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**SEXUAL HARASSEMENT AND IT'S TREATMENT
UNDER ETHIOPIAN LAW**

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I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

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Introduction

Sexual harassment is a form of unlawful sex discrimination. Under federal law in the United States, sexual harassment is unwanted verbal or physical behavior of a sexual nature that occurs in the work place or in an educational setting under certain conditions. Such behavior is illegal if it creates an environment that is hostile or intimidating, if it interferes with a person's work or school performance, or if acceptance of the harasser's behavior is made a condition of employment or academic achievement. A number of countries including Japan, Canada, Australia and several European nations also have laws that prohibit sexual harassment.

Perceptions differ about what behaviors constitute sexual harassment. However, typical examples of sexual harassment include sexually oriented gestures, jokes, or remarks that are unwelcome, repeated and unwanted sexual advances, touching or other unwelcome bodily contact and physical intimidation. Sexual harassment can occur when one person has power over another and uses it to coerce the person to accept unwanted sexual attention. If a supervisor forces an employee to have sex by threatening to fire the employee, that is sexual harassment. It can also occur among peers for example, if coworkers repeatedly tell sexual jokes, post pornographic photos, or make unwelcome sexual innuendos to another coworker. Both men and women can be harassers or victims of sexual harassment. However, research indicates that women are more likely to be victims

Unwanted sexual attention was at the first time named by Lin Farley in 1974 in her research on women and work than on different definition and explanations were given for the question what is meant by sexual harassment. The basic definition of sexual harassment comes from the United States Equal Employment Opportunity Commission (EEOC). According to EEOC guidelines sexual harassment is "the unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct was made either explicitly or a term or condition of an individual's employment, submission to rejection of such conduct by an individual was used as the basis for employment decisions affecting such individual or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

Whereas Black's Law defines it as "a type of employment discrimination, includes sexual advances, requests for sexual favor and other verbal or physical conduct of sexual nature prohibited by federal law"

This paper, have 4 chapter each chapters deals different ideas in the first chapter, the evolution of sexual harassment as a legal concept will be dealt the definition and types of sexual harassment is seen and also the impact of sexual harassment is seen in this chapter generally this chapter deals the concept of sexual harassment in general.

In the second chapter, how an international instrument which is Ethiopia signed is dealing sexual harassment.

In the third chapter, the legal provisions relevant to sexual harassment under the Ethiopian legal system would be assessed, to see the kind and extent of protection that the law provides

The fourth chapter deals with where the problems for protection lie is it in cultural beliefs and attitudes, legislative gaps or other reasons this chapter deals this issues

The methodology uses in this research paper is that information gathered from primary and secondary sources this are literature review document reviewed includes research out puts on sexual harassment in Ethiopia and else where which is related to sexual harassment in women. Legislative and policy documents related to sexual harassment in women and girls in Ethiopia where reviewed including international instruments and also analyzing some provisions of laws some information gathered through interview.

Police officials and students counselors have been interviewed to see the extent of protection and remedies they provide for their female students finally head of public prosecutors at high court; EWLA was interviewed with this issue.

Finally, is presented the conclusion along with recommendations.

CHAPTER ONE

1. The Concept of Sexual Harassment in General

1.1 The Evolution of the Concept of Sexual Harassment

The emergence of sexual harassment as a legal concept is a recent development. The concept of sexual harassment has always existed; it did not even have a specific name until 1974.

Unwanted sexual attention was at the first time named by Lin Farley in 1974 in her research on women and work, at Cornell University. In this research Farley wrote

“In one of our consciousness raising session, my students and I determine at the outset to discipline ourselves to focus on what had happened to us on our jobs because we were women. As we each took our turn in speaking, I was amazed; the group was nearly equal division of black and white with economic background ranging from very affluent to poor. Still when we had finished, there was an unmistakable pattern to our employment.....each one of us had already quit or been fired from a job at least once because we had been made too uncomfortable by the behavior of men.....The men’s behavior eventually required a name, and sexual harassment seemed to come as close to symbolizing the problem as the language would permit.”¹

Historically, in many countries unwanted sexual advance has been actionable under tort and criminal law. For instance, unwanted sexual touching was still considered tortious and actionable under the doctrines of assault, battery, and infliction of emotional distress.²

The law of sexual harassment in its modern sense emerged in the USA through the court application of Title VII of the 1964 Civil Rights Act. These acts prohibit an employer from discriminating against any individual with respect to his compensation, terms, condition or privileges of employment on the basis of such individual’s sex- Prior to 1976 the US courts adamantly refused to apply this act to sexual harassment cases. In fact, some courts ridiculed plaintiffs who tried to litigate their cases under Title VII. For instance, in *Corne v Bausch* and

Lomb Inc, the Arizona federal District court said that,..... “It would be ludicrous to hold that the sort of activity involved here was contemplated by the Act, because to do so would mean a potential law suit every time any employee made amorous or sexually oriented advances towards another. The only sure way an employer could avoid such charges would be to have employee who are a sexual”³ In Tomkins V. public service electric and Gas co. the court stated that. “An invitation to dinner could become an invitation to a federal law suit if a once harmonious relationship turned sour at some later time.”⁴

In 1976 in Wiliams Vs saxbe ,the district court of Columbia federal court for the first time held that a retaliatory action taken by an employer against a female employee for reference refusing sexual overtures constitutes a sex discrimination, and hence actionable under Title VII.⁵ on appeal the court decided that an employer is liable for retaliatory measures taken by its supervisory personnel for refusal of sexual advances. Subsequently, in 1977 in Barnes Vs Castle. The federal court introduced the famous “but for her womanhood” clause. The court held that “but for her woman hood, the complainant’s participation in sexual activity would never have been solicited. She became the target of her supervisor’s sexual desires because she was a woman, and was asked to bow to his demands as the price for holding her job.”⁶

Until 1981, the courts entertained claims of sexual harassment only if the plaintiff can show that she has lost a tangible loss in connection to her employment (i.e., it was only the quid pro quo type of harassment that was recognized). But in Bund Vs Jackson the court held that unwelcome sexual conduct at work places amounts to a sex discrimination even if the plaintiff incurred no tangible loss. The court stated that “an employer can sexually harass a female employee” with impunity by carefully stopping short of firing her, or by not taking any other tangible actions against her in response to her resistance. The employee’s endurance of sexual intimidation becomes a condition of her employment”⁷ with this decision the court established for the first time what is now known as hostile environment harassment. In 1986 the US federal Supreme Court established that in cases of hostile environmental harassment, the employer would be liable for the acts of its employees (Whether a supervisor or co-worker), if it knew or should have known of the harassment but did not take prompt and effective remedial measures.⁸

The first legislation that gave a clear definition of sexual harassment was the 1980 US equal employment opportunity commission (EEOC) guideline. This guideline also states that sexual harassment at work places is a sex discrimination that is prohibited under Title VII.⁹ Through it was only in 1996 that the US office for the enforcement of civil right) issued a guideline declaring that sexual harassment in schools is also a sex discrimination, even prior to that the Us courts have declared that sexual harassment of female students is a sex discrimination that violates Title IX of the education Amendment of 1972.¹⁰

