

## IS HARASSMENT A NEW NORMAL AT WORKPLACE OR IS IT OMNIPRESENT? HARASSMENT OF WORKING WOMEN AT WORKPLACE IN EDUCATIONAL SECTOR

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### ABSTRACT

Millions of Indian women are now working because of greater access to education and jobs. Many professional women are subjected to sexual harassment on a regular basis. As a result, it is critical that we fight as a country to eliminate workplace sexual harassment, because women have the right to work in a safe and secure atmosphere. Gender equality and the development of the country necessitate the protection of women. Maneka Gandhi is a woman who has made a difference in the world. Sexual harassment at work is a form of everyday violence that is both discriminatory and exploitative because it jeopardises women's right to life and livelihood. It is a violation of a woman's fundamental rights to equality under Articles 14 and 15 of the Indian Constitution, as well as her right to live in dignity under Article 21. On July 9, 1993, India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

**Keywords:** Sexual Harassment, Working Women, Workplace, Educational Sector.

### INTRODUCTION

Women's positions are a significant impediment to social fairness in humanity. The arrogance of a society toward women is of immense social significance, because the position of women in society is the actual key to its social, economic, political, cultural, and spiritual success. There have been several disagreements on the position of women in the Indian subcontinent, about cultural background, family structure, class, caste, morals, and property rights. While tracing the history of women over the years, it is discovered that the role and status of women has been characterised as shifting from one of specialist and freedom to one of subservientness.

Sr No.	Sexual Harassment	By Teacher	By students	By employees
A.	Sexual approaches that are unwanted. Unwelcome solicitations for sexual favours	Male Professor If you want an "A," you must take your final test at my house, I told the female student.	student who is female Dressing provocatively or acting provocatively in a meeting or in the presence of a male faculty member or	Using filthy words to address ladies (students, professors), and touching their personal areas in the presence of

			supervisor in a one-on-one scenario.	women.
<b>B.</b>	Other sexual behaviour in which: Submission to such action is made either directly or indirectly either openly or implicitly a situation or phrase of a person's work or membership in an other- educational programme or activity sponsored by a third party	The male leader of the department pushed the female subordinate employee to agree that if her contract was to be renewed, she must spend some time with him when he leaves office hours	student who is female asked that the teacher give the final product all-grades list students. When the instructor declined, the student filed a complaint alleging that he tried to grasp her hand in the parking lot while requesting her to meet in private for the grade list.	The Dean of the relevant faculty prevented a younger faculty member from pursuing further education (PhD/Phil). The authorities moved junior faculty to another department against their choice as a punishment for refusing to comply with unreasonable requests for (sexual) favours.
<b>C.</b>	Individuals' acceptance or rejection of such behaviour is used as a steppingstone to academic or professional development. decisions concerning employments Influence.	HOD is a man. Deliberately contacting or striking the main body of female worker using a file or a pen/pencil Male Professors in relation to female anatomy and reproductive During class lectures, cycles are used to humiliate female pupils.	student who is female man, instructor on a visit in his workplace needlessly and unnecessarily working long hours as well as starting closeness for monetary gain (In terms of grades, or even employment monetary).	Administrative Personnel asking female students to compensate them for delivering the students for their paperwork on time, extra benefits for young female faculty/staff in suggesting their names for international/domestic vacations for their consideration
<b>D.</b>	That individual Such behaviour is intended or has the effect of being irrational. interfering with a person's academic or professional success, or of instilling a fearful, hostile, or insulting educational or working environment	Individuals 'acceptance or rejection of such behaviour is used as a steppingstone to academic or professional development. Various complaints a record of looking at a female students particularly at them bodies Female students in need were considering the financial situation assistance from Member of the faculty in return for favours sexual in nature Complaints from	Students are submitting in handwritten notes letters and emails Intimacy requests- in return for grades Characteristics a person's assassination female educators to achieve political power, scholarly or monetary Dressing gains culturally in an unacceptable manner bodily components should be highlighted (Both men and females)	putting ladies at danger kids using forge/fakedocuments and photographs They'll be blackmailed into obedience. Anonymous letters/pamphlets/e-mails Employee/teacher/student defamation of character assassination supplying materials to a newspaper/magazine sully the reputation of faculty/employee/st

		students of a teacher informing obscene jokes while classes that have Innuendos sexual in nature		udents.
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In their lives, at least 20% of women globally have been sexually or physically assaulted by a male. The World Health Organization (WHO) acknowledged in 1997 that violence against women is a serious concern in the realms of health and human rights. <sup>1</sup> Every year in the United States, over 2.1 million women are physically beaten and or raped. Of these assaults or rapes, 1.5 million are mistreated by intimate relationships: current or past husbands, boyfriends, or girlfriends, including different or same-sex partners. <sup>2</sup> Violence against women, especially domestic partner violence and sexual violence, is a serious public health issue as well as a violation of women's basic rights. <sup>3</sup> As a result, sexual violence creates major physical, emotional, sexual, and reproductive health problems for women in the short and long term, affecting their aspirations for a full life. It also has an impact on their children and causes significant social, economic, and mental harm to women, causing problems in their families and communities. <sup>4</sup> According to this study, sexual violence against pregnant women is almost twice as often in low-income people as in high-income people. According to expressive research that reflects Turkey at the regional level, women experienced sexual and or physical assault exposure at least once in their lives, regardless of their welfare (43.4 percent of women with a low, 38.0 percent of with a medium and 29.2 percent of with a prominent level of welfare) <sup>5</sup>.

In recent years, the subject of women's safety has risen to the top of the list of public concerns in India. Harassment is defined as any unlawful and unpleasant behaviour that may reasonably be anticipated or asserted to cause offence or humiliation to another person. Sexual harassment typically occurs when there is a power or consultant disparity between the individuals involved (Student/Teacher, Employee/Supervisor, Junior Teacher/Senior Teacher, Research Supervisee/Supervisor). <sup>6</sup> This includes treating people unequally based on gender in work-related or academic tasks or programmes, as well as not providing female students with the same academic opportunities as male students, or vice versa; this also applies to same sex harassment (male/male, female/female). In higher education institutions, both the offender and the offender's Supervisors, Chairperson, Directors, and Institutional Heads can be held accountable for sexual harassment. The right to an education is today recognised as a basic right. <sup>7</sup> A study of schoolgirls in one southern Indian state also found that girls are more

<sup>1</sup> Edin KE, Hagberg U. Violence against pregnant women will remain hidden if no direct questions are asked. *midwifery* 2002;18: 268-278.

<sup>2</sup> Arias I, Dankworth Douglas Dutton MA Stein Violence against women: the state of batterer prevention programs. *J Law Med Ethics* 2002; 30:157-165.

<sup>3</sup> World Health Organization. *World Health Statistics 2018: Monitoring Health for the SDGs, Sustainable Development Goals*. Geneva: World Health Organization; 2018.

<sup>4</sup> Bazyar J, Safa pours H, Deliria S, Karimi A, Keykaleh MS, Bazyar M. The prevalence of sexual violence during pregnancy in Iran and the world: a systematic review and meta-analysis. *J In Violence Res*. 2018;10(2):63–74. <https://doi.org/10.5249/jivr.v10i2.954>.

<sup>5</sup> Hachette University Institute of Population studies. *Turkey Demographic and Health Survey 2013*. Ankara: Elma Teknik Basim Matbaacılık; 2018

<sup>6</sup> Sexual harassment at workplace and educational institution: A case study of district Srinagar, Kashmir by chested Akhtar, international NGO journal Vol.8(3), pp.54-60, March 2013.

<sup>7</sup> *Ibid*

vulnerable to harassment. There are no accurate figures on the number of child abuse instances in India, owing to the poor reporting of such crimes.<sup>8</sup>

## **STATEMENT OF THE PROBLEM**

Sexual harassment is defined as invasive sexual behaviour by those in positions of influence around individuals who can be promoted or hurt in an official capacity. As a result, it is primarily a matter of power abuse, not sex.

- Sexual harassment is a violation of a believing relationship, which should be a sex-neutral and easy-going environment. It is unethical behaviour that calls into question the integrity of the job relationship.
- Sexual harassment is any form of coerced behaviour, whether indirect or direct. It is unwelcome attention and confidence in a nonreciprocal relationship.
- Sexual harassment is a heinous violation of professional ethics.

Women's contributions to the advancement of the nation are considerable when considering their efforts in economic support, internal activities, and emotional characteristics that considerably enhance the economic affluences of family, community, and nation. As a result, while doing these responsibilities, she should be advanced to a safe and secure workplace environment. As a result, sexual harassment impacts women's social and psychological behaviour both within and outside of the workplace. Later, sexual harassment obstructs women's job safety and hangs over their producing potential.

