefits or continuation of employment.

#### iv) Work Place

Dictionary.com (2004) defined work place as;

1) An area with defines or in define boundaries or a portion of space to do physical or mental effort or activity directed towards the production or accomplishment of something.

2) A place such as an office or factory, where people are employed.

Cambridge International. Dictionary of English (2004) defined workplace as a building or room where people perform their jobs or these places generally.

#### v) Victim

Cambridge International. Dictionary of English (2004) define victim as someone or something, which has been hurt, damaged or killed or has suffered, either because of the actions of someone or something else or because of illness or chance.

#### vi) Harasser

Online Plain Text English Dictionary (2004) define harasser as one who harasses.

Rhymezone define harasser as a persistent attacker.

### 1.2 THE PLAYERS IN SEXUAL HARASSMENT

Sexual harassment crosses lines of status, social ranking, race, education, occupation and power. The offender can be a man or woman. Sexual harassment can happen in so many ways such as men by men, women by women, women by men, and men by women. It can happen anywhere, may be in offices, hospitals, colleges, universities, companies, factories, organizations, and wherever men and women work or study together. Victim

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and the harasser are the key players of sexual harassment. Sexual harassment won't

happen without a victim and harasser. They involve in sexual harassment directly or indirect situation.

In most cases, Sexual Harassment victims are women. Although men have brought these

suits and such actions do fit within the framework of employment discrimination law, the psychological context that gives rise to the challenged conduct is not gender neutral. By looking at the circumstances and consequences, women are more affected. But the argument is not whether women or men are involved in sexual harassment, we only aspect and argue for “Sexual Harassment Free Workplace”.

### 1.3 FORMS OF SEXUAL HARASSMENT

With the definition of sexual harassment, any form of sexual innuendos whether by words, signs, actions or looks can be interpreted as sexual harassment if the victim perceives such unwarranted attention as being related to his/her employment status.

Therefore, sexual harassment can be in the form of ; ( Human Resource Ministry – 2001):

► Verbal harassment:

(Offensive/ suggestive remarks, attempts at flirting directly, jokes, questions, sounds, jesting, kidding and etc.);

► Non-verbal signs:

(Leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting and etc)

► Visual harassment

(Showing pornographic materials, drawing sex based sketches or writing sex based letters, letters of sexual innuendos, flashing/sexual exposure, etc.)

► Mental/psychological harassment

(Lewd phone calls, repeated unwanted social invitations whether sexual in nature or not, repeated request for dates or physical intimacy, repeated and unwarranted visits, etc); and

► Physical harassment

(Inappropriate touching, patting, pinching, stroking, brushing against the body,

fondling, hugging, molesting, etc).

All the verbal and non-verbal communication that showing the sexual harassment gives a negative effect to the victim. Mentally and emotionally, the victims are disturbed and this might distract their work performances.

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#### 1.4 TYPES OF SEXUAL HARASSMENT

There are two types of sexual harassment, Quid pro Qua and Hostile environment.

##### i) Quid Pro Qua

Mahoney (1997) defined Quid pro Qua as “something for something”. This occurs when employment decisions or hiring, promotion, transfer, discipline or termination are made on the basis of submission to or rejection of unwelcome sexual conduct. The conduct must be considered “unwelcome” to be illegal and does not solely have to occur on the job premises. This is equivalent of sexual blackmail, which done by someone may be those who is having power or authority towards their employee or subordinate.

##### ii) Hostile Environment

According Mahoney (1997), a hostile environment is a workplace in which a woman or man is subjected to abusive and demeaning conduct which adversely affects her ability to perform her/ his job. It can take many forms including verbal abuse, discussing sexual activities, using offensive language, making sexual gestures or engaging in unnecessary touching. Such coercive actions change the very nature of workplace, transforming it into a hostile environment that may become unbearable to the victim.

#### 1.5 FACTORS THAT CONTRIBUTE TO SEXUAL HARASSMENT

We have understood the terms of sexual harassment and the types. Now, I would like to discuss on the victim (harassed) and the response (harasser) and the situation that caused sexual harassment.

According to Arapakis (1993), the victim could be harassed because of four categories such as;

- i) Physical structure: short and smaller women harassed easily compare to big size and tall women.
- ii) Economic status: Economically vulnerable women are not dependable on their job for survival not be target as much compare with a women who are.
- iii) Power status: In organization title, seniority, popularity there all make different. The higher the rank the greater the popularity the less vulnerability.
- iv) Gender make up- if women alone work with all men it is easy target or a man work all women could be harassed.