The concept of sexual harassment under US legal system recognized as sex discrimination is a landmark in the evolution of sexual harassment law-sexual harassment is no longer an injury only to the individual woman, but also to women as a group. It is no longer a matter of bad manners on the part of male employers, supervisors, workers teachers or students; rather it is the expression of male dominance over women. The recognition of sexual harassment as sex discrimination also establishes the nexus between sexual harassment and the harm it causes to women's employment and academic performance. It realizes that sexual harassment is a barrier to employment and education which is placed before women but not before men. In a nut shell, it condemns sexual harassment as a practice that contravenes women's right to equality. From this development it can be seen that it is the US legal system that took the initiative for the emergence of sexual harassment as a legal concept. At regional level, in 1991 the European commission adopted a recommendation on the protection of the dignity of women and men at work. Art 1 of the recommendation defines sexual harassment at work places the same as us EEOC guideline. Associated with this recommendation there is the European code of practice on the protection of the dignity of women and men at work. The code of practice recognizes that unwanted conduct of a sexual nature affects the dignity of women and men at work, and that it contravenes the principle of equal treatment for men and women. The code of practice goes beyond recognizing that sexual harassment is sex discrimination and specifies the harm it can cause to the individual victim. In Art 1 it states this sexual harassment pollutes the working environment and has a devastating effect upon the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment commonly leads to those subjected to it taking time off work due to sickness, being less efficient at work, or leaving their job to seek work elsewhere". Another region as

document that explicitly refers to sexual harassment is the 1994 inter American convention on violence against women. The convention places sexual harassment at work places and in educational institutions in the realm of violence against women; among other such as rape, sexual abuse, torture and forced prostitution.¹¹

The emergence of the concept of sexual harassment at the international level was very slow. This is in spite of the fact that the UN banned sex discrimination as far back as 1948, when it adopted the Universal Declaration of Human Rights. The 1966 conventions on civil and political rights and on economic, social and cultural rights also bind member states to guarantee rights of individuals without discrimination on the basis of sex.

In 1979 when the UN adopted the convention on the elimination of all forms of discrimination against women (CEDAW) that sex discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the purpose of impairing or nullifying the recognition, enjoyment or exercise by women ----- on a basis of equality of men and women of human rights and fundamental freedom in the political, economical, social, cultural, civil, or any other field.” In 1992 the UN adopted the general recommendation 19 of CEDAW on violence against women the following year the UN general assembly adopted the declaration on the elimination of violence against women (DEVAW) .

Further more the United Nations specialized agencies the ILO have given a special attention to sexual harassment at work places. As early as 1958, the ILO has adopted a convention on discrimination in employment. Art 1 of the convention prohibits any distinction, exclusion, or preference made on the basis of sex which has the purpose or effect of nullifying or impairing equality of opportunity or treatment in employment is a practice that exactly falls within the ambit of Art 1. Moreover the ILO committee of experts on the application of conventions and recommendations has listed several conducts that can constitute sexual harassment. The committee stated that insults, jokes, remarks about a person’s dress, physique, age and condescending or paternalistic attitude undermine dignity, unwelcome invitations or requests that are implicit or explicit, whether or not accompanied by threats, lascivious looks or other gestures associated with sexually, unnecessary physical contact such as touching caresses pinching, can all constitute sexual

harassment, if such conduct can justly be perceived as a condition of employment or if it's made the basis for employment decision affecting the victim. The ILO has issued other non binding instruments that recognize that sexual harassment at work places is a sex discriminate. ¹² Among these instruments is the 1989 special protecting measure for women and equality opportunity and treatment which categorizes sexual harassment as employment safety and health problem. ¹³

Today, the definition, sanction and the remedy for the wrong of sexual harassment as developed in the USA and also adopted by many countries such as the United Kingdom, Canada, Denmark, Germany, Ireland, Newzerland, Sweden and Australia have adopted equal opportunity laws which specifically prohibit sexual harassment in employment and education. Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Greece and Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and UK have adopted labour laws that explicitly recognize that sexual harassment is sex based discrimination in employment. In France the criminal law prohibits sexual harassment regarding it as an abuse of authority by employers and teachers. The concept of sexual harassment under Ethiopian law the criminal code of Ethiopia does not explicitly refer to the acts as sexual harassment.

To sum up the US legal system played the major role in the evolution of sexual harassment as legal concept, the contribution made by a prominent feminist legal theorists like Catharine A. Mackinnon should also be taken in to account. And also the victim of sexual harassment is speaking out against the harassment and seeks and redress has exposed the magnitude of the problem and the need for a legal mechanism against it.

1.2 Definition of Sexual Harassment

Sexual harassment is a phenomenon that is difficult to define. Since the late 1970s numerous researches have been conducted investigating the meaning, nature, causes and effects of sexual harassment. Still now there is no a single universally accepted definition of sexual harassment. A statement by Ellen f. Paul precisely explains the chaos regarding the definition of sexual harassment forwarded in different literature "sexual harassment is a notoriously ill defined and almost infinitely expandable concept including everything from rape to unwelcome neck

massaging, discomfiture upon witnessing sexual overtures directed at others, yelling at and blowing smoke in the ears of female subordinates and displays of porno graphic pictures in the work place.”¹⁴

In some cases, courts have applied the Reasonable woman standard to define sexual harassment. Reasoning that because women are more often victims of sexual violence than are men, women may be more concerned about whether mild forms of sexual harassment might be a prelude to more violent behavior. Since men are rarely victims of sexual assault, they may not perceive their behavior in the same way. Hence, the court should judge the behavior from the victim’s perspective. However, to prevalent abuse of this standard; courts have adopted “the reasonable women standard” By asking whether a reasonable woman would define the behavior as harassment. All courts are not adopter this standard.

The basic definition of sexual harassment comes from the United States Equal Employment Opportunity Commission (EEOC). International legal instruments and many literatures define sexual harassment on the basis of the definition provided by the EEOC guideline. In light of EEOC guidelines sexual harassment is:

“The unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature when

- Submission to such conduct was made either explicitly or implicitly a term or condition of an individual’s employment.
- Submission to or rejection of such conduct by an individual was used as the basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with all individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

Like same as EEOC the UN general recommendation 19 to the convention on the elimination of all forms of discrimination against women defines sexual harassment which state “sexual harassment includes such unwelcome sexually determined behavior as physical contact and

advances, sexually colored remark's showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment including recruitment or promotion, or when it creates a hostile working environment.”

The European commission's 'code of practice' defines sexual harassment as an “unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work.”¹⁵

United Kingdom sexual harassment laws emphasize that sexual harassment occurs when the victim of sexual harassment disposes with the necessary burden of proof and establishes her subjective experience by the behavior and the degree to which the behavior was unwelcome or unwanted.¹⁶

All the above definitions deal with sexual harassment in the employment context. However the definitions of sexual harassment at work places can apply to school or in schools unwanted sexual conduct is sexual harassment, when it interferes with recipient's academic or work performance. The US department of education office for civil rights defined sexual harassment as a conduct of a sexual nature that occurs when:

- “ a school employee explicitly or implicitly conditions a student's participation in an education program or activity, or bases an educational decision, on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, non-verbal, or physical conduct of a sexual nature.”
- “Unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal or physical conduct of a sexual nature by an employee, by another student or by a third party that is sufficiently severe, persistent or pervasive to limit a student's ability to participate in or benefit from an education program or activity, or to create a hostile educational environment.”

1.2.1 The Sexual Nature of the Conduct

From the above definition it can be observed that there is no limit to the type of sexually oriented conducts that can constitute sexual harassment. The behavior can be verbal, non verbal and physical. The verbal behavior includes spoken comments that have sexual nature. These are sexual jokes, sexual remarks about body, persistently asking for dates and sexual favors and teasing, non verbal e.g. leering ogling, unspecified sexual contact touching pinching, caressing and hugging are some of the behaviors categorized as physical are some of the behaviors categorized as sexual harassment.