## **HISTORICAL BACKGROUND**

The women lawmakers of the Indian legislature are concerned about and sensitive to the issue of sexual harassment. Ms. Kamal Sinha introduced a bill in parliament in May 1994 to provide for the anticipating of sexual harassment of female employees at their employment. Ms. Sinha highlighted in the statement of things and reasons that women make up a major percentage of the workforce in practically every sphere of economic activity. Women are forced to labour under the worst service conditions at the workplace. They are sexually harassed at work by male co-workers, managers, employers, and others. Even though acts such as physical assault and molestation have been made punishable under the Indian penal code, working women remain unsafe since the statute does not cover all qualities. As a result, there is a pressing need to deal with the problem more sternly. As a result, the bill addresses the offences linked with workplace sexual harassment of women.<sup>9</sup> Prior to the introduction of this bill, Bhanwari Devi, a rural change agent, was appointed as a *satin* (friend) by the state of Rajasthan in 1992 to work towards the prevention of child marriage. During her efforts, she forbade the marriage of a one-year-old girl in the neighbourhood. Her job was filled with rage and fascinated harassment from the guys of that group. Bhanwari Devi informed the confined authorities, but no action was taken. That oversight cost Bhanwari her life when she was gang raped by those men. Based on the facts of the Bhanwari Devi case, Vaisakha, and other women's organisations, as well as the state of Rajasthan and the Union of India, filed a PIL before the Supreme Court of India.<sup>10</sup> Following that, in 1997, a three-judge panel of India's Supreme Court ordered a landmark verdict known as the Vaisakha judgement to be

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<sup>8</sup> The new report from HRW said such abuse is disturbingly common, government responses are falling short in protecting children and in treating victims.

<sup>9</sup> Dr S. Ram, (ed.), "Encyclopaedia of women and social change women: socio-economic problems vol-3", Commonwealth Publishers, Ansari. Road, Darya Ganj, New Delhi-110002, pp. 58-59, 2003.

<sup>10</sup> Ministry of women and child development, "Handbook on Sexual Harassment of women at workplace (prevention, prohibition and redressal) Act 2013", p.3. Nov. 2015.

registered by all foundations when dealing with defence and redress of sexual persecution. For the first time, the judgement acknowledges and defines workplace sexual harassment of women. Prior to the 1997 decision, the sole alternative for women workers who experienced sexual harassment at work was to file a complaint under parts of the Indian penal code. Furthermore, companies, foundations, institutions, and personnel take no responsibility for the safety and security of their female colleagues.<sup>11</sup> Many administrations one made commitments and expressed concerns after this number of pledges and concerns were made. Among these was the National Commission for Women, which produced draughts of a Code of Workplace Behaviour in 2000, 2003, 2004, 2006, and 2010. Krishna Tirith, the then-Minister of Women and Child Development, introduced a bill in 2007 titled The Defence of Women Against Sexual Harassment at Workstation Bill. The bill was approved by the Union Cabinet in January 2010 and introduced in the Lok Sabha in December 2010. As a result, the bill was referred to the Parliamentary Standing Committee, which issued its findings in November 2011. And it was in May 2012 that the Cabinet amended the measure. The Bill as revised was approved the bill was passed by the Lok Sabha in September 2012, and the Rajya Sabha passed its final judgement on it in February 2013, and the President signed it into law on December 9, 2013, as the Sexual Harassment of Women in the Workplace (Prevention, Prohibition, and Redressal) Act The Sexual Harassment of Women in the Workplace Act of 2013 (Prevention, Prohibition, and Redressal) retains the essence of the Vaisakha Guidelines while expanding on its prohibitions. It broadens the definition of "distressed woman" to encompass all women, regardless of age or job position, and it provides shelter to clients, customers, and domestic employees. It broadens the definition of the "workplace" beyond traditional offices to include all types of organisations from many industries, making the transition easier. non-traditional workplaces (such as those that allow for telecommuting), and locations visited by workers for work. It directs the formation of the internal criticism committee (ICC) — and states the action to be performed if an ICC is not created — as well as the component of an assessment report of the number of complaints and exploit reserved at the end of the year. It slants the employer's obligations, such as providing consistent seminars and awareness programmes to teach employees about the Act and conspicuous direction programmes for ICC members. If an employer fails to form an ICC or does not abide by any additional provisions, they may be fined up to \$50,000If the perpetrator is a repeat offender, the fine is collected. If the employer has previously been convicted of a crime under the Act, he would face double the penalties, and the second offence may result in the termination or non-renewal of his licence. The offence punishable under the Act shall be managed by an Urban Magistrate or a Judicial Magistrate of the first class.<sup>12</sup> All of this has if women working in an organisation, whether government or private divide knowledge of sanctuary from sexual assault. By providing them with a safe working environment, they may grow to their full potential.

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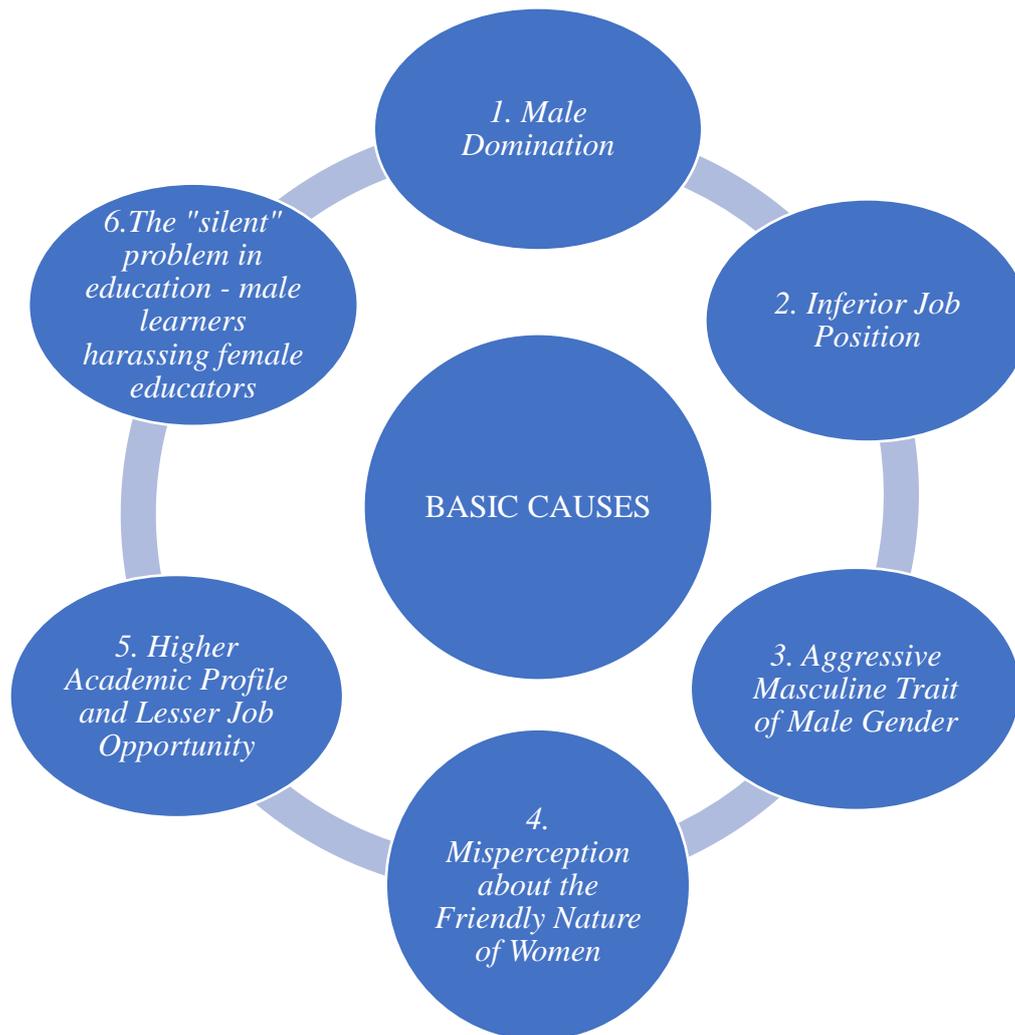
<sup>11</sup> P. Chaudhuri, "Sexual Harassment at workplace: Experience with complaints committees", economic and political weekly, vol.43, no.17, pp.99-106, 2008.

<sup>12</sup> S. Sai gal, "Sexual Harassment at Work: The limits of the law", The Hindu, April 02, 2017.

Sr. No	Ancient Period	Vedic period	Post Vedic period	In post independent India,
A.	Women occupy a crucial and illogical location in Indian	During the Vedic period, Women held a prestigious status. And occupied a position of honour, respect, and fairness with men.	In the Post-Vedic era, age, job title It was permissible for women to give to Manu, the first supporter of law.	Women's standing has regained strength and has been on the rise ever since. Women in the post-independence period
B.	Over time, society has evolved. ages, as evidenced by ancient accounts, historical accounts poems, and tales as well as narrations	The Vedic system finest stretch of time be designated as a period of feminine beauty as well as male sageness and liberalism	Manu smriti, conducted several tasks' restrictions on women's rights and rights its Women standing was lowered as a result. as well as disadvantageous her customary status.	India has been in Contributing to practically all forms of economic activity, day-to-day domestic responsibilities, voting for improved government, and active political participation
C.	The cultural history of India exposes that, in ancient India a woman liked the position of Devi (goddess) as described in many religious manuscripts of Hindus.	The Vedas runs Abundant evidence that women were equal of men as respects access to education and religious ceremonies.	The Subservience of woman is exactly summed up in the famous injunction of Manu, where it is stated that a woman should never be independent,	In recent years the attitude of the government to women has undergone a major change,
D.		The females were early spending years at the Brahmacharya ashram Extremely strongly, Upanayana samskara had been decided on for females		Where Women's empowerment is made an objective in government programmes. The emphasis has shifted away from women's development.