Greengard (1997), identify that women who are single or divorced are between the ages of 20 to 44, have some college education have a non-traditional job or work in a predominantly male environment or for a male supervisor have the greatest chance of being sexually harassed, but that harassment occurs to women and men of all ages, background and job categories.

In Malaysia cases, women who are younger, never married or divorced were more likely to receive unwelcome looks, gestures, teasing, joking, touching, cornery and phone calls.

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In most issues in local cases, women and men are not aware of sexual harassment. This is become as an advantage for harasser. This make the issue of sexual harassment kept underground in many cases.

A person who happens to be a victim may sense that she is the only victim and her position as down line and working for the harasser who is having power; may be her supervisor or manager. This situation make the victim worried about their job because they believe their job will be taken if he or she brought the issue up and often happen they says “nothing”, “it’s ok”, “never mind” and they don’t realise it could be very well many other person in particular position or particular setting that may be victimise much same way. This may cause the employee’s overall performance of working and mentally are affected. In this case individual itself, organization and government legal remedies should play their role to reduce and stop sexual harassment.

## 2.0 SEXUAL HARASSMENT AND WORKPLACE

Sexual Harassment is unwanted, repeated sexual attention at work. Sexual harassment is illegal if your job depends on your going along with this behaviour or the conditions of your employment behaviour or the harassment creates a hostile or offensive work environment which interferes

with your ability to do your job. Everyone has the right to a workplace free of harassment.

According to Benjamin (1997), sexual harassment isn't the fault of the victim. No one finds it fun or flattering. It can often result in serious emotional and physical consequences for him or her. Sexual harassment isn't about physical attraction or emotional need. It is about power or

control, and how that power is abused in our workplaces. Typically such behaviour is designed to humiliate and control someone.

Arapakis (1993) seeing the seriousness of sexual harassment in workplaces and has identified five indirect causes of sexual harassment;

I) Increased Turnover: people sometimes quit their job when they are sexually harassed.

II) Increased Absenteeism: people sometimes stay away from their job when being harassed

III) Morale problem: the entire office atmosphere suffers when harassment is going on.

IV) Damaged Teamwork: sexual harassment causes the atmosphere in the workplace which leads to being unable to get along with each other and cooperating with one another.

V) Damaged Public image: Customers, clients and the public will not positively impress when an organization allows sexual harassment to go on.

The victim will face pressure by pressure from the harasser and this will cause her or his work performance to be affected. At the same time they might face dissatisfaction and psychological problems and mental stress. Finally it may cause their character and behaviour to change

drastically. The impact is to the company or organization, because this will lead to demotivate workers to perform or do well in their job. This causes the working environment in that organization to be affected and overall productivity of the worker to decrease

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The illustration can identify how a victim will be facing pressure once they are sexually harassed.

Now we realise how important to have “sexual harassment free workplace”. Before we could see what organization can do to deal sexual harassment, we should understand the actual

problem in management. Case 1 and Case 2, have given a good lesson and had open our eyes on Sexual Harassment Problems in Malaysia

#### CASE 1:

Former hotel executive who claimed she was sexually harassed by her boss, in what Malaysian lawyers are calling the first case

of its kind in the country." The facts of the case, as reported by The Asian Wall Street Journal, were that Ms. Lilian Therera De

Costa was forced to quit her job in 1994, "after resisting the advances of Zulkifli Mokti, a part owner of the Mint Hotel being

built in Kuala Lumpur." The harassment "began December 31, 1993, when Ms. De Costa went to Mr. Zulkifli's office to wish

him a happy New Year. 'I extended my hand to greet him and to wish him Happy New Year. He just pulled me to him and gave

me a kiss on the lips. He leaned forward and pulled me suddenly to him' she said." Ms. De Costa objected to the treatment, and

Mr. Zulkifli "promised not to do it again." A second incident occurred in February 1994, when after a meeting, "he put his arms

around her waist, fondled her breasts and kissed her." Ms. De Costa did not return to work for two weeks, and "when she

returned, Mr. Zulkifli harassed and criticized her, finally asking her to resign."