Some writers categorize rape as sexual harassment. But the prevalent view is that rape is different from sexual harassment. In case of rape it involves the use of physically restrain the victim, while in case of sexual harassment involves the use of social prerogative as the move sex or institution as power to coerce the victim in to accepting or tolerating a sexual conduct.

1.2.2 The Unwelcome Nature of the Conduct

Every sexually oriented conduct does not constitute sexual harassment. To begin with, sexual harassment is quite different from consensual advances which are based on choices that individuals make freely. The key to whether or not a sexual conduct constitutes sexual harassment is the unwelcome or unwanted nature of the conduct. In any definition of sexual harassment emphasized that the conduct must be unwelcome by the recipient, in the sense that the recipient did not desire that the sex related conduct take place. The conduct itself may not be inherently offensive. For instance, caressing or flirting is not inherently offensive. In a consensual setting it may be welcome, even flattering. The main issue is not whether the conduct is inherently offensive; but rather whether it is welcome from a given individual. It's this nature of sexual harassment that makes it different from harassment based on race, religion...., where the harassing conduct itself is inherently offensive. In this regard, a US judge presiding over a case of sexual harassment noted, "We are not concerned with racial epithets... which serve no one's interest, but with social patterns that are to some extent normal

and expectable. It is the abuse of this practice, rather than the practice it self that arouses alarm.”¹⁷ Therefore, sexual harassment is illegal when it is unwanted, unreciprocated nature.

1.3 Forms of Sexual Harassment

Sexual harassment law has recognized two distinct types of sexual harassment quid pro quo harassment and hostile harassment. The distinction between the two types of harassment is based on the relationship between the sexual harassment and the victim’s employment or education. The distinction between the two types of harassment is discussed in detail in the following sections.

1.3.1 Quid pro quo Sexual Harassment

“Quid pro quo” is a Latin term which literally means for ‘some thing for some thing’ it basically means giving something in exchange for some thing else. This kind of sexual harassment occurs when the harasser expects some kind of sexual favors from the victim in exchange for educational or employment benefit¹⁸ it takes place when submission to or toleration of such conduct is made an either explicit or implicit term or condition of education, employment or participation in other system related activities.¹⁹

Quid pro quo harassment, whether it occurs at work places or in schools, it involves people in positions of unequal status this is because in order to threaten or to decide over the victim’s employment or academic status.

Quid pro quo harassment differs from hostile environment harassment in that it involves either threats or disadvantages implied or direct, if sexual involvement or advances are refused, or the promise of advantages as a result of involvement.²⁰

Quid pro quo harassment occurs when refusal or rejection of such sexual advances result in retaliatory actions, such as poor personal recommendation and references, poor job evaluations, unfavorable bonus rating, unachievable or impossible performance standards, unrealistic work deadlines. Demotion or downgrading, transfer to less satisfactory work, job

location, shift assignment, lack of cooperation from other male colleagues, or outright dismissal. In education, it includes giving bad grades, low results, negative reviews and recommendations, can be how position can be manipulated to silence the student.

Although such concrete losses are often a development of quid pro quo harassment, the fact remains that sexual harassment has occurred, regardless of the retaliatory action, because unwanted sexual attention has taken place.

1.3.2. Hostile Environment Harassment

Traditionally, sexual harassment was defined narrowly to refer only to quid pro quo harassment. But recently the definition of illegal sexual harassment has been broadened to include hostile environmental harassment.

Hostile environment sexual harassment is defined as an unwelcome sexual conduct unreasonably interferes with an individual's job performance or creates a hostile, intimidating or offensive work environment even though the harassment may not result in tangible or economic job consequences, that is, the person may not lose pay or a promotion. Employers, supervisors, or clients can create a hostile work environment.

This type of sexual harassment although often carried out under the pretext of fun and friendship, causes considerable distress to the victim. An objective analysis shows that such hostile acts are aimed at demeaning women and prejudicing their integrity and self-determination. As a result, the hostile act has the potential to create a hostile environment which in turn adversely affects women's achievements.

The ultimate effect of such conduct, even if unintended, is to unreasonably interfere with an individual's ability to function normally during education or employment. The purpose of the hostile act is to intimidate a woman and coerce her into a willing sexual response, or to create an atmosphere so uncomfortable or unbearable for the woman that at the least her performance is compromised, and at worst, she is forced to abandon her education or job. In this way, the unwanted act symbolizes men's power over women and perpetuates the myth of men's superiority.²¹

“Sexually harassing language or conduct that creates a hostile environment is usually offensive not only to the person to whom it’s directed, but also to witnesses. This type of harassment is particularly apparent in organizations dominated by male employees who either significantly outnumber women, or who hold superior positions that enable them to exploit the power they have over women. This makes it easier for men to create hostile environments.”²²

In the workplace, more often than not, the harasser’s position within the hierarchy of the organization influences the impact of the harassment on the victim. In many circumstances, a woman finds it harder to deal with hostility in the form of harassment from a senior position.

Within academic institutions, the very nature of student-teacher relationships makes the student to a certain extent dependent on the teacher, whose professional conduct impacts on the student’s performance. However, when professional conduct and relationships are not limited to the classroom and academic purposes, and the teacher uses his influential role to threaten the student’s academic performance by being hostile towards the student’s academic performance, then the student’s education will be seriously compromised.²³

This form of harassment may also be inflicted on a female student by male students acting or collectively, impeding the female student’s academic performances and threatening her physical security.

At work places and in schools, no woman should be subjected to a sexual conduct that she has not invited. She has a right to be respected and to be treated with respect. She has a right not to be patted, pinched, not to be “visually undressed”, or not to be commented upon or mocked about her body shape or looks. But it would be difficult for the law to interfere whenever an employee or student is subjected to a sexual conduct. Instead, sexual harassment law has set high standards requiring that the sexual conduct must have unreasonably interfered with the women’s academic or work performance or that it must have created a hostile, offensive, or abusive working or educational environment. But the most difficult question is from whose point of view the hostile or offensive nature should be evaluated. . What is offensive to one

individual may be inoffensive to another. Previously, the reasonable person standard was used to determine this issue. Accordingly, when the sexual conduct to which the woman was subjected is viewed from the perspective of “a reasonable man”, if it can be perceived as creating a hostile working or academic environment such conduct constitutes sexual harassment. But the problem with this approach is that “a reasonable man” and “a reasonable woman” are likely to differ in their judgment of what is offensive or abusive.²⁴

To sum up the most controversial issue in hostile environment harassment is how to determine whether the conduct was welcome by the recipient. With regards to this problem different countries set different standards for example the Canadian courts have decided that asexual conduct is said to be unwelcome, if the harasser knows or ought to have known that his conduct is unwelcome by the recipient. Under the Swedish sexual harassment law a female worker who has not clearly refused the sexual advances can not allege that she did not welcome the conduct.²⁵

1.4 The Impacts and Effects of Sexual Harassment

The impacts of sexual harassment divided into two forms these are long term impacts of sexual harassment and short term impacts of sexual harassment. The two forms of impacts discussed in the following section.

