

**WIPING AWAY TEARS AND FEAR; A  
CRITICAL ANALYSIS OF THE LAWS  
RELATING TO WORKPLACE SEXUAL  
HARASSMENT AGAINST WOMEN IN SRI  
LANKA**

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# Introduction

- Over the past few decades, women's right to work in a safe and decent environment has received global attention, as an inevitable part of gender equality and women's empowerment.

**Example: Gender Equality and Women's Empowerment' is the Fifth Goal of the UN SDGs.**

- Sexual harassment in the workplace against women deprives the full enjoyment of women's human rights and freedom, and results in nullifying women's physical, psychological, social and economic well-being.
- **Lipper (1992, p. 299)** discovered that “many women who experienced sexual harassment were forced to leave their jobs when the working environment became intolerable.”

# Outline of the Presentation

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# Significance of the Research

- ▶ Workplace sexual harassment has an impact not only on workers and employers, but also on their families, communities, economy and society as a whole.
- ▶ **Apparel Export Promotion Council v. A.K. Chopra (A.I.R. (1999) S.C. 625 – The Supreme Court of India)**  
Sexual harassment of a female worker is incompatible with the dignity and honour and needs to be eliminated

# Research Objectives

- ▶ To critically examine the adequacy of the existing legal framework in Sri Lanka to prevent, prohibit and redress sexual harassment against women in the workplace.
- ▶ In addition to that, it further intends to provide effective recommendations to eliminate the identified inadequacies and lacunas in the contemporary legal system of Sri Lanka.

# Research Methodology

- ▶ The methodology employed in this research involves a review of secondary data for in-depth qualitative research.
- ▶ The review involves a thorough assessment of existing literature, case law, legislation, international treaty law, electronic databases and international committee reports.

# Definitions – Key terms

- ▶ **Sexual Harassment** – According to section 18 of the CEDAW General Recommendation No: 19 on Violence against Women, 1992, “Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions.
- ▶ **Workplace** – According to Article 3 (C) of the ILO Occupational Safety and Health Convention, 1981, ‘Workplace’ covers all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer.

# Nature of the Offence

- ▶ Sexual harassment can be exhibited by using different forms of conducts of a sexual nature, such as; verbal, non-verbal, physical or visual.
- ▶ There are two types of workplace sexual harassments recognised by its nature as; **Quid Pro Quo Harassment and Hostile Work Environment.**
- ▶ In Latin, **‘quid pro quo’** means “something for something”; in other words, demand for sexual favours in exchange of benefits.
- ▶ **‘Hostile work environment’** occurs when an employee is subject to frequent and unwelcome sexual harassments, which makes an intolerable working environment.

# The Gravity of the Issue; Costs and Consequences – Examples

Workplace sexual harassment is considered as;

1. A criminal offence / sex crime
- ▶ 2. An issue of gender-based violence (GBV)
- ▶ 3. An Issue of health and safety of women
- ▶ 4. A disciplinary management problem
- ▶ 5. A violation of human rights
- ▶ 6. An issue of human resource management
- ▶ 7. An issue of diversity management in organizations
- ▶ 8. A violation of workers' rights & ILO standards
- ▶ 9. A violation of the CEDAW principles of 'gender equality' and 'non-discrimination'.
- ▶ 10. An issue of the productivity of the company and the national economy

# Sri Lankan Law

- ▶ 1. Sexual harassment is a **criminal offence** under the Penal Code (Ordinance No. 2 of 1883) of Sri Lanka. **According to section 345**, as amended by the Act, No: 22 of 1995 and No. 16 of 2006;
- ▶ “Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment.
- ▶ **‘First Explanation’ to section 345** addresses the issue of the workplace sexual harassment as; “unwelcome sexual advances by words or action used by a person in authority, to **a working place** or any other place, shall constitute the offence of sexual harassment.”