## BASIC CAUSES

Sexual harassment has no specific source; it can occur anywhere, to anybody, at any time. It makes victims question, "Why me?" has no definitive response to the question in this section we will look at some of the most notable explanations that are widely held in modern culture.



### 1. 1. Male Domination

The controlling males, or men in authority, who make sexual favours to female subordinates may typically recognise that this care of male behaviour is merely about the sex, which we term general perception. But the fundamental issue isn't sex; it's bias on the job. The truth is that most harassment is motivated by a desire to safeguard one's job, particularly one's favoured field of employment. Much of the harassment women endure at work isn't "sexual" in nature or intent, but the motivation is to demonstrate male authority. And it is this type of behaviour that establishes the gender divide and establishes work as a sphere of male domination.<sup>13</sup>

### 2. Inferior Job Position

Because women have less ordered authority in companies and males have more, sexual harassment may be used by the strong to assert control over the powerless. This theory is supported by research showing that women are more likely to feel stressed when they advance to higher levels in organisations or work in non-traditional fields. Individuals with less power tend to pay more attention to those with more power than the reverse. This clearly

<sup>13</sup> J. I. Kalyan, "Sexual Harassment Against Women in India: An Overview", International Multidisciplinary Research Journal, Vol.2, Issue II,2015.

demonstrates that those with subpar work positions in an organisation or institute are more vulnerable to sexual harassment than those in positions of authority.<sup>14</sup>

### **3. Male Gender's Aggressive Masculine Attribute**

Assorted studies show that harassers start in all sorts of jobs at all organisational levels, both within and outside the family, and even among college instructors. Sexual harassment is thought to be a result of fierce competition and ego worries, or there is always a fear of males losing their position of power or superiority. They don't want to appear weak or less macho to other guys. Demonstrate their dominance, they harass their female co-workers. As a result, it is apparent that male aggression fosters sexual harassment of women.<sup>15</sup>

### **4. Misperception about the Friendly Nature of Women**

It is well known that males in a society have begun to harass their female co-workers who are pleasant in nature. They see that these ladies are naturally constrained, and that if we solicit sexual favours from them, they will accept. But it was not the purpose that women assigned to her. And this finally leads to the ladies being obvious as having sexual attention by being pleasant. This receptive attitude of women with their male colleagues in an organisation or in a larger social setting becomes the source of sexual harassment.

### **5. Higher Academic Profile and Lesser Job Opportunity**

In today's culture, we are aware that there are many women populations with higher academic degrees who are looking for work, but the accessible employment scenario is less than these highly educated young women. When these talented and efficient women started their journey to find a job in an organisation, whether it is an educational institute or another private or government sector, they were harassed and progressive by sexual nepotisms by the person in charge, and for that they were certain to be offered a job. This behaviour of male organisational components in higher positions has a "Quid Pro Quo" effect (This for that). Later, when these females are devoted to a certain employment function, there is no doubt that this is the case in our current culture, and this becomes one of the primary causes for sexual harassment of young, educated women. The aforementioned factors clearly prove that women, whether working in the private sector or in government, are educated to endure such humiliation by their male colleagues, and a few legal and constitutional provisions protect their modesty and reputation at work.

### **6. Male students harassing female instructors is a "silent" problem in education.**

This form of harassment of females in schools, particularly secondary schools, has gotten little attention and is a severe problem in a lot of nations. This type of harassment appears to be the opposite of the usual. It not only implies that women must justify their charges of sexual harassment, but it also pushes women to question the validity of sexual harassment in the traditional worldview. Abuse has been identified as a problem, typically perpetrated by males in positions of authority, and that sexual harassment is an abuse of their position of trust. None of these characteristics appear when male apprentices sexually abuse their female tutors. The previously defined social power disparities between masculinity and femininity do not apply in this scenario. This dichotomy penetrates the learner/educator space. When male students undermine classroom management in the traditional Western approach to power by depending on the idea that children are "innocent" and "naive" in responding to authority to

<sup>14</sup> S. G. Baugh, "On the Persistence of Sexual Harassment in the Workplace", *Journal of Business Ethics*, Vol. 16, No. 9, Women in Corporate Management, pp.899-908, 1997.

<sup>15</sup>L. I. Gerdes, "Sexual Harassment", Greenhaven Press, Inc., San Diego, 289009, p.90, 1999.

"adult" notions like sexuality, gender, and power, it becomes clear that this is not the case. The Act Against Discrimination Against Women of Australia.<sup>16</sup>

## **International problem**

### **Is there sexual harassment in the South African educational system?**

The Human Rights Commission started an investigation in 2001 investigating charges of purposeful and persistent sexual harassment of apprentices in South African schools, which showed that sexual harassment is widespread in South African schools, with attitudes posing a severe threat to children. Equal learning chances cannot be guaranteed in such a hostile environment. There were no official statistics on the prevalence of sexual harassment in higher education that could be found. Data on school harassment are scarce and variable and are typically the result of a single study in a specific geographic area. Nonetheless, all the data points to a massive and far-reaching problem. Sexual harassment in schools should be regarded extremely seriously, especially considering the unique nature of the connection between teachers and students. Instead of deporting students, the *in loco parentis* principle should safeguard them. This concept is built on a two-tiered approach. Begin, mentors welcome the chance to assume a responsibility of care, as though the educator is always the vigilant *paterfamilias*. This is analogous to a father's status in his family. Coaches have a legal and ethical obligation to safeguard students from sexual harassment and violence at school. The second layer of the *in loco parentis* notion is that tutors are grateful for keeping peace, order, and discipline in the classroom. Because teachers work in the role of *in loco parentis* for their pupils, any sexual relationship is prohibited. The educator's control over a student raises the risk of abuse, and the learner may feel powerless to refuse the educator's sexual attention. In this sense, it is difficult to say that any "consent" granted was real and willingly given, because fear and undue influence, as well as the possibility of power abuse, play a substantial role in the learner's behaviour. The Employment of Educators Act, Section 17, prohibits educators from engaging in sexual or other forms of harassment, which implies that they are not allowed to have sexual contact with students. If an educator is determined to have violated this rule, he or she is guilty of misconduct under the Act and is subject to suspension. The Criminal Law Amendment Act (Sexual Offences and Related Matters)<sup>17</sup> sets up the age criteria for sexual conduct Sections 15(1) and 16(1), when read in conjunction Section 1's definition of "child" makes "voluntary penetration" or "sexual violation" of a youngster (male or female) aged 12 to 16 illegal. No one under the age of 12 can agree to any sexual behaviour, according to Section 57(1). Any attempt, conspiracy, or incitement to commit a sexual offence is likewise illegal under the Act. This Act also creates a national registry of sex offenders and provides an obligation to report sexual offences committed with or against children. This is something that will be managed in the future. Learners, even those beyond the age of 18, are not to be exposed to, required to watch, or forced to witness certain sexual behaviours, including but not limited to: "flashing," exposure to child pornography, or sexual activity with someone older than 18. It's important to realise that students might outlast their typical age while still being committed to study. As a strong warning of criminal liability, these aspects should be highlighted in all Codes of Conduct. According to the literature in South Africa, more than 30% of girls are raped at school, according to Prinsloo. About HIV/AIDS With a rate of incidence of 22.9 percent for young girls and boys, sexual harassment in schools becomes a more significant issue. It has been shown that many females

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<sup>16</sup> *Ibid*

<sup>17</sup> Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

are raped, sexually abused, sexually harassed, and beaten at school by male students and educators.<sup>18</sup>

### **In South Africa, the educational institution also functions as an employer.**

#### **Legislation and common law**

Sexual harassment is considered inebriation, an infringement of a person's uniqueness, and an unfair discriminatory practise in South African law. Having influence over a sexual harassment victim is not essential. Even if educators are considered employees, or whether sexual harassment occurs between colleagues and consumers or suppliers, physicians and patients, or learners and educators, it is not a legal requirement. The harasser is often a person of lower money or status than the harassed, and this is a problem. disparity must be managed carefully. A person the harasser may be held accountable for delict, or a contractual responsibility may be imposed, and/or the offender may be charged with criminal offences such as stabbing, indecent assault, rape, or attempted rape. The employer might be judged guilty in common law, *ex delicto*, or *ex pledged*, charged of being a criminal accomplice, or accountable under the Employment Equity Act (EEA). The following definitions of sexual harassment remain in effect:

*Unwanted sexual advances, requests for sexual favours, verbal, or physical sexual behaviour, including circumstances when such favours or behaviour are made a condition of employment, ongoing employment, or advancement, tacitly or explicitly.*<sup>19</sup>

The Code of Conduct for the Prevention and Treatment of Sexual Harassment. Its goal is to cut sexual harassment in the workplace (in its broadest sense) and to provide opportunities for appropriate events to address the issue and its consequences. It also encourages and supports the development and implementation of policies and practises that will help to ensure that workplaces are free of sexual harassment.<sup>20</sup> As a result, the Code's aim is to abolish sexual harassment in the workplace. It not only supplies guidance on what constitutes harassment, but it also provides a broad range of applications that go far beyond simply safeguarding employees. Contractors, clients, job applicants, and contractors are also included.<sup>21</sup> The Code fills a void in our legislation by supplying a proper description of in item 3, we'll talk about sexual harassment and how to tell it from sexual attention. (1) Unwelcome sexual behaviour is classified as sexual harassment. Sexual harassment is distinguished from welcome and mutual performance by the unwanted aspect. (2) Sexual attention is considered sexual harassment if and only if the following conditions are met: (a) the behaviour is predetermined, though a single incident of harassment can be considered sexual harassment; and/or (b) the beneficiary has made it clear that the behaviour is offensive; and/or (c) the perpetrator should have known that the behaviour is improper. Because of the enormously diversified nature of South African society, it is critical that employers and jurists pay attention to the supervisory principles in this respect. Policies should be set up in such a manner that there is trust in Taking into mind the diversity to be managed in the workplace, what types of behaviour will not be accepted. The following are some of the various kinds of sexual harassment listed in Item 4 of the Code: (4) (1) Sexual harassment can take the form of offensive physical, verbal, or nonverbal behaviour, however it does not include the following: (a) Sexually inappropriate physical engagement encompasses any unwelcome

<sup>18</sup> Prinsloo 2006 SAJE 305.