1.4.1 Short-term Impacts of Sexual Harassment

Under the short-term impacts of sexual harassment produces both psychological reactions, include mistrust, fear and anger, which results in feelings of insecurity and helplessness. The victim's faces unwanted and often persistent advances that she does not know how to handle. Work-related stress reactions include anxiety, tension irritation, insomnia, headaches, sleepiness, migraine, tiredness and depression, and occasional suicidal tendencies or attempts. According to the EC'S study on sexual harassment in Sweden, 4% of those had considered suicide.²⁶ physical reactions include problems with diet and weight.²⁷

1.4.2 Long- term Impacts of Sexual Harassment

“The short term impacts of sexual harassment often have cumulative effect, which can lead to long-term complications and consequences. In extreme cases, victims of sexual harassment may suffer from coronary heart disease and other serious illness. Symptoms such as muscular pains and related complications, including persistent headaches or migraines may also occur”²⁸

When victims of sexual harassment are forced to abandon their education or employment financial problems ensue, which affects not only the victim but often the well- being of their families, including their children. Even when women stay in school or their job, their ability to work is seriously impaired as sexual harassment result in decreased concentration and ability, leading to decreased productivity. In addition to being a health hazard, sexual harassment often has a ‘negative effect on long term job prospects’ and ‘contributes to the un satisfactory overall conditions women experience with in the job market’.²⁹

“When we see the vicious cycle; the negative impact of sexual harassment reinforces the stereotype of women lacking incentive and not really wanting to aspire to better jobs. Although normal reaction to stress, the reactions to sexual harassment send the negative message that women have limited potential, and thus limited prospects, and can not compete with their male colleagues, or deal with a competitive atmosphere.”³⁰

On the other hand sexual harassment has a chain effect on both the individual and the organization. Many victims indulge in future detrimental practices such as increased alcohol in take, smoking cigarette and using drugs. stressful work conditions cal lead to problems with inter personal relation ship with family, friends and co-workers.³¹ repeated sick leaves and dressed performance affects the organization’s productivity, leading to poor working conditions and possibly a high rate of turn over in personnel. Organizations should be take responsibility for monitoring their work environment and social climate, in order to discourage incident of sexual harassment from clouding the working atmosphere.³²

On a broader scale, the link between sexual harassment and organizational efficiency creates a significant impediment to a country’s development. A survey done by the US Merit System

Protection Board, showed that between May 1978 and May 1980 sexual harassment alone cost the U.S. government \$189 million dollars.³³

Finally to analyze how much sexual harassment affects the financial resources, the problem becomes more pressing in underdeveloped countries like Ethiopia, where the resource is scarce and hardly wasted because sexual harassment is tolerated within the institution.

Chapter ONE END NOTES

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28. Ibid
29. Supra,note 18,p.28
30. Supra, note14,p.29
31. Supra,note14,p21
32. Supra,note.15.p23
33. Supra ,note18 p29

CHAPTER TWO

2. International Instruments dealing with Sexual Harassment

Ethiopia has ratified the major international instrument dealing with equality and right related to women and children and made these instruments an integral part of the country's laws. The Universal Declaration of Human Right (UDHR) followed by the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), CEDAW and the African charter on Human and people's Right, Declaration on the Elimination of Violence against Women laid down the concept of equality.

On the following section I can tray to show how these instruments deal with sexual harassment.

2.1 Universal Declaration of Human Right (UDHR)

The adoption of a declaration of human rights was envisaged as the very first item on the UN agenda within the program of the International Bill of Rights. The United Nation General Assembly established the Human Right Commission (UNHRC) and formed a committee of eight members to draft the UDHR, which is concerned primarily with civil and political rights, and which was adopted by the general assembly in December 10, 1948.¹

The Universal Declaration of Human Rights was deliberately adopted under the guise of a resolution of the UN general assembly and not that of an international treaty subjected to a formal ratification of procedure in member states. There are however, debates on the status of the UDHR .proponents of the binding character of the declaration argue for its status as a customary law opponent of such a view submit that the establishment of a customary international legal rule requires the existence of general, uniform and consistent practice by states in the obligatory character of such a practice.²

Despite the fact that the UDHR is a declaration, it has made an important legal impact and has been incorporated in to many domestic constitutions. For instance the FDRE constitution contains

an elaborate and progressive norm with all the generations of rights. In addition to these rights specified in the constitution, it is stated that the fundamental rights and freedoms specified in chapter three of the constitution shall be interpreted in a manner conforming to the principles of the UDHR and international instruments adopted by Ethiopia in light of article 13(2) FDRE constitution. More over, as far as the place of these international instruments are concerned, article 9(4) international instruments ratified by Ethiopia are an integral part of the law of the land stipulated that all.

When it look's to the content of the UDHR starting from the preamble ,which prvides the declaration's purpose ,motive and philosophy, and also the declaration has 30 articles which focus human rights and the inherent dignity and equality of all people. Article 2 of the UDHR provides that “every one is entitled to all the rights and freedoms set forth in this declaration with out distinction of any kind such us sex, race and color” but when we come to the reality half of the world's population is women and women have been discriminated against for centuries on the basis of their sex denied the right to be treated as human beings. Discrimination against women includes sexual harassment, which occurs in the work place, at home and also in educational institutions, streets and elsewhere.

When we looks to the other side article 23 of the UDHR stated that “every one has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. Every one, with out any discrimination, has the right to just and favorable remuneration, ensuring for him self and his family an existence worthy of human dignity and supplemented, if necessary, by other, means of social protection.” The factual situation is that not only women un employed and often suffer from unjust and unfavorable working conditions, as do men, but they are also frequently forced to submit to the sexual demands from their superiors in order to receive employment ,promotion, and salary increases. Such treatment is a form of gender based violence.

Article 26 of the UDHR states that, “education shall be free and every one has the right to education.” However, the research conducted by EWLA (Ethiopian Women's Lawyers Association) shows that in educational institutions, especially secondary school and higher

educational institutions, many female students suffer from the psychological and physical consequences of widespread sexual harassment, which severely affects their academic performance. The perpetrators are predominantly teachers, though sometimes are male students.

2.2 International Covenant on Civil, Political, Social (Economic and Cultural) Rights

The source of Social, Economic and Cultural Rights in international law can be found in numerous declarations and UDHR contains the whole range of human rights with in one consolidated text. The subsequent division of human rights into two main categories resulted from a controversial decision that two main separated, one on Civil and Political Rights and the other on Economic, Social and Cultural Rights several assumption not all of them well founded. It was argued and subsequently often repeated that the two sets of rights where has a different nature and considered to be absolute and immediate where assumption was that Civil and Political Rights where justifiable in the sense that they could easily be applied Social, Economic and Cultural Rights were as political nature .It was further believed that Civil and Political Rights were 'free' in the sense that they did not cost much. Their main contents were assumed to be obligation of states not to interfere with the integrity and freedom of the individual. The implementation of Economic, Social and Cultural Rights in contrast was held to be costly since they were understood to be as obliging the state to provide welfare to the individual. Thus, the arguments centered around the issue of the differences in states obligations arising from two sets of rights for this reason, it was expected that states who did not want to undertake the obligations arising from the Economic Social and Cultural Rights would be willing to ratify an instruments which contained only Civil and Political Rights.³

Obligation taken by the states and consequently by the international community, under human rights instruments shall be implemented in good faith. This standard applies to all parts of the contemporary human rights system. However, many obstacles must be over come in fulfilling this standard, including that of the relative neglect in clarifying the content of these rights and there corresponding obligations.⁴

Internationally recognized human rights are those include in the international bill of human rights or those elaborated on in subsequent instruments adopted by the UN general assembly. The rights contained in these instruments from a wide ranging interrelated, normative system.