(Source: McCharthy, Jennie – New England Internatioanl & Comparative Law Annual)

This case make Malaysian realise on women discrimination and actual problem facing by

Malaysian women in workplaces. Most women who have been sexually harassed tend to blame themselves, rather than the perpetrators of the crime, for the ordeal and consequently allow their

Non-verbal signs  
(Staring, vulgar  
/ Suggestive signs)

Visual harassment  
(obscene/  
pornographic  
materials, letters of  
sexual innuendos)

Mental / psychological  
harassment  
(Lewd phone

calls,

Physical harassment

repeated

unwarranted

( brushing against the  
whether

invitations

body, hugging, molesting,)

sexual

in nature

or not)

Sexual

harassment

VICTIM

VICTIM

► feel confusion,

► upset,

► angry,

► scared,

► frustrated,

► shook

► embarrassed

► powerless.

aggressors to walk of scot-free. Fear, embarrassment and uncertainty were also some of the main reasons why women put off reporting sexual harassment. Ms. De Costa faces a big battle. After Ms. De Costa's case, in March 2001, the public was alerted again on another sexual harassment case, when case Rubiyah Togi, highlighted in most of the medias in Malaysia

## CASE 2

Mrs. Rubiyah Togi 38, a machine operator in government office. She claimed sexually harassed by her two superior officers

since early on 2001. The superior was physically and verbally harassed her. "I have heard verbal and physical conduct in my

office and whenever I am with them regarding office job. Mrs. Rubiyah works in this government office since 11 years ago

(2001). At first she thought it was just a joke and they will stop. But her behaviours which "couldn't be bothered", most of the

time with the situation make this two officers takes things for granted. Even they used to call her with all type of names.

Mrs. Rubiyah can't tolerate anymore with the situation and made a police report in Seremban, on March 13, 2001. Unfortunately

her report not responded by police officers. She felt so depressed and upset with this situation and finally took decision make

report regard sexual harassment in Bukit Aman Police Station.

Source: Utusan Malaysia, March 2001)

Do you think this is a appropriate action? The cases was not clearly identify until the victim have to face so many other consequences. What is the exact problem in this two cases? The problems is organization not bother about sexual Harassment awareness in because they are lack of information or they don't consider sexual harassment as one of the misconduct in their

organization. They also don't realise ofn the outcome of the sexual harassment work place.

### 3.0 SCENARIO ON THE DEVELOPMENT OF LAW REGARDING SEXUAL HARASSMENT IN MALAYSIA.



Sexual harassment has been a long discussed matter years back. Trade Unions and women's activist have campaign for the enactment of a special act to combat sexual harassment at

workplace since 1980's. During that era, employers did not have any formal guideline to refer to as guidance. Complaints made on sexual harassment are classified under disciplinary issues. The victim only chances of getting a fair trial are by complaining to their employer or superior. The problem at this stage is on the evidence that they need to produce. Sexual harassment is rarely recorded and sometimes it happens between the harasser and the victim in isolated situation or in others words no one witnesses the act. The only opportunity is if the harasser is practising sexual harassment to more than one person in the workplace. Another obstacles on the part of the

employer is there is no appropriate procedure on how to conduct a trial on sexual harassment claim. As it is categorized under misconduct that falls under disciplinary issue, therefore the harasser will be investigated through the same procedure as the other misconduct. Opinion given that a sexual harassment case should be conducted differently as it involves a person's reputation and dignity.

Later Malaysian through petitions as well as newspaper survey also indicates that they

overwhelmingly support legislating against sexual harassment. (Zarizana 2001). Finally in

September 1999 there is a positive move towards solving this matter where a special code

namely The Code of Practise on the Prevention and Eradication of Sexual Harassment in Workplace 1999, was introduced by Ministry of Human Resources. The Code was the result of collaboration between many organization, including the Malaysian Trade Union Congress

(MTUC), and the Malaysian Employers Federation (MEF) (L.G Seah 2001). The purpose of the

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Code of Practise is to provide practical guidance to the employer, employee, trade unions and other relevant parties on the protection of the dignity of men and women at work.

Feedback given on the existence of the code whereby many thought pointed out that the code is

not efficient to handle the complaints of sexual harassment. In fact cases on sexual harassment have been increasing without having any impact on the public. The supporting reasons for those views are even though the code is comprehensive yet it remains a mere guideline or policy. It does not carry with it the force of enacted law (N. Sivabalah 2001). Notwithstanding the launch of the code two years ago, the companies are given option either to adopt it as part of the

companies rule or not. As of March 2001, only 1.12% of the companies have adopted the code. The study conducted by the women's Development Collective and All Women's Action Society revealed that not all elements recommended by the Code have been implemented by companies (JAG 2002).