<sup>19</sup> *Ibid.*

<sup>20</sup> Items 1(1) and (2) Gen N 1357 issued GG 27865 on the 4th of August 2005, which contained a Code of Good Practice on the Handling of Sexual Harassment.

<sup>21</sup> *Supra* Note 27

Strip search by or in the presence of the opposing sex, including physical interaction ranging from gentle to sexual stabbing and rape. Unwanted and inappropriate inquiries about a person's sex life, sexual advances, comments with sexual implications, sex-related jokes or abuses, or unwelcome graphic remarks about persons' bodies made in their presence or to them, and unsolicited whistling at a person or group of persons are all examples of verbal forms of sexual harassment. Unwanted signals, indecent exposure, and the unwelcome presentation of sexually explicit pictures and objects are all examples of nonverbal forms of sexual harassment. (d) Quid pro quo harassment occurs when an employer, supervisor, member of management, or co-worker looks for or undertakes to impact or influence an employee's or job seeker's employment, promotion, training, punishment, dismissal, pay increases, or other advantages in return for sexual favours. (2) Sexual preference appears when a person in a position of power rewards only those who react to sexual advances, while other worthy employees are denied promotions, merit, or salary increases.<sup>22</sup>

**a) The English Common Law**

*An employer is required by common law to supply a safe and healthy working environment for its employees. If a breach of this requirement results in harm, the employer may be held liable in a delict action. If an employer does not provide a safe working environment free of sexual harassment, the employee is likely to terminate the employment contract and file a constructive dismissal claim.*<sup>23</sup>

Our legal system does not recognise sexual harassment as a specific delict, but any act or omission that compromises a person's physical integrity, including their good name and dignity, as well as their privacy, feelings, and identity, could be considered a delict if all the other elements of a delict are present. It would allow the victim to compensation for both non-patriotic and patrimonial losses. According to the Industrial Court in *J v M Ltd*, sexual harassment interferes on the right to reliability of the body and personality, which is endangered both civilly and criminally.

**b) The Constitution of the Republic of South Africa.**<sup>24</sup>

Discrimination based on gender or sex is prohibited under the Constitution, which also ensures a person's right to work in an atmosphere free of harassment and discrimination.<sup>25</sup> Sections 9 and 23 specifically provide for the right to equality, which includes the right not to be discriminated against unlawfully and the right to good working conditions. Consequently, it discovers a claim for sexual harassment under the law. It is important to note that the Constitution does not merely list sexual harassment as a forbidden practise. As a result, case law will play a significant role in the formation of our law in this direction. In view of the framework of gender and sex being clearly identified as forbidden grounds of discrimination, the lack of sexual harassment as a prohibited practise looks unimportant.<sup>26</sup>

**c) The Labour Relations Act is a federal law that governs labour relations.**<sup>27</sup>

This bill is a legislative expression of the equality principle, with implications for the fundamental right to fair labour practises. Any infractions of the Labour Relations Act will be

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<sup>22</sup> . Item 4 Code of Good Practice on the Handling of Sexual Harassment Cases (N 1367 in GG 19049 of 17 July 1998).

<sup>23</sup> *Ibid.*

<sup>24</sup> Constitution of the Republic of South Africa, 1996.

<sup>25</sup> Snyman-Van Deventer and De Bruin 2002 Acta Academic Supplementum 196.

<sup>26</sup> Ntshabo v Real Security CC 2003 24 ILJ 2341 LC 2377D-E.

<sup>27</sup> Labour Relations Act 66 of 1995.

dealt with in line with the law.<sup>28</sup> Mthembu was represented by PSA. in a recent 2008 case,<sup>29</sup> The accused was relieved of service following an investigation into charges a subordinate's sexual harassment of the suspicious employee

**d) The Equal Compensation for Equal Labour Act (EEA) is a federal statute that requires equal pay for equal work (EEA)**<sup>30</sup>

This law is the legislative embodiment of the Constitutional right to equality. The EEA expressly prohibits sexual harassment in the workplace, stating that it is illegal and related with unfair discrimination. By removing biased views and adopting favourable action programmes, this promotes equal opportunity and fair treatment in the workplace. When one of the grounds specified in section (6)(1) is present, harassment is considered unfair discrimination and cannot be accepted, according to section 6(3) of the EEA. The grounds listed in section (6)(1) are not the same as or comparable to those listed in section 36(1) of the Constitution. 60th Section In the matter of Mokoena and A v Garden Court Art, the EEA requirements were recently assigned.<sup>31</sup> It was contended that if only one incidence of sexual harassment occurred, an employer could not be held accountable under this rule. The employer was only responsible if the harasser's activities were brought to the employer's attention and the harassment persisted because the employer did not take the necessary steps to avoid, eliminate, or prohibit sexism or genderism, which was not the case in this case.

**e) The Act to Promote Equality and Prevent Unfair Discrimination (Act to Promote Equality and Prevent Unfair Discrimination (Act to Promote Equality and Prevent Unfair Discrimens (PEPUDA)**<sup>32</sup>

The exceptions in this law relate to sexual harassment outside of the workplace and represent our constitution's equality principle. Sexual harassment is clearly specified as a forbidden behaviour in PEPUDA. The act applies to circumstances in which sexual harassment is committed by or against someone other than the employer or employee as a form of partial discrimination.<sup>33</sup> There are also added statuses.<sup>34</sup> Aim to provide workers and third parties that are held in a secure working environment It's important to remember that a school is also a workplace.

**f) Code of Ethics**

Because the Employment Equity Act does not directly address sexual harassment, a Code of Decent Practice on the Treatment of Sexual Harassment was created. has been made public following the Labour Relations Act The 2005 Code of Good Practice for the Prevention and Treatment of Sexual Harassment offers guidelines and recommendations on the concept of sexual harassment. Despite the fact that it introduces no individual rights, it will impact the law in this area in the future.<sup>35</sup> In the year 2008, the Moped.<sup>36</sup> In this case, The accused was found not guilty because the nature of the alleged misconduct was not established, and it was not made evident that the behaviour was objectionable to the complainant, as was required.

<sup>28</sup> Le Roux, Orleyn and Rycroft Sexual Harassment 15.

<sup>29</sup> PSA on behalf of Mthembu v Dept. of Health 2008 JOL 21638.

<sup>30</sup> Employment Equity Act 66 of 1995.

<sup>31</sup> Mokoena v Garden Court Art (Pty) Ltd 2008 29 ILJ 1196 (LC) 1196.

<sup>32</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<sup>33</sup> Le Roux, Orleyn and Rycroft Sexual Harassment 18.

<sup>34</sup> These include the Occupational Health and Safety Act 85 of 1993, the Compensation for Occupational Injury and Diseases Act 130 of 1993 (as amended) and the Protected Disclosures Act 26 of 2000.

<sup>35</sup> Moepel v CCMA 2008 JOL 21837 LAC.

<sup>36</sup> Le Roux, Orleyn and Rycroft Sexual Harassment 75.

Based on this judgement, the judiciary clearly follows the Code of Good Preparation. Even though it is simply a suggestion, conditions must be followed for a guilty verdict to be deserved.