To sum up the International Convention on Civil and Political Rights (ICCPR), which has a binding effect (force) on those states, which ratify it. The ICCPR clearly stipulates the fundamental human rights such as the right to dignity and the right to liberty and security of person. The right to equal access to education, work, and trainings are also clearly stipulated under the international convention on economic social and cultural rights (ICESCR). But when we looks in relation to sexual harassment it is against women dignity and also the reality shows that women are discriminating in there work place and in educational institution by there boss and teachers and by there class mates because of there sex and suffer many problems. The equality clause of the ICCPR and ICESCR also explicitly condemn discrimination based on sex.

2.3 Convention on the Elimination of all forms of Discrimination against Women (CEDWA)

Women have had to fight for their recognition as full human beings and for the granting of their basic human rights for a long time, and unfortunately the fight is not yet. Although their situation has improved in many ways globally, societal structures and prejudices still hinder the full and immediate implementation of human rights of women in the world over. The 20th century has brought many improvements but also many set backs, and even in times of peace and progress women and their human rights, were not given special attention. Nevertheless in all periods in history heroines can be found who fought for their rights, with arms or with words. Eleanor Roosevelt, for example insisted that “all human beings are equal” should be used instead of “all men are brothers” in article 1 of the Universal Declaration of Human Rights clearly stipulated that human right belong to every human being, no matter whether female or male and introduced equality as one of the fundamental human rights principle.⁵

The principle of equality as formally expressed in law, with out differentiation between women and men, often implies hidden discrimination against women. Due to the different positions and roles that women and men have in society, often de jure equality results to promote the differentiation between formal notions of equality. In many contexts formal notion of equality based on assumption of equality of all human beings have not helped people in disadvantage

situations. The notion has to account plurality, difference, advantage and discrimination. As Daririan Shanti emphasizes in her article equality and the structure of discrimination, “Neutrality does not allow for sensitivity to disadvantages that may prevent some people from benefiting from equal treatment. Hence, the focus must move to an emphasis on equal outcomes or equal benefits” equality between women and men can only be achieved if both formal and substantive equality are fully realized.⁶

The convention of the Elimination of Discrimination against Women also called the women’s convention consolidated all the gender related laws scattered in various UN instrument CEDWA adopted and opened for signature, ratification and access by general assembly resolution 34/180 of 18 December, 1979. It was entering into force in 1981 and ratified by Ethiopia the same year. CEDWA defines the broad range of issues that constitute discrimination against women and identifies steps that need to be taken at the national level to end discrimination. The convention highlights human rights of women and commits states to incorporate the principles of equality of men and women in their legal system as well as in the economic, political, and social and cultural spheres. It is the only human rights treaty that affirms the reproductive rights of women.

Article one of the convention of All forms of Discrimination Against Women (CEDWA) begins by defining the term discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying; the recognition or enjoyment or exercise by women, irrespective of their marital status, on a basis of men and women, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field.”⁷

Article 2 of CEDAW provides that states parties condemn discrimination against women in all forms; agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women; to embody their principle of equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated there in; and to ensure, through law and other appropriate means, to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.⁸

The comprehensive convention calls for equal rights for women, culture and civil sectors it also calls for national legislation to ban discrimination against women, recommends temporary special measures to speed equality between men and women, and advocates for action to modify social and cultural patterns that perpetuates discrimination.⁹

The CEDAW also provides that women have equal rights in political and public life; equal access to education and the same choice of curricular for men and women non discrimination in employment and payment, equal guarantees of job security. The article further calls on states to establish legal protection of the right of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.¹⁰

Article 11 of the convention states that states shall take all appropriate measures to eliminate discrimination against women in the field of employment considering for instance, the right to work as an inalienable right of all human beings; the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment, the right to freedom of choice of profession and employment; the right to receive vocational training, including recurrent training; the right to equal remuneration, including benefits; and the right to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the equality of work.¹¹

Despite CEDAW having been agreed to, women's rights continue to be violated and women continue to be victimized by sexual harassment. Discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the women's participation on equal terms with men in their countries political, social, economic and cultural life.; Hampers the growth both the family's and society's prosperity and makes it more difficult for women to fully develop their potential in the service of their countries and humanity .¹²

2.4 Declaration on the elimination of violence against women (DEVAW)

Violence against women creates an obstacle to achievement of equality development and peace. Violence against women abridges, impairs or nullifies women's enjoyment of human right and

fundamental freedoms it is also a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination. Violence against women is one the crucial social mechanisms by which women are forced in to subordinate position as compared to men.¹³

The UN instrument on the Elimination of all forms of Violence against Women (DEVAW) adopted in 1993, is a very important document among other things, for define violence against women (VAW) in a very compressive way.

Article 1 of a declaration on the Elimination of Violence against Women (DEVAW) states that violence against women means “any act of gender based violence that results in or likely to result in physical ,sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.”

According to article 2 of DEVAW, violence against women shall also be understood to encompass physical, sexual and psychological violence occurring with in the general community, including rape, sexual abuse, sexual harassment and intimidation at work educational institutions and else where, trafficking women, and forced prostitution. Article 3 adds that women are entitled to the equal enjoyment and protection of all human rights include the right to equality, the right to equal protection under the law, the right to be free from all forms of discrimination, and the right to just and favorable conditions of work.

Through all these declarations, women still do not have equal right, women's are still discriminated against just because of their sex in the work place and educational institutions on the street thus, all appropriate measures must be adopted, especial patterns of conduct, and to eliminate prejudices, customary and all other practices based on the idea of inferiority or superiority of either of sex.

2.5 The African Charter on Human and People's Rights

In 1963 at the summit conference of the head of states and governments in Addis Abeba, the charter of the organization of African unity was adopted. Its article 2 states that some of the goals of the organization of all forms of colonialism from Africa and the promotion of international cooperation “having due regard to the charter of the United Nations and the Universal Declaration of Human Rights.”

African governments were soon invited to study the possibility of adopting an African convention on human right in order to give full effect to the universal declaration. It was the beginning of a long process, while ended in 1981 with the adoption of the African Charter on Human and People’s Right and came in to force in 1986. All African countries having ratified it.¹⁴

This charter grants the same protection to civil and political rights as found in other regional and international instruments. Under article 2 of the ACHPR, provided that the equality of women with that of men is clearly guaranteed under the non-discrimination clause. The African charter on human and people’s rights is the leading human rights instruments at the regional level. It is equality clause, like any other international human rights instruments, explicitly condemns discrimination based on sex. Hence, sexual harassment which is one form of discrimination in particular in education and employment is condemned under the ACHPR.

Indeed, Ethiopia is a party to many international and regional human right instruments. She has also incorporated many of these regional and international standards in to her domestic law. As far as recognition of these concerned, the Ethiopian constitution known for its liberal approach to rights and wide range of individual, group and solidarity rights being incorporated in the 1994 FDRE constitution. It remains to be seen how far these rights are implemented this is the main Problem the government should be check the implementations of these instruments.