## 2. Fundamental Rights Violation

- ▶ Workplace sexual harassment violates
- ▶ The constitutional guarantee for the freedom from torture or cruel, inhuman or degrading treatment – **Article 11**
- ▶ workplace sexual harassment results in a violation of the right to work – **Article 14 (1) (g)**
- ▶ Equality before the law – **Article 12**
- ▶ In **Manohari Pelaketiya v. Secretary, Ministry of Education** (SC/FR/No.76/2012) the Supreme Court of Sri Lanka held that “sexual harassment occasioned by the oppressive and burdensome conduct under colour of executive office, would be infringements of Articles 12 (1)

## 3. An Issue in Labour Law

- ▶ 1. According to section 48 of the Industrial Dispute Act (IDA), No. 43 of 1950, any issue relating to sexual harassment in the workplace is an **'industrial dispute'** and then, falls within the scope of the IDA. it can be referred by the **Commissioner or the Minister** for the **arbitration, refer to an industrial court or to conciliation.**
- ▶ In labour law, providing a safe working environment is an implied obligation of the contract of employment. Hence, if a worker has to leave her job due to the issue of sexual harassment, it amounts to **'constructive termination'**. [section 31(B)(1)(a) of IDA]
- ▶ Workmen or the trade union can also enter into a **collective agreement** with the employer, according to section 8 (1) of the IDA, to prevent sexual harassment at workplace.

## 4. Law of Delict –Civil Law

- ▶ In the law of Delict, a victim of workplace sexual harassment can file a civil case in the District Court to recover damages under the *Aquilian action*.
- ▶ ***Media 24 Ltd. & Another v. Grobler* [2005] 3 All SA 297**
- ▶ An employer has a legal duty to maintain a safe working environment in which employees not subject to sexual harassment and to take reasonable care for their safety.
- ▶ Otherwise, the employer could be held vicariously liable, subject to the condition that the delict must be committed by his employee in the course and the scope of the employment.

# Gaps & Shortcomings

- ▶ **Criminal Law** – The high burden of proof in a criminal case; ‘beyond the reasonable doubt’ requires the victim to carry a much heavier evidentiary burden that cannot be easily proved in the case.  
**Restrictions upon FR Jurisdictions** – government sector employees are entitled to file a fundamental right petition before the Supreme Court. (Art. 17)  
**Law of Delict** – Time Consuming/ Unawareness
- ▶ **Labour Law** – The deterrent effect is inadequate.
- ▶ **The Committee of Experts on the Application of ILO Conventions (2017, p. 372) advocated that** “addressing sexual harassment only through criminal proceedings was normally not sufficient.” ILO further requested to take appropriate legislative measures

# Recommendation

- ▶ Therefore, this paper recommends that to achieve the multiple goals of prevention, prohibition and redress the issue of workplace sexual harassment, **specific legislation is** needed to be enacted with comprehensive definitions.
- ▶ [Comparative study of other jurisdiction – India](#)
- ▶ Having complied with the Supreme Court guidelines as prescribed in the landmark judgment; **Vishakha and Others v State of Rajasthan (1997) 6 SCC 241**,
- ▶ **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013)** was enacted.

# Other Recommendations

- ▶ 2. To establish **a time-bound, gender-balanced and independent grievance handling mechanism in workplaces** to deal with the sexual harassment complaints.
  - ▶ For example, the Human Rights Commission of Sri Lanka recommend that “a committee of investigation established in an institution should consist of a fair balance of representation of men and women.
- ▶ 3. **Public awareness and Legal Education**
- ▶ 4. **Empower women in the litigation process;** by providing legal aid, necessary medical treatments, counselling services, prescribing regulations for media reporting and providing protection against re-victimization.

## Recommendations Cont..

- ▶ 5. There is an argument that gender politics in the trade unions have ignored the issue of workplace sexual harassment since mainly the victims are women. – Gender-balanced in the trade union leadership and the decision-making level.
- ▶ 6. Availability of Statistics – collecting data on sexual harassment in both public and private sectors, including on the sanctions imposed on perpetrators. (CEDAW Conclu. Obser. – 2017)

# Conclusion ....

- ▶ Having considered the cost and consequences of the issue of workplace sexual harassment this study urges to take **effective legal, procedural and institutional actions** and steps to eradicate the issue.
- ▶ Example: The attention must be paid to the modern transformation of harassing behaviours against women that occurs in the cyberspace. – **security measures to be safe against online and digital harassments.**
- ▶ The true commitments of all the parties to the labour relationship; **the state, employers and employees** of the country are essential to creating a sexual harassment-free environment.

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