### **In South African law, employers are liable.**

The theory of misplaced charge and section 60 of the Employment Equity Act govern an employer's liability for sexual harassment by an employee.<sup>37</sup> This type of liability is a product of common law. According to the adage, it is the employer's responsibility to supply a safe working environment.<sup>38</sup> Employees (educators) are not at risk of serious physical harm or mental distress. Employers who have a working contact with harassed employees are vicariously liable.<sup>39</sup> If sexual harassment is proven to have happened in the workplace, solely based on the job connection. *Grobler vs. Naspers*<sup>40</sup> The Supreme Court found remote responsibility on the basis that common law had to be developed as authorised by Section 173 of the Constitution and the inherent authority of the Supreme Court. The court figured out that displaced obligation existed since protecting the right to pride as well as the right to security freedom was a basic responsibility. Because employment has evolved into a jumble of tasks and relationships that extend beyond the contract's primary parties, it would be idealistic to expect that such relationships would not be mismanaged and that employers should be held liable for their employees' actions if the conditions for commissioning a delict are met.<sup>41</sup> The goal of Section 60 of the EEA liability is to penalise employers who do not resolve workplace impartiality. The goal of Section 60 is to penalise an employer when an employee breaks an EEA law at work, not to punish an employer for a deficiency. This section does not address sexual harassment by or against independent third parties such as servicers, dealers, users, and initiators. Employee sexual harassment is a violation of the EEA. Section 60 of the EEA will apply if it occurs at work and the smallest requirements have been satisfied. In terms of sexual harassment, it means that an employer will be held accountable. In the context of This means that if one employee sexually harasses another at work, the company will be held responsible. It's also worth noting that the term "workplace" is unique in its broader logic, incorporating settings in which the employee travels or appears to do responsibilities at work It has nothing to do with an actual location. For this provision to be effective, the employer does not need to be aware of the sexual harassment. Because the fee is not strictly enforced under this clause, the employer might avoid it in two ways: a) Once aware of the sexual harassment, the employer shall confer with all parties and take the necessary steps to stop the behaviour and comply with the EEA. If this is not done, the employer will end your employment be deemed to have violated Section 60 of the EEA and will be held accountable for the same.<sup>42</sup> It is not necessary for the employer to be aware of the sexual harassment for this clause to be effective. Because the charge is not severely enforced under this section, the employer has two options for avoiding it: a) Upon becoming aware of the sexual harassment, the employer must consult with all parties and take the necessary steps to end the behaviour and comply with the EEA. If this is not done, the employer will be regarded to have breached Section 60 of the EEA and will be held liable.<sup>43</sup> What the phrases "reasonably practical" appear to show is not entirely apparent. South African case law in this part is limited, but it would almost certainly require the recruitment

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<sup>37</sup> *Ibid.*

<sup>38</sup> Snyman-Van Deventer and De Bruin 2002 Acta Academic Supplementum 211.

<sup>39</sup> Stadstad van Pretoria v Pretoria Pools 1990 1 SA 1005 (T) 1007H.

<sup>40</sup> Grobler v Naspers BPK 2004 5 BLLR 455 (C) 527.

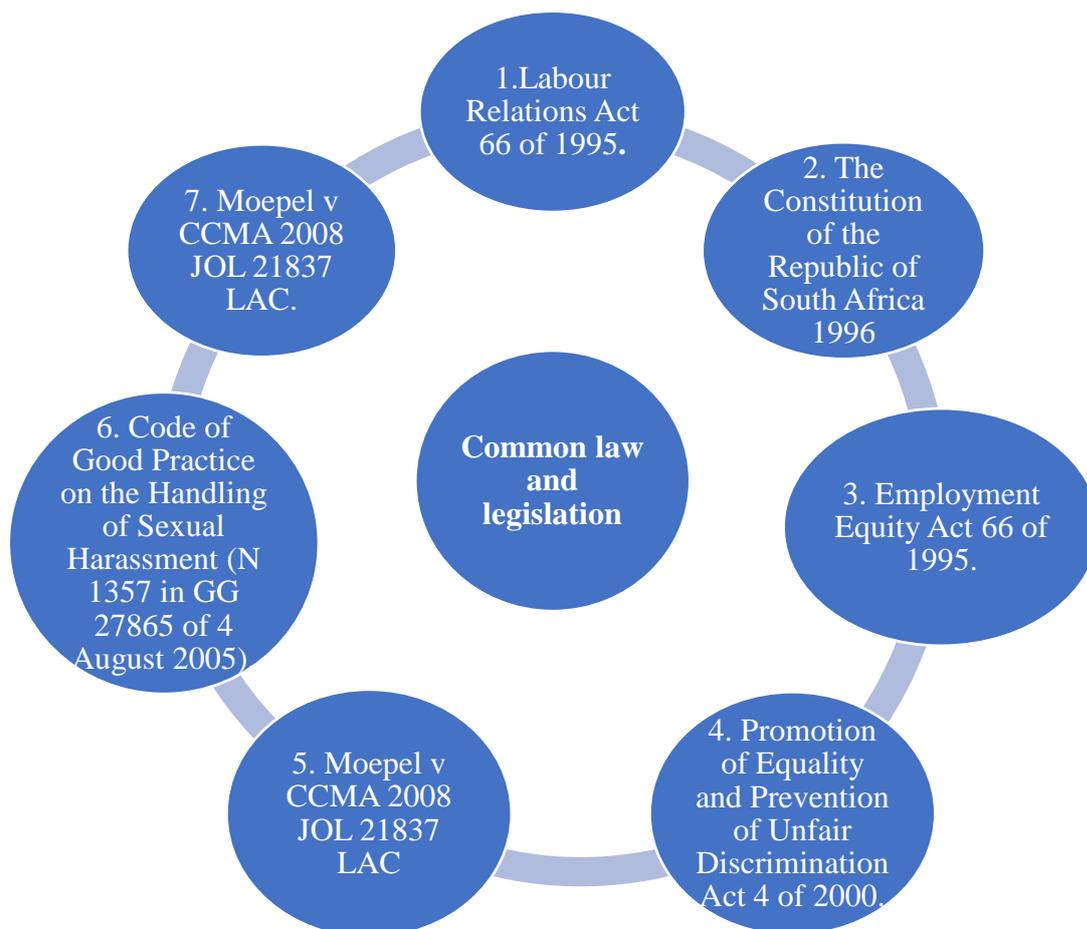
<sup>41</sup> Le Roux, Orleyn and Rycroft Sexual Harassment 91

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

and dissemination of a comprehensive sexual harassment prevention programme in the specific workplace. Because the Act does not specify the variables to be examined in assessing whether reasonable measures were taken, the test in this regard should be whether the defences were practical rather than ideal.<sup>44</sup> Unlike the Labour Relations Act, the Employees' common law rights against their employers are not affected by the EEA, and there is no limit to the amount of reimbursement or compensation that can be looked for. The concept of delicta liability is founded on the idea that the harasser or his or her employer can be fined or prosecuted for reparation to compensate for the harasser's injury or loss. Loss of income, as well as a slew of other damages, such as monetary compensation for the loss of a promotion chance or psychological compensation suffering, should be improved.<sup>45</sup> If the harassment resulted in the employee's wrongful discharge, the harassed employee may sue for breach of contract. If a criminal case is filed and the employer knew or should have known about the crime but did nothing to stop the harassment, the employer might be prosecuted as an accomplice to the crime, as it is the employer's responsibility to cease any harassment of its employees.<sup>46</sup>

**In South Africa, the legal situation is that the learning institution serves as the employer.**



<sup>44</sup> *Ibid.*

<sup>45</sup> Snyman-van Deventer and De Bruin 2002 Acta Academic Supplementum 213

<sup>46</sup> *Ibid.*

## **Sexual harassment in the education sector in the United States**

Tertiary education plays an active role in ensuring economic stability for children, particularly females, yet these institutions in America continue to show Bias and harassment have a negative influence on pupils' ability to receive a fair education. Sexual harassment affects most college students, especially in their first year. Students, particularly female students, are embarrassed, uncomfortable, enraged, and dissatisfied with their college experience because of these incidents, which range from unsolicited sexual remarks to forced sexual intercourse.<sup>47</sup> During their internship, 63 percent of female respondents in a 1994 survey of second-year students randomly selected from an American Medical Association file reported sexual harassment.<sup>48</sup> In 2005, the Association of University Women Educational Foundation conducted a nationally representative poll of undergraduate students, finding that almost two-thirds of college students had experienced sexual harassment of some kind. Only around ten percent informed a friend or another person, and even fewer reported the sexual harassment legally. More than a third reported non-contact sexual harassment in their first year, while about a third reported physical harassment, such as being pitied, grabbed, or forced to do sexual acts. Larger universities, four-year institutions, and private colleges show these behaviours more frequently.<sup>49</sup> While both men and women were equally likely to feel nervous, female students were more likely to be sad and uncomfortable because of the harassment, according to the study. They were also more anxious, insecure, perplexed, or disagreed with their identities, and they were more likely to change their behaviour after being sexually harassed. It had occurred to them because of sexual harassment. Seventy-five percent of the 1,582 students polled said female victims made it difficult for them to concentrate in class and sleep. Students who were lesbian, gay, bisexual, or transgender were reported to be harassed more often than other students. Sexual harassment was seen and reacted in comparable ways by white, black, and Hispanic students.<sup>50</sup> Men were also found to be more likely than women to be harassed. Male students reported to sexually harassing someone in college half of the time, while female students admitted to harassing someone in college one-third of the time. The situation in schools, on the other hand, is far more concerning. According to a study done by Welsch in 2007, sexual harassment in high schools is a severe problem. A study was undertaken in 2007 to decide the prevalence of sexual harassment in high schools. Students were only asked to disclose sexual harassment that occurred in the previous two weeks and that they had been sexually harassed in the two weeks prior to the interview 7 percent experienced physical sexual behaviour, and 15 percent reported being highly distressed by such harassment.<sup>51</sup> According to the survey, harassment occurred most frequently at the entrances (7%), classrooms (6%), and outside the school building on the school grounds (4%), although only 0.5 percent reported it to teacher or other school personnel. The American Association of University Women (AAUW) conducted research on the prevalence of sexual harassment in secondary schools as early as 1993. According to the AAUW, 81 percent of students have met or knew of someone who had suffered unpleasant sexual behaviour at some time during their study. Females were harassed the most and were subjected to more subtle forms of sexual harassment than males. Most of the perpetrators were boys or males, with only 9% being women Among those who had claimed becoming victims, In Canada, it was stated that 70% of pupils had experienced

<sup>47</sup> Hill and Silva 2005 [www.aauw.org](http://www.aauw.org) iii.