CHAPTER TWO END NOTES

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7. Article1, Convention on the Elimination of all forms of Discrimination against Woman (CEDAW)
8. Ibid, article 2
9. Ibid
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14. Supra, note 3, P.111

CHAPTER THREE

3. Sexual Harassment under Ethiopian Law

Different countries have opted to incorporate provisions against sexual harassment in different contexts under different sections of their laws. Now a day's, there are thirty-six countries that have a specific legislation on sexual harassment.¹ But in some countries including Ethiopia, the issue of sexual harassment does not exist as a specific legal concept. Rather the claims of sexual harassment are brought under other areas of law which is a general legislation which prohibiting sex discrimination; those are criminal law, labour law, the law of torts, and also the FDRE constitution. All this laws are some how relevant but not sufficient to protect the victims of sexual harassment.

In this section I will try to show how sexual harassment is treated under these laws and whether it is enough to protect the victims or not.

3.1 Under the FDRE Constitution

The federal constitution of 1995 has done away with discriminatory laws and practices. The constitution guarantees all Ethiopians equality before the law and specifically guarantees women's equal rights with men. It addresses gender issues in many parts starting from the preamble paragraph 2 provides for full respect of individuals and peoples freedoms with out any sexual, religious or cultural discrimination.² and also paragraph 4 of the preamble states the need to rectify historically unjust relationships.³

Article 35 of the constitution recognizes the equal right of women and men. Several sub provisions specifying the type of rights to which women are entitled. Article 35(3) allows affirmative action to rectify past discrimination against women. Article 35(4) States that the rights of women to eliminate the influences of harmful customs.⁴ Cultural rights are again dealt with in article 91. Article 91 stipulates the duty of government to support the growth and enrichment of cultures and traditions on the basis of equality. It further specifies that it is those cultures and traditions that are compatible with fundamental right, human dignity, democratic norms and ideas.

All international arguments ratified by Ethiopia are integral part of the law of the land, and thus all international provisions given to women that ensure equality, also form part of the constitution.

The first among these international instruments is the Universal Declaration of Human Rights [UDHR] article 1 of UDHR states that “all human beings are born free and equal in dignity and rights” and also the preamble of the covenant on civil and political rights [ICCPR] and of the covenant on economic social and cultural rights [ICESCR] states that “the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” similarly the same principle is provided under Article 24[1] of the FDRE constitution , which states that “every one has the right to respect for his human dignity”

The FDRE constitution, UDHR, and ICCPR, all of them recognize that women are equal with men with regards to the issue of sexual harassment. Women are treated as a plaything created for men's amusement. Sexual harassment rips of woman's human dignity. It violates the constitution and also it is against the rules of non discrimination which are provided in constitution and in the international agreements which are ratified by Ethiopia.

All international instruments which Ethiopia adopted are prohibiting sex discrimination in the enjoyment of human rights. The convention on the elimination of all forms of discrimination against women specifically prohibits discrimination against women. The same, article35 (1) of the FDRE constitution provides that “women shall, in the enjoyment of right and protections provided for by this constitution have equal right with men.” But sexual harassment discriminates against women by depriving them of there right of equality. There is no any doubt that sexual harassment is against the FDRE constitution and international instruments.

Ethiopia has ratified international conventions that ensure non discrimination in employment opportunities and equal payment for work of equal value. ILO convention 111 promotes equality of opportunity in employment. Article1 of the convention provides that there shall be equal opportunity payment and that all forms of discrimination on the basis of sex which deny or restrict such equality are unacceptable and must be eliminated in the same manner. The FDRE constitution article 35(8) specifies that women shall have a right to equality in employment, promotion, and

pay. But when we come to the case of sexual harassment it contradicts on these legal prohibitions reality shows that women are not equally treated they were discriminated because of their sex.

UDHR recognizes that every person has a right to education. Similarly article 41 of the FDRE constitution generally states that every one has the right of access to education. But sexual harassment denies female students their right to participate in educational programs. The main reason is that male teachers and male students; administration staff, who impose their sexual demands on female students. These effects deny them equal treated education a research conducted by Ethiopian women lawyer's association shows that many female students miss class frequently, they can not use libraries and other facilities which they need and even some students withdraw from the school because of the hostile and abusive environment that sexual harassment creates.⁵

To sum up sexual harassment is against human dignity and equality, and contravenes the FDRE constitution. We can understand from the above section that the constitution and international instruments which Ethiopia ratified prohibit sexual harassment. But the main problem is that the constitution is a general law which needs specific laws to implement it. If our judiciary body is strong and willing to stand women's right the constitution is somehow protect the victims.

Ethiopia is a state party to the CEDAW. Article 24(1) of the convention provides that state parties should take legal measures, including penal sanctions, civil remedies and compensatory provision against sexual harassment in light of the declaration. As state party Ethiopia should be adopting a specific legislation on sexual harassment and would be fulfilling its obligation.

3.2 Under the Criminal law

As we may know every country has a set of laws called criminal law, which serves to control the behavior of individual citizens that is considered to disrupt the peaceful life of the public at large we all prefer to live as we want without any restriction whatsoever. But since human beings live in a society, the action or omission of a certain individual should not be detrimental to others. Therefore, the criminal law tries to keep this peaceful co-existence of persons with each other, by making such detrimental acts or omissions an offence and punishable.

The acts of sexual harassment constitute a crime. But the term “sexual harassment” does not appear anywhere in the Ethiopian penal code also the revised criminal code does not include the act of sexual harassment as a crime despite of the fact the act of sexual harassment is one kind of crime. In this section deal on possible articles from the FDRE criminal code to find out if, in any way, the context of sexual harassment is treated and whether it is enough to protect victims or not.

The FDRE criminal code article 625 somehow address part of the issue of sexual harassment than any other provisions it states that “whoever, apart from the cases specified in the preceding article, procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or of the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master, employer, or by virtue of any other like relationships, is punishable, up on complaint, with simple imprisonment.” This provision deals with both quid pro quo and hostile environment which is committed by employers, supervisors, teachers or any other person having institutional authority over the victim. Most of the time victims of sexual harassment are female. In fact men are also affected, but the majority of the victims are women’s and also our criminal code recognizes that women are victims of sexual harassment.

Under article 625 there is no any limitation to the type of conduct that constitutes a sexual offense. It can range from sexual intercourse to any indecent act that was procured by taking advantage of women’s material distress or dependence. The law is silent as to whose perspective are a “indecent act.” Should determine. Under Ethiopian legal system in cases other than sexual harassment, when issues of standard arise our courts resort to the reasonable person standard. But the reasonable women standard is not known in case of sexual harassment if courts use the reasonable person standard article 625 can be invoked in limited circumstances. Because men and women have a different perception of asexual conduct that means if one sexual conduct is indecent to women may not be indecent for men a reasonable person standard is difficult to use in case of sexual harassment.

In case of quid pro quo type of sexual harassment sexual compliance is exchanged or proposed to be exchanged for employment or academic benefit; article 625 deals these two circumstances. The one is where the harasser has proposed to exchange employment or academic benefit for sexual favors, and procured the sexual benefit. The other is whether the harasser has proposed to exchange employment or academic benefit for sexual favor, but did not procure the sexual benefit. The second situation, the harasser has made the proposition but the women did not comply with his proposition. Article 625 explicitly covers the situation where the harasser has succeeded in procuring the sexual benefit. But where the sexual benefit has not been procured, it is attempt to commit the crime specified under article 625, which covers the situation.

The act done to exchange sexual benefit for employment or academic benefit amounts attempt to commit the crime which is specified in article 625. In light of article 27(1) of the FDRE criminal code, whoever “intentionally begins to commit a crime and does not pursue or is unable to pursue his criminal activity to its end, or who pursues his criminal activity to its end with out achieving the result necessary for the completion of the crime shall be guilty of an attempt.”