From the situation the end result shows that certain parties do not look into this matter seriously. Since its adoption is voluntary the response of the employers have not been encouraging. While the code has been influential in drawing up guidelines for employers, there are areas that still need serious attention. Employers tend not to believe the complainants due to prejudice and the perception that sexual harassment complaints are easy to make and difficult to disprove. (JAG2000) As have been explained above the consequences that may contribute to the downfall of a company may be caused by conduct of sexual harassment therefore this matter should have alerted all organization.

### 3.1 COMPLAINT MADE TO THE LABOUR DEPARTMENT

An alternative for the victimized employees, they can file a complaint to the Industrial Relation Department. The lengthy and never ending process can be said to be one of the factors as to why the victim usually abandon their case and prefer to take step their own way such as quitting job, absenteeism and less productive. Complaint made to the Labour department for those who earns RM1 500 or less and Industrial Relation Department for those who earns more than RM 1 500 a month will be handle as in accordance to Employment Act 1955 or Industrial Relation Act 1967(which ever suitable).

The Labour department will then request the employer to look into the complaint. The department may ask for a domestic inquiry or a meeting with the employer. This domestic inquiry will be conducted by preserving the human rights of Audi Alteram Partem (right to get a trial without any bias) and Nemo Judex in Causa Sua(right to be heard). Yet, the Department is not empowered to compel the employer to take any action

(Navaratnam 2001). However there is no specific provision for sexual harassment neither under the Employment Act 1955 nor under Industrial Relation Act 1967. The complainant may make a complaint if they have been unfairly dismissed due to the fact that they have made complaint of sexual harassment or they have been sexually harassed in the workplace. Unfair dismissal may happen if a person is constructively dismissed. For example she is instructed to serve in another branch of the company in order to avoid sexual harassment, which she experienced at the present workplace. This can be seen as to prevent further sexual harassment act being committed to the victim however its

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unfair to the victim if it is against her consent and she felt pressured. And finally this will lead her to quit the job. This situation shows that she's the one who is punished. A good example happened in the case of Rubiyah Togi, whereby due to the complaint that she made on sexual harassment done to her, she received a letter of transfer from District office of Seremban to district office of Jempol. (Ainul Asniera 2001)

Occupational Safety and Health Act 1994(OSHA) can be viewed as one of the law that can help in reducing sexual harassment in workplace. The main objective of this act is to provide safe and healthy environment in workplace. The word safe here may be regarded as to include 'safe from any sexual harassment conduct'. The following sections of OSHA can be referred to:

- i) Sec. 15(2): Duty of the employer to ensure a safe environment in workplace.
- ii) Sec 19: Failure to fulfil the duty the employer can be fined not more than RM50,000 or imprisonment not more than 2 years or both
- iii) Sec. 27: Discrimination towards employees are not allowed and this includes to expelling or downgrading a worker in any occasion when the worker made a complaint on the safety of worker at workplace.
- iv) Sec 28 : Scope of safety and Health in this act do not specifically mentioned the word sexual harassment. Therefore there needs to be amendment in order to include specific provision on sexual harassment as a factor that contributes to an unsafe environment in workplace.

### 3.2 SEXUAL HARASSER AS A CRIMINAL

Penal Code is another source of law that can be viewed when discussing matters on

sexual harassment. There is again no specific provision for sexual harassment. Nevertheless there is some provision, which comes near to sexual harassment such as:

- i) Sec. 351- Assault
- ii) Sec. 354-Assault or use of criminal force to a person with intent to outrage modesty
- iii) Sec 377D- Outrages on decency
- iv) Sec 503- criminal intimidation
- v) Sec. 509- Word or gesture intended to insult the modesty of a person

In using this alternative the victim have to file a report to the police station and will make the case of sexual harassment falls under criminal offence. In order to prove a criminal offence the prosecutor have to prove the Mens Rea(Intention) as well as the Actus Reus (Act) of the harasser. Proving the Actus Reus is not as hard as proving the intention of the harasser. This case has to be tried in civil court. Comparing the cases conducted in Industrial court where the burden of proof is only on the balance of probabilities, a criminal case surely sets a higher degree of burden of proof, which is beyond reasonable doubt. This creates an almost insurmountable barrier as sexual harassment often happens when there is no one else around to witness it (Navaratnam 2001). Criminal prosecution also does not provide any form of redress for the complainant. Till today cases of sexual harassment have been alien to criminal case. This is due to the rigid procedure attached to proving the sexual harassment case under a criminal offence.