<sup>48</sup> Jorgenson and Wahl 2000 *Harv Rev Psychiatry* 95.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

sexual harassment in the school setting.<sup>52</sup> This proves how ancient the problem in the education industry is.

### America's legal situation

#### A review of the laws and case law

Sexual harassment is considered a kind of sex-based workplace discrimination in the United States. It is prohibited by Title VII of the Civil Rights Act of 1964.<sup>53</sup> It makes it illegal to discriminate based on race, colour, national origin, religion, or gender in the employment. A threat, offer, or act of sexual favour in exchange for favourable outcomes or the avoidance of negative outcomes has also been classified as this type of harassment.<sup>54</sup> In 1976, the federal court in *Williams v Saxby* recognised it as a type of employment sex discrimination for the first time.<sup>55</sup> Sexual harassment can be divided into two categories:

a) Harassment in exchange for something Due to the denial of sexual approaches, this sort of harassment links sexual favours or rebuffs to job decisions, such as withholding a promotion or appointment or denying a well-deserved raise.

b) Unfavourable Working Conditions Although the EEOC defined a hostile working environment as "the telling of inappropriate jokes, the uttering of sexist comments, or the use of offensive language" in 1992, it is more difficult to show.<sup>56</sup> In American schools, sexual harassment is frequent. According to statistics, sexual harassment was reported by 85 percent of high school girls and 75 percent of high school boys.<sup>57</sup> In the United States, there is a clear distinction between educator-to-learner harassment and peer sexual harassment under the law. In public schools, sexual harassment by peers is forbidden. Thankfully, the legal system distinguishes between horseplay and less serious sexual conduct and actual sexual harassment. Educators are not mandated to protect kids from teasing or horseplay, both of which are widespread in children's games. This distinction does not exist in South African law and should be addressed in the code of conduct and policy that schools must adopt under the Schools Act. Title IX of the Education Amendments of 1972 states:

*Based on gender, no one in the United States of America should be denied participation in, denied benefits from, or subjected to discrimination under any education programme or activity receiving Federal financial assistance....*<sup>58</sup>

In *Gebser v Lago Vista Independent School District*, the court determined liability.<sup>59</sup> Because to be found accountable, Officials at the school must have had concrete knowledge of a teacher's sexual harassment, not just inferred knowledge. The concept of "deliberate indifference" was enshrined in Title IX legislation., "Something more than ordinary negligence but less than acts or omissions with the express intent to inflict hurt" was needed.<sup>60</sup> Only if all these conditions were met could liability be imposed. This was confirmed in the case of *Soper v Hoben*,<sup>61</sup> and in *Doe v Towne of Bourne* in 2004<sup>62</sup> A three-year statute of

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<sup>52</sup> *Ibid.*

<sup>53</sup> Hill and Silva 2005 [www.aauw.org](http://www.aauw.org) 7.

<sup>54</sup> Limpaphayom, Williams and Fadil 2006 Cross Cultural Management 33.

<sup>55</sup> Williams v Saxby 413 F Supp 654 (DCDC 1976) 658.

<sup>56</sup> Limpaphayom, Williams and Fadil 2006 Cross Cultural Management 33.

<sup>57</sup> Klusas 2003 TFCLCR 94.

<sup>58</sup> *Ibid.*

<sup>59</sup> Gebser v Lago Independent Schools District, 524 US 274 (1998) 1911.

<sup>60</sup> Farmer v Bre115 Klusas 2003 TFCLCR 96.

<sup>61</sup> Soper v Hoben 195 F 3d 845 (6th Cir 1999) 851.

<sup>62</sup> Doe v Town of Bourne 2004 WL 1212075 (D Mass) 10.

limitations was decided to be necessary. It's important to remember that all four Davis Decision components must be addressed in cases of peer sexual harassment.<sup>63</sup> Students must be present for schools to be held accountable. In circumstances of less serious kinds of harassment, this clause protects not only students, but also institutions from liability. Students must be present for schools to be held accountable. In circumstances of less serious kinds of harassment, this clause protects not only students, but also institutions from liability...<sup>64</sup> *Vance v Spencer County Public School District was decided by the Sixth Circuit Court in 2000.*<sup>65</sup> based on a noticeably clear illustration of the harassment complained of what would be considered persistent sexual harassment, as well as what would be considered objectively objective sexual harassment The onerous Title VII was designed to encourage the adoption of anti-harassment policies and effective grievance procedures. It stems from tort law's "avoidable consequences principle," which says that an employer can avoid liability by putting in place mechanisms to detect and eliminate harassment.<sup>66</sup> Employer responsibility is a legal concept in the United States. We must take attention, particularly of employer responsibility in the US legal system, as American legislation dealing with sexual harassment is driving the legal expansion in this field.<sup>67</sup> One possible explanation A misunderstanding about the legal requirement to respond to such allegations is to blame for the surge in sexual harassment in American schools. Schools must cope with two sets of legal requirements: To prevent losing government aid, use the constructive notice standard. In this case, a school can be found accountable and lose federal money if it was aware of or should have been aware of peer sexual harassment. b) They employ to shield themselves from private claims, they use the actual notice standard. A school participates in this scenario. may only be held culpable and so liable for monetary damages if it was aware of the sexual harassment by peers.<sup>68</sup> As a result, schools either do not safeguard harassed employees or over punish violators. *Davis v Munroe Country Board of Education*, with reference to *the court decided in Davis v Munroe Country Board of Education that Gebser v Lago was the first sexual harassment case dealing with peer sexual harassment.*<sup>69</sup> that institutions would only be held responsible for peer sexual harassment under Article IX if and only if: a) A school supervisor was blatantly unconcerned about the harassment. b) the harassment was severe, pervasive, and objectively disagreeable to the point where the victim was unable to attend school. Schools' only defence is to show that, as required by Title IX, they took immediate, reasonable, and effective corrective action and kept it up until the sexual harassment stopped.<sup>70</sup> Effectively explained processes. Prevail in a suit based on quid pro quo harassment, the claimant must demonstrate: 1. He or she belonged to a protected class. ii. he/she received unwanted sexual approaches. The advancements were made based on gender. Submission to the demand was made a requirement for getting work benefits or avoiding job loss.<sup>71</sup> When a claimant seeks a promotion, the standards for sexual harassment are different– *City of Dundee vs. Henson. The claimant must show on a balance of probabilities that: she/he was a member of a protected class, ii. he/she was subjected to unwanted sexual harassment affecting a term, condition, or privilege of employment, and ii. the employer knew or should have known about the harassment and did not take appropriate corrective action. In addition, the claimant must*

<sup>63</sup> Davis v Monroe County Board of Education 74 F 3d 1186 (11th Cir 1996) item 4.

<sup>64</sup> Eckles 2006 Education Digest 37.

<sup>65</sup> Stephen Vance v Spencer County Public School District 231 F 3d 253 (6th Cir 2000) 259.

<sup>66</sup> Marczely 1999 Clearing House 317-318.

<sup>67</sup> Shrout v Black Clawson Co 689 F Supp 774 (SD Ohio 1988) 774-775.

<sup>68</sup> Klusas 2003 TFCLCR 91

<sup>69</sup> Gebser v Lago Vista Independent Schools District 524 US 274 (1998) 1193.

<sup>70</sup> Supra Note 84.