Hence, an employer, teacher or a person who can have institutional power over a woman who threatened to or offered to exchange sexual benefit for employment or academic benefit, but who was unable to procure the sexual benefit for is guilty of an attempt to commit the offence in light of article 625.

Both sexual offer and sexual thereat are prohibited under article 625. This means that whether a women complies to a sexual coercion in order to get employment or academic benefit that she disservice on merit basis; or to get employment or academic benefit that she does not actually deserve, she can still avail her self of 625. That the sexual conduct must have been based on a consensual relation ship can be inferred from the phrase “by taking advantage of her material distress” and “the authority he exercises over her” It must be that the women would not have complied had it not been for the authority the harasser exercises over her.

Article 625 also applies to hostile environmental harassment which is committed by employers, supervisors, teachers or other persons exercising similar authority over female employees or students. In hostile environmental harassment no employment or academic benefit is offered or

threatened to be denied. But the woman is subjected to severe or persistent unwanted sexual advances. Employers, teachers or any other person having power over the employment or education of a woman can, by taking advantage of his position, impose on her unsolicited sexual advances. The women can be coerced in to tolerance because of the authority he exercises over her, even though she is not explicitly offered or threatened with the loss of any employment or academic benefit. Sexual intercourse or any other indecent act which is made a condition of a women's employment or education is asexual offence under article 625.

Article 625 can be criticized on the following points. First, the law gives due emphasis to sexual harassment that is centered on the issue of power as a means of control. Under this provision where can a case of girl that is sexually harassed by her classmates or school mate's fall? This provision does not say any thing. Secondly how can sexual jokes or sexual comments and other similar patronizing act be treated and also we need to know how far we can stretch up the term "indecent act"

Thirdly, the law punishes such act only if the victim reports the matter. But social beliefs and attitudes in Ethiopia, discourage women from bringing out in the open issues like sexual harassment and also the law fails to incorporate other forms of sexual harassment as it limits it self to sexual intercourse and indecent act and gives more emphasis on sexual harassment resulted from power relations. Further more, institutional responsibility and liability is in no ways touched by this provision.

Article 407 of the FDRE criminal code states that "any public servant who with intent to obtain for himself or to procure for another an undue advantage or to injure the right or interest of another by misuses his official position or the power proper to his office, whether by a positive act or by a culpable omission or exceeds the power which he is officially invested is punishable according to the circumstances of the cases with simple imprisonment not exceeding ten years and fine" in light of this provision if a manager is harassing his secretary by using his power he is punishable. The same as to teachers and supervisors and also 402(4)(f) "advantage" means any other advantage or service other than which is not assessable in terms of money .that means under this provision any advantage which is not assessable in terms of money is included. Though any person harassing a

women by using his power to get advantage because of her sex is punishable in light of article 402(4) (f).

In many legal systems displaying pornography or graffiti at work place or in school is deemed to amount to hostile environmental harassment. When these things are unwelcome by employees and students. Pornographic pictures have sexual connotation and usually depict women as sex objects that are available for men's sexual satisfaction. Displaying such materials at work places or in schools causes women to feel intimidated work places or in schools causes and schools materials. This is recognized in article 640 of FDRE criminal code. In light of article 640(1) (a), any person who "displays in public images, posters, films or other objects which are obscene or grossly indecent.....is punishable with simple imprisonment or fine" as every body knows schools and work places is a public place these places is not a single person's office not a private place employees go to their office to do their job the same as students go to an instructor's office for consultation also for other educational matters though female student and employees should not be intimidated by pictures that have sexual nature in light of art 609[1] displaying obscene materials at work places or in school is punishable according to this provision.

To sum up the above provisions is some how deals sexual harassment if it is interpreted broadly. In fact our criminal code is not include sexual harassment as a crime but some act which is constituting sexual harassment is criminalized under our criminal code but they where not enough to protect the victims.

3.3. Under Tort Law

The law of extra contractual liability has a very clear goal it is about risk sharing and also it is about allocation of burdens in case of liability for fault the person who was at fault takes the burden. In many countries before the evolution of sexual harassment as a legal concept, it was tort law that provides remedies to women for unwanted sexual advances. Tort law is still invoked in a suit of sexual harassment, even in those countries that have sexual harassment law.

Under Ethiopian extra contractual liability law there are some provisions which are relevant to sexual harassment. In the following section, evaluate these provisions.

Under article 2038(1) provides that “a person commits an offence where he intentionally makes contact with the person of another against the latter’s will” in light of this provision unjustifiable physical conduct is made a civil wrong. This means, kissing a woman with out her consent, putting hands up on a female with a view to violate her or intentional touching of a woman by a man with out excuse or justification has been considered physical assault. But to proving this assault requires disproving the exceptional justifications which is provided under article 2039 sub article ‘a’ up to ‘e’. These justifications which are listed ‘a’ up to ‘e’ are phrased so broadly an act that falls under physical assault is any thing that can not be justified in the eye of a reasonable person in light of article 2039(e). The law does not clearly provide who a reasonable person is whether it is a reasonable man or woman to see this matter.

In case of material damage if a woman is repeatedly subjected to repulsive physical harassment it can cause stress and stress related to illness. For example headache if she incurs material damage due to medical expenses material damage would be due under article 2090(1). In light of article 2090 compensation should be equal to damage. However, for moral damage can not be measured. Therefore, the compensation can be fixed only equitable. In other words the judge uses his sense of fairness and conscience to determine the amount.

In case of moral injury which is compensated under article 2107. In light of this provision where a man has forced an unpleasant or repulsive contact on the women’s person, the court may order him to pay fair compensation. No matter how grave the damage may be the maximum amount of compensation is 1000 Ethiopian birr in light of article 2116(3).

Article 2129 provides that “Bodies corporate shall be liable under the law where one of their representatives, agents or paid workers incurs a liability in the discharge of his duty.” This provision shows that employers have been clearly excluded from being vicariously liable for sexual harassment committed by their employees. According to 2129 and 2130 employers are liable for the tort committed by their employees, only if the employees incurred the liability in the discharge of his duties only if he committed the offense for the purpose of carrying out his duties. Neither does a school teacher or school administrative staff harass a female student for the purpose of carrying out his duties. No one can do this for the purpose of carrying out his duty. This

provision clearly shows that under our law employers are not vicariously liable, liability based on this ground has been completely excluded to ended employers whether natural person, corporate bodies or schools can escape liability for sexual harassment committed by their supervisors, managers, teachers or school administrative staff in light of above provision.

3.4 Under Labour Law

When one says “labour law”, one means the law regulating labour relations. A labour regulation implies the relation ship between a private employer and employees. It is concerned with labour or work which is done in a position of subordination that means control when an employee works under the command, authority and of an employer.⁶ now a day's different countries have incorporated in their labour laws, provisions explicitly prohibiting sexual harassment at work. In other countries, labour law provisions framed in terms of employers, obligation to “show respect for priority and decency during the employment relationship.”⁷ were deemed to protect workers from sexual harassment. In Italy the employer's obligation to protect the moral and physical integrity of the worker is interpreted to include the employer's duty to protect his workers from sexual harsemnt.⁸

If constructed broadly, labour proclamation No 377/2003 provides protection to female workers from the harm of sexual harassment. The purpose of this proclamation is enabling workers and employers maintain industrial peace and work in cooperation towards the all round development of Ethiopia. It also has as its objective the creation of a harmonious work environment. Sexual harassment pollutes the work environment. It affects the woman's performance on her work and both the quantity and the quantity of work may suffer as well as the employee's moral attendance and ability to work with others .A victim of sexual harassment loses self esteem and confidence in her abilities, because she realizes that it is not her efficiency that keeps her at her job, that entitles her to a promotion or pay raise, but rather her sexual performance. All these things affect her work performance and also the harassment can harm the victim's psychological and physical well being. If the employer doesn't give attention to sexual harassment committed by their male supervisors, managers and other workers, this lead to lower productivity. The organization can lose valued employees just because of sexual harassment. In general sexual harassment can create a work environment which discourages workers from being efficient and from working in cooperation.