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The year 2001 Malaysian view seem to deviate from the usual filing of the case of sexual harassment. Mrs. Rubiyah Togi has decided to file a report at the Seremban police station on a sexual harassment conduct that she experienced in her workplace. She reported that her superior has sexually harassed her by physically and verbal. Unfortunately this case ended unsuccessful. President of CUEPACS, N. Siva Subramaniam, of the opinion that the wide authority given to most of the superior in organization able them to close the case an organization level (Yusri Sahat 2001)

### 3.3 THE JUDICIARY STANDING.

Despite the underwhelming support from the employer side we could observe a positive movement in the judiciary system which have trial on sexual harassment case. The case

of Ms. Lilian Therera De Costa (the facts as mentioned above) is said to be the first case of its kind in the country. The Industrial court in this case decided that her evidence fulfilled a “balance of probabilities” test and the fact she did not report the acts to the police or her husband did not mean her statements were less credible. This represents a tremendous social transformation for Malaysia, since previously no sexual harassment law existed and a victim’s credibility was lessened by not forming a male relative of the incident (JAG 2003)

The Malaysian court once have viewed a case from India

MADHOSINGH DAULAT SINGH v. STATE OF BOMBAY(1060) ILJ 291 AIR  
where the court says that:

“..and if the servant’s conduct is so grossly immoral that all reasonable men would say he cannot be entrusted the master may dismiss him”

The word immoral in the phrase includes act of sexual harassment. From this decided case it can be said that the employer should or may take action of dismissing his worker if it can be proven that he had commit sexual harassment towards his colleagues or subordinate. The burden of proof that the employer should seek for is from the view of all reasonable men. Which means that if majority soundperson were asked whether such act can be categorized as sexual harassment or not, and the answer is yes. Than the accused harasser can be punished by way of dismissing him. This test is similar to the test of balance of probabilities used in most cases tried in Industrial court.

Before the Code being introduced there are two cases on sexual harassment have been tried in the Labour Court in 1998.

In PROJEK LEBUHRAYA UTARA SELATAN BHD v AZAHAR AHMAD[1998] 2 ILR 51 an employee was dismissed by the company for sexual molestation of his subordinates and the court in upholding the dismissal held that:

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“ the employer must produce convincing and cogent evidence and the burden of proof lies on the employer that the workman was dismissed for just cause and excuse..”

In this case it can be said that the court emphasize on a clear evidence in order to proof that the accused has commit the act of sexual harassment. The burden of proof once again is put on the shoulder of the employer. This principle have also been decided in the case

of STAMFORD EXECUTIVE CENTER v DHARSHINI GANESAN(1985) 2 ILR 101 and the case of CAR SEAT CM SDN. BHD v MOHD MOKHTAR b MOHD KEPOL & ANOR(1995) 1 ILR 60. It can be assumed that the same test of a reasonable man is applicable here.

In the same year of 1998, the case of EDARAN COMMUNICATIONS SDN BHD v TAHAR MOHAMED[1998] 3 ILR 487 the court upon observing all the evidence tendered in order to proof alleged sexual harassment conduct and satisfied himself, praised the act of the company dismissing the accused person. In this case the accused person have committed several sexual harassment act towards a few of his women colleagues. As the accused can be seen as a threat to the company the act of dismissing him is justified.

Later in 2003 a Technical Manager of a company is dismissed for having grossly misconduct himself over the past few months by making harassing phone calls to an employee of one of the customer. Here the court in deciding the case have referred to the The Code of Practise on The Prevention and Eradication of Sexual Harassment in Workplace (the code) 1999. FUCHS PETROLUBE(M'SIA) SDN. BHD. v CHAN PUCK LIN @CHAN PAK NEAN Award no 692 of 2003.

The most recent decided case relevant to sexual harassment is the case of BERJAYA REDANG BEACH RESORT SDN. BHD. v R SAMIKANNOO RAJOO[2004] 1 ILR.

In this case the claimant, a sours chef for the hotel (company) was dismissed from employment due to his act of sexually harassed his female workmates. The first incident was done to Rosilawati (kitchen apprentice) where he unzipped his trousers towards her and stucked his tongue out at her in lewd. The second incident was done to Eznul where he unnecessarily touched her on several occasions that include hands and buttocks. Upon complaint made to the employer a domestic inquiry was held and satisfied on the evidence the accused was dismissed from employment.