<sup>71</sup> Cram v Lampson and Session Co 49 F 3d 466 (8th Cir 1995) 473 item 16.

show that the harassment was abusive and serious enough to call for legal action necessitate a change in working conditions. Analyse women's viewpoints and experiences, several federal courts created a "reasonable woman test," which resulted in a wide range of conclusions. Despite later proposals to widen the reasonable threshold to include both men and women, and to replace the concept of reasonableness with the concept of "respect," courts continue to use the old concept of "reasonableness" to show guilt.<sup>72</sup> Ellerth's conclusion, in terms of a school district's responsibilities as an employer, is significant.<sup>73</sup> makes it necessary for all businesses to have a sexual harassment policy in place and to function as soon as they are made aware of unacceptable behaviour. As previously showed, if an actionable hostile atmosphere was established or no concrete employment action was taken, the employer is susceptible to vicarious responsibility. The employer may argue that it took reasonable steps to prevent and address sexual harassment, or that the claimant did not take advantage of any preventative or corrective measures provided by the employer to avoid damage or other harm. If a school district is sued for establishing a hostile environment as a result of sexual harassment, the court will likely rule in favour of the plaintiff, If the district can show that it has a sexual harassment policy in place and that the plaintiff employee did not violate it, it can avoid liability.<sup>74</sup> *In the case of Franklin v. Gwinnet County Public Schools (1992)*<sup>75</sup> A comparison was made between sexual harassment from a teacher to a student and sexual harassment from a supervisor to a subordinate. It concluded both were deemed kinds of discrimination, and thus both types of harassment were subject to the same laws. The Supreme Court, not Congress, interpreted Title IX to allow for damages for teacher-to-student harassment, which led to the Gebser case.<sup>76</sup> The case distinguished between harassment responsibility under Title IX and There is a liability for harassment under Title V11. Title IX is a contract between the federal government and educational institutions in which the receiver commits not to discriminate based on gender. It protects federally funded institutions from discrimination by threatening to withhold funds if it occurs.<sup>77</sup> Karen L Michaelis authored an essay titled "Title IX and Same-Gender Sexual Harassment."<sup>78</sup> She addresses the reasons for failure of school culpability when begun under regular Title VII was used in conjunction with Title IX. Title VII only applies in the context of employment, according to the courts. Any claim for damages based on sexual harassment filed under Title VII is doomed to fail because minors and students are not employees. Davis's decision in 1996<sup>79</sup> showed a more stringent framework for school responsibility based with relation to sexual harassment This new criterion makes it easier for courts to protect school district resources at the expense of students who have been sexually harassed. Few kids have ever been successful in claiming damages since school leaders must be aware of the harassment. Although parents expect their children to be safe from sexual harassment at school, it is unlikely that students will be able to show that the school was aware of the harassment but failed to take the necessary steps to stop or prevent it under the current liability requirements, because it is unclear who should have been aware of the harassment.<sup>80</sup> As a result, the issue stays in schools and postsecondary institutions. We must learn from these gaps to establish successful policy in this area.

<sup>72</sup> Snyman-Van Deventer and De Bruin 2002 Acta Academic Supplementum 208.

<sup>73</sup> Ellerth v Burlington Industries 912 F Supp 1101 (ND Ill 1996) 1104, 1124.

<sup>74</sup> Marczely 1999 Clearing House 318.

<sup>75</sup> Franklin v Gwinnet County Public Schools 503 US 60 (1992) 1037.

<sup>76</sup> Gebser v Lago Vista Independent School District 524 US 274 (1998) 1992.

<sup>77</sup> *Ibid.*

<sup>78</sup> Michaelis 2000 BYU Educ & LJ 47-98.

<sup>79</sup> Davis v Munroe County Board of Education 74 F 3d 1186 (11th Cir 1996) 1195-1196.

<sup>80</sup> *Ibid*

## The impact of workplace sexual harassment on education

The percentage of victims who pursue legal action against their harassers' contrasts sharply with the proportion of victims who experience mental discomfort because of sexual harassment at work. Only 15% of sexual harassment victims file any kind of official complaint, and only 6% take legal action against their perpetrators, according to estimates.<sup>81</sup> The cost of the damage could be as high as 90%. Disrupted sleep, nightmares, headaches, tiredness, nausea, neck pain, back pain, gastrointestinal difficulties, lack of appetite, and weight loss are common somatic signs of sexual harassment, according to professional literature. Sexual harassment charges at work may manifest as increased absenteeism, poor work performance, and a negative work evaluation. Psychological consequences include low self-esteem, annoyance, loneliness, despair, wrath, guilt, dread, frustration, and powerlessness. Among the diagnoses offered to patients treated by psychiatrists because of workplace sexual harassment include adjustment disorders, severe depression, and anxiety disorders.<sup>82</sup> Employers and educators should be aware of such signals since they could imply sexual harassment, which necessitates immediate action. When sexual harassment occurs on campus, students have been shown to avoid certain areas of campus, change their schedules, stop attending classes or activities, or change their lifestyles to avoid being harassed.<sup>83</sup> Although sexual harassment is costly and detrimental to schools and institutions' reputations, students' emotional and intellectual well-being should come first. Sexual harassment can harm students' well-being, generate and exacerbate conflict among students, and contribute to a hostile learning environment. Although sexual harassment is costly and detrimental to schools and institutions' reputations, students' emotional and intellectual well-being should come first. Sexual harassment can harm students' well-being, generate and exacerbate conflict among students, and contribute to a hostile learning environment.<sup>84</sup> Harassment is said to have had a negative impact on students' grades and performance. It has been proven that students are more likely than their classmates to feel self-conscious, unsure about ever having a good romantic connection, humiliated, afraid, less confident, and confused about themselves because of sexual harassment.<sup>85</sup> Students who engage in this kind of behaviour may grow up to be adults who continue to harass others sexually. Students who engage in this type of behaviour may develop into adults who continue to harass others sexually.<sup>86</sup> The personal growth of nearly half of the students who reported sexual harassment was jeopardised. They were less conversational in class, and as a result, their grades fell. Surprisingly, male sexual harassment was linked to an increased risk of illness, injury, or violence, while female sexual harassment was not. The actuality of sexual harassment-related assault as an employment danger must be controlled, as prior study has revealed.<sup>87</sup> There was no evidence of a link between sexual harassment and workplace assault. According to Espekhage and Holt's 2007 study on dating violence and sexual harassment among middle and high school students in the United States, 81 percent of pupils experienced sexual harassment at some point throughout their academic careers. Six out of ten people have had it on occasion, and a quarter have experienced it daily. Physical harassment was reported by 58 percent of students, while sexual harassment was reported by 48 percent.<sup>88</sup> Adolescence

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<sup>81</sup> Jorgenson and Wahl 2000 Harv Rev Psychiatry 97.

<sup>82</sup> *Ibid.*

<sup>83</sup> Hill and Silva 2005 [www.aauw.org](http://www.aauw.org) 4.

<sup>84</sup> *Ibid.*

<sup>85</sup> Walsh, Duffy and Gallagher-Duffy 2007 Can J Behav Sci 111.

<sup>86</sup> *Ibid.*

<sup>87</sup> Rosenda, Richman and Others 2005 J Bus Psychology 107.

<sup>88</sup> *Ibid.*

brings with it a slew of problems in terms of social, emotional, and academic growth. It has been proven that pupils who experience sexual harassment in the early stages of adolescence have a harder time than those who face it later in life.<sup>89</sup> Given the findings, which show that many sexual harassment victims have been subjected to long-term patterns of harassment rather than a single incident.<sup>90</sup> Employee health should be a top priority for employers, schools, and educational institutions. Methods for avoiding accountability while keeping a secure learning and working environment. The greatest technique for dealing with sexual harassment in the workplace, according to Williams and Fadhil, is to set up good regulations. Organizations must prove and convey effective policies, procedures, interventions, and training programmes to combat the problem.<sup>91</sup> In order to successfully tackle the problem at work, changes in organisational culture must also be adopted. The most important part of a good policy would be to appropriately describe sexual harassment behaviour. Accommodate various viewpoints on what constitutes sexual harassment, managers and employees must grasp what types of behaviour constitute sexual harassment. According to Thomas, studies on the efficacy of sexual harassment policies in the UK and Canada clearly revealed that a policy based on a "consultative" approach had the greatest impact on the number of instances reported each year. Universities with "top-down" sexual harassment policies had the highest rate of sexual harassment and reported the fewest occurrences per year. Sexual harassment often goes unnoticed (83 percent).<sup>92</sup> User-friendly reporting systems must be instilled in organisations, notably schools and academic institutions. An informal network of help is insufficient to address the problem of sexual harassment in institutions. Universities have also proven that an initiative-taking approach produces far better results than a reactive approach. A consultative/network method was used by 69 percent of the 16 universities that reported more than five occurrences each year, whereas a top-down/network approach was used by just 9% of the universities. Safeguard their reputation, institutions usually disregard this recurring issue. This is especially true in education, where teachers manage instructing beginners. Even though the trait of sensitivity may be implied, it should not be a barrier to avoiding workplace sexual harassment. Sexual harassment is a complex and diverse issue that is intertwined with normal educational procedures... Because the interrelationships between sexual harassment and other issues like lesbophobia, discrimination, ageism, and classism have a substantial impact on how this behaviour is suppressed and forbidden in schools.<sup>93</sup> This problem will not be controlled unless it is addressed publicly, right regulations are established, and full-fledged programmes like HIV creativity are implemented. An astonishing solution to sexual harassment in the faculty, where everyone was aware of what was going on but no one did anything, was found in a study undertaken at five UK medical universities and published in 2007: They don't need a better way for people to report it; they need to start at the top and instil in people that this is wrong, because they've been doing it for so long that they think it's okay, and then residents see the attending acting this way and think, 'oh, that's okay.' It's a vicious cycle because no one at the top says, 'NO, you can't say that.'<sup>94</sup> A supportive school atmosphere for sexual harassment is directly related to increased sexual harassment and negative psychological, occupational, and health repercussions.<sup>95</sup> As a result, In the education sector, it is necessary to have an effective and well-documented sexual harassment policy that demands that inappropriate behaviour adhere to the Codes of

<sup>89</sup> Gruber and fine ran 2007 Violence against Women 34.

<sup>90</sup> Fitzgerald 1997 J Appl Psychol 401-402.

<sup>91</sup> Limpaphayom, Williams and Fadhil 2006 Cross Cultural Management 33.

<sup>92</sup> Thomas 2004 Brit J Soc Educe 152.

<sup>93</sup> Robinson 2000 Studies in Cultural Politics of Education 83.

<sup>94</sup> Wear, Altman and Borges 2007 Teaching and Learning in Medicine 24.

<sup>95</sup> Ormerod, Collinsworth and Perry 2008 PWQ 113-125 especially on 115.

Conduct mandated by the legislation mentioned below. Unethical behaviour by educators and pupils should be criticised, and teacher unions may be able to help in this regard.<sup>96</sup> The Department of Education should create or execute programmes to teach all education partners how to protect, support, and fulfil human rights in the classroom.<sup>97</sup> In the formulation of school regulations and codes of behaviour, it is also suggested that the following topics be addressed.<sup>98</sup>

a) Use language that plainly and absolutely prohibits sexual conduct between students and faculty members.

b) Include examples of actions and behaviours that are inappropriate.

c) Outline potential sanctions and procedural safeguards that should be in place:

I) Provide detailed instructions on how and to whom a person who has been wronged can file a complaint.

ii) Determine the time limit within which a complaint must be filed, and disciplinary action must be done.

iii) Provide information about the investigation procedure.

iv) Determine who has the authority to investigate and/or inquire.

v) Describe any appeals options that may be available.

vi) Ensure that both the blamed and the victim's confidentiality rights are protected.

a) Use language that plainly and unequivocally prohibits sexual conduct between students and faculty members.

b) It is critical to supply counselling and support to victims of sexual harassment. In view of the in loco parentis principle, even the culprit should be sent for analysis. If the ideas are implemented, school responsibility may be reduced. As a result, more time should be distributed to the education division to provide the finest possible education to all children.<sup>99</sup>

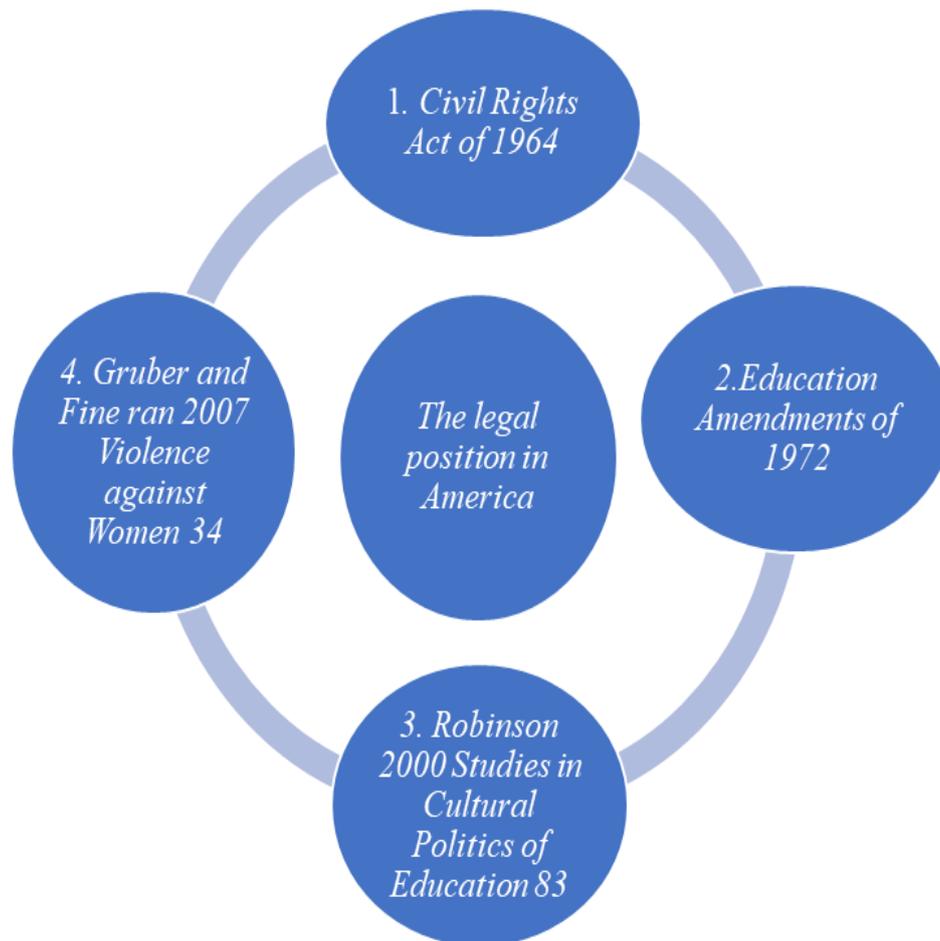
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<sup>96</sup> Prinsloo 2006 SAJE 315.

<sup>97</sup> *Ibid.*

<sup>98</sup> Russo 2001 Education and the Law 69-74.

<sup>99</sup> *Ibid.*



## RESULTS AND DISCUSSION

The graph below depicts a dramatic increase in incidents of women being beaten to offend their modesty. According to National Crime Records Bureau data, women are directly and incidentally exposed to sexual harassment in organisations and institutions due to a variety of factors, including male supremacy, inferior job positions, higher education, and fewer job opportunities, which have resulted in the destruction of their basic workplace protections. The number of instances reported under the offence head attack on women with purpose to crime her reserve was 40613 in 2010, and it has steadily climbed over the years, reaching 82235 in 2014. In 2015, there was a slight rise of 187 instances as compared to previous years. The difference between 2015 and 2014 is 0.2 percent. While investigating over the last half-decade, from 2010 to 2015, it was discovered that the increase in cases of assault to the modesty of women is worrisome, with 82422 cases recorded. Maharashtra has recorded the most such crimes (11,713 incidents), followed by Madhya Pradesh (8,049 cases) and Uttar Pradesh (7,885 cases). In comparison to the national average of 13.6, Delhi UT has the highest crime rate of beating on women with aim to outrage her diffidence instances (57.8). Out of 82,422 reported incidences of female violence, with resolved to barbarity her modesty, 24,041 reports of sexual harassment were filed (sec.354A IPC)<sup>100</sup> Total sexual harassment testimonies hoisted at 17,003 in 2020, a decrease of 1,331 incidents from 2019 and 18,334 with most individuals. Working after hours, only 485 incidents of workplace erotic harassment were recorded in the prior year, a slight decrease from the previous year's total of 505 occurrences. According to the most recent report of the National Crime Archives Bureau

<sup>100</sup> T. Bhattacharyya, "The Indian Penal Code", (6th Ed.), Central Law Agency, Allahabad, p.530, 2010.

(NCRB) on 'crime in India -2020,' a total of 66, 01,285 cognisable crimes were registered in 2020, forming 42, 54,356 Indian criminal code crimes and 23, 46,929 unique and local law's offences. Since 1953, the NCRB has been conducting the crime in India report. It increases from 385.5 in 2019 to 487.8 in 2020. In the year 2019, In Delhi, 485 occurrences of sexual harassment were reported, with just 21 cases of workplace harassment reported; however, the number was reduced to 12 in 2020. Mumbai recorded 452 incidences of persecution this year, out of a total of 454 across Maharashtra in 2013. Significantly, Surat and Coimbatore reported no occurrences of stalking in both 2019 and 2020. The aggregate incidence of crime among women in 2020 showed a significant decline of 21.1 percent in the country's main cities compared to 2019. <sup>101</sup>

## **SUGGESTIONS AND RECOMMONDATIONS**

Here are some comments and references that may aid in the prevention of sexual harassment incidents in the workplace:

1. All businesses should educate their staff about sexual harassment and supply legal advice when appropriate.
2. The competent authority shall arrange sessions, workshops, and mock exercises on the evil repetition of sexual harassment.
3. Maximum job opening, and advancement periods should be appointed for women, allowing them to avoid being emotionally tracked and to avoid future stress.
4. Internal complaints committees and protest cells should be set up in every organisational structure, whether governmental or private, to monitor sexual harassment situations.
5. Legal awareness programmes should be developed and prepared by each department in the government and commercial sectors to educate female employees about their advantages and rights.

## **CONCLUSION**

Sexual harassment in the workplace is more prevalent today than ever before. According to our findings, sexual harassment is a relatively new social crime that is spreading at an alarming rate and causing concern among businesses. The current study also finds the factors that have contributed to an abrupt spike in sexual harassment incidents in India. Dominance of men in the workplace should be challenged by giving females an extra edge for raises and other benefits, which would undoubtedly reduce the number of incidents reported each year. Another crucial factor of sexual harassment is increased educational attainment of women who are duped and offered sexual approaches by an organization's leaders. Instead of employment, it is necessary to speak quite severely. The current study examined the data of the National Crime Records Bureau, which was released by the government in 2020, and an exhaustive evaluation was conducted on the instances detailed in the report. And it is a fact that incidences of sexual harassment of women at work in India are growing daily. And there is a need to develop such a gadget that can better halt the situation and reduce the number of incidents.

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<sup>101</sup> <https://www.statista.com>