The overall view of the judiciary opinion on sexual harassment can be said to be on the positive move. As long as the evidenced tendered able to fulfil the test of on the balance of probabilities the court will uphold the employers' decision of dismissing a harasser from the workplace. However this shows that the case have to be supported by the employer cause they are the one who can decide either to dismiss a harasser or not. Then

only the court will review the decision if there is a complaint made to the Industrial court.

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#### 4.0 RECOMMENDATION AND PREVENTION OF SEXUAL HARASSMENT IN WORKPLACE

By looking at the problems and consequences of sexual harassment, we should realize how

important is preventing sexual harassment in workplace because it could cause negative impact to the individual, management, company and office. Prevention is the best tool to eliminate sexual harassment in workplace. Employers are encourage sexual harassment happened in their organization will not be tolerated anymore. Allegation of sexual harassment affects a company's bottom line directly through litigation and settlement cost indirect through redirection of

management attention, reduction in employee morale and loss of shareholder's confidence.

Organization can prevent sexual harassment in work place by establishing an effective ways and steps to stop sexual harassment. Each organization should come out with best strategies to curb sexual harassment in workplace. We are recommending best strategies to "Sexual Harassment Free Workplace";

a. Strategies to organization to curb and prevent sexual harassment.

b. Alternative to the victims to find a way out from sexual harassment.

#### 4.1 PREVENTING SEXUAL HARASSMENT BY ORGANIZATION

If organizations want to extinguish sexual harassment, they need to come out with the best solution to curb and prevent this problem. To keep the image of the organization and to gain respect from client, customer and employees, each organization should come out with their strategies to prevent sexual harassment in workplace such as;

##### 4.1.1 SEXUAL HARASSMENT AWARENESS AND PREVENTION TRAINING

As we explain earlier, most of the individual are not sure and not aware on sexual harassment. They don't see sexual harassment as a big problem. Management should have Training session for all workers. Training session can be proceeding step by step or according to the level of the seniority of the workers. This training is to brief them on

social problems that could occur in certain organization such as sexual harassment. An expertise should be invited by the organization to give speech and to handle training. Sexual harassment speech, courses and training will expose this problem to the employer and employee. By using good visual aid such as posters, videos, speech or talk with the victims, role playing will give better knowledge to everyone who attended the training. If we use better interactive training elements, it will be promote discussions between the trainers and trainees. It also will foster a clear understanding of sexual harassment.

By this training session, supervisor, managerial staff, clerical staff, and others will be train to recognize potential problems and this also will help them to deal with sexual harassment easily. Training is an essential part of any prevention program. A good training session will trained the trainees to manage the sexual harassment and take action accordingly. The best training for sexual harassment is “Sexual Harassment Awareness

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and Prevention Training” in each company or offices should be handle by expertise with involvement of employer and employee.

#### 4.1.2 SET UP A POLICY ON SEXUAL HARASSMENT (MISCONDUCT) IN WORKPALCE.

Organization should have own policy on sexual harassment to prevent sexual harassment in workplace. When a policy been highlighted in organization, the employer or employees will be aware on sexual harassment and will make sure they are not involve directly or indirectly in any sexual harassment cases. This is because, by right when they against the company’s policy their job will be affected and they might face other consequences if they breach the policy of the company. Those who are responsible and ethical definitely will follow the rules and regulation of the organization. These employees also know what are the problems might occurs if they didn’t follow the policies of the management.

The policy should be documented from management to the employee. Each new employee before they are assign to their position or job, they should sign an agreement on policies and rules of the company. The policies and rules of the company should be given to them a copy. This is one of the way to make sure the workers knows that they have sign for an agreement to follow the policies and rules of the organization. If they breach



the contract, the company have all the right to take action towards them. The management also should explain to the employees why such a policy is needed and important to the organization. The employee should realize by having such a policy, it would help the organization to prevent sexual harassment in order to create positive and conducive working environment in organization.

## 5.0 CONCLUSION

The sexually abusive behaviour can cause wide variety of emotional and physical problems for the victims. The victim, feel confusion, upset, angry, scared, frustrated, shook, embarrassed and powerless. They have been betrayed by someone they once trusted, co-worker, friend, colleague, manager or supervisor. You or anyone we know can become as a victim of sexual harassment. Sexual harassment concern both men and women. In certain situation we can blame the victim (men or women) for their behaviours, which caused to sexual harassment happened. Some women the way they dress up such as sexy and outstanding and even socialize characteristic can invite sexual harassment to the “door step”. This mean they expose them self to sexual harassment