Under article 14 (1) (f) of labour proclamation provides that “discrimination between workers on the basis of nationality sex, religion; political out look or and other condition is unlawful” This means that if the employer discriminates between workers on the basis of sex is unlawful activity. And also art 87 (1) states that “ women shall not be discriminated against as regards employment and payment, on the basis of their sex.” When an employer uses sex as criteria for employment decision or for imposing employment conditions, in effect he is discriminating between workers. For example if one woman (employee) rejects her employer sexual a advances and the employer makes his sexual advances a condition of her employment, he is subjecting her to an unfavorable treatment

In light of article 26 (1) a contract of employment may only be terminated where there are grounds connected with the worker's conduct or with objective circumstances arising out of his ability to do his work or the organizational or operational requirements of the undertaking. According to Article 26(2) (c), it is unlawful for an employer to terminate a contract of employment because of the worker's submission of grievance or his participation in any proceeding against him. Denial of employment benefit because a woman rejected sexual advances or because she submitted a compliant of sexual harassment is a measure against her because she exercised her legal right to say no or seek legal protection. If an employer terminates a woman's employment because she submitted grievance against him, he is obliged to re-instate the worker. If she is not willing to be reinstated, she is entitled to payment of compensation as provided under Article 43(4) in addition to severance payment. On the other hand termination of contract of employment with out notice occurs when an employer makes the employee's working condition to become so intolerable that a reasonable person would feel compelled to leave that employment. In case of hostile environment harassment an employer can subject a woman to persistent or severe, unreciprocated sexual advances without taking any adverse measure against her employment. Because of this the working environment can become so intolerable that the victim may be compelled to resign. In most cases the only way that women can escape sexual harassment is by resigning. This is because the harasser, as the employer. As a result the woman has no choice but to resign just to avoid the sexual harassment.

Under proclamation No 377/2003 termination of contract of employment with out notice provides under Art 32(1) (a) that the employee has the right to unilaterally terminate his contract of employment with out notice if the employer has committed against her any act contrary to her human dignity and morals or other acts punishable under the penal code. An employee who terminates her contract of employment of compensation that amounts to thirty times her daily wages of the last week of service (Art 41). This compensation is in addition to severance pay. Sexual harassment by employers is a practice envisaged under Art 32(1) (a) sexual harassment is an attack on women's dignity and morals. It is also an act punishable under Art 625 of the FDRE criminal code. Hence a woman who has been subjected to sexual harassment by her employer can avail her self of Art 32 (1) (a) cumulative Art 41. In light of Art 33 the women's right to terminate her contract of employment "shall lapse after fifteen working days from the date on which the act occurred or ceased to exist."

To sum up from the above section it can be observed that the constitution is clearly provides that all Ethiopians equality before the law and the constitution specifically guarantees women's equal right with men. But the problem is the constitution is general law which needs specific legislation to implement it. With regards to criminal law as we know our criminal law doesn't specifically provide the act of sexual harassment constitute a crime and also schools and employers can not be held vicariously liable and some provisions that seen some how provides the context of sexual harassment if it is interpreted broadly. Under the tort law employers are not vicariously liable. Liability based on this is completely excluded. And also the labour law can be used to protect women workers from sexual harassment, if it is interpreted broadly.

CHAPTER THREE END NOTES

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CHAPTER FOUR

4. Where do the problems for protection lie

4.1. In cultural beliefs and attitudes

Cultural beliefs and attitudes perpetuate sexual harassment by portraying it as natural, harmless and trivial phenomena. Worst of all, it is our culture that keeps sexual harassment under wraps by effectively restraining women from bringing it out in the open. The general effect of culture is that, sexual harassment is not recognized as a problem, and thus the need for prevention and protection is neglected.

In Ethiopia, still now days male are dominant and also there is a prevalent belief that, when a woman says “No” she means “Yes” or that she is just playing hard to get. This is the same as saying that there are no such things as sexual harassment as women do not really mean it when they say “No” but it is always best to assume that a woman means what she says. In fact, men generally believe that women take sexual attention as a certificate of their worth, and thus women love sexual attention. This kind of attitude makes it normal for men to take sexual liberties with woman.

There are lots of sayings in Ethiopia that intend to give females lower status. Such sayings go beyond that and some times try to make the women accept whatever a man does as reasonable if not correct. This inherent inception to male superiority has made woman to accept sexual harassment and even adulterous acts as tolerable yet talking about which, is strictly forbidden.

Even though there is a lack of due attention to some acts of men such as sexual harassment until recent times, it is weird for an Ethiopian girl to talk about such incidents even to their closest family members because of cultural beliefs and attitudes.

There is also a general attitude that woman who dress provocatively can not claim that they did not welcome the sexual advance. It is believed that they dress like that to solicit men’s sexual

attention. Hence, such women can not claim that they were sexually harassed. This kind of attitude effectively restrains women from complaining about sexual harassment. They think by putting on make up or by dressing attractively they had invited harassment.

Cultural belief has also socialized women to accept men's sexual advances as part of men's nature. This has made them think that mild but persistent form of sexual harassment is part of their every day life, which has to be tolerated in order to get along at work or in schools. Many women believe that, if men whistle to them, pat or pinch them or call them sexual names, it is because that is the way men are. Thus, women feel that to complain about sexual harassment is to make a big deal out of nothing, even though it has made life difficult for them.

Sexual harassment is so embedded within Ethiopian culture that at the very base of society it contributes to how cultural identity is formed, and at higher levels, determines gender related economic opportunities. Distorted gender conditioning leads to unbalanced gender roles, which in turn creates unbalanced economic opportunities. It also leads to gender based self perceptions, which directly and indirectly affect women's participation in the public area and the country's overall development.

Sexual harassment is trivialized. Many men who harass women say that it was just a joke. They say that they were just having fun and that it is not their fault if women do not have a sense of humor. But the point is that men are having fun at the expense of women. How can women find it funny to be sexually patted or pinched or touched against their will? It is a very difficult thing.

The above kind of cultural attitudes and beliefs normalize sexual harassment. To protect women from the harm of sexual harassment society can avoid bad cultural beliefs and attitudes.

4.2. Legislative gaps

Under our laws there is inavailability of a compressive legal protection for all forms of sexual harassment. To begin with, Ethiopia does not have a sexual harassment law. This means that sexual harassment is not defined, nor scope delimited. The few relevant legal provisions which are found scattered here and there, do not provide adequate remedies on this issue I have interviewed Tobiya Mekonen, head of public prosecutor at ledeta high court said that “our criminal code doesn't specifically provide sexual harassment as crime just like marital rape but when we look other countries such acts are crime and punishable. With regard to cases there is no any case brought the court because our criminal code doesn't specifically put this act as crime because of this the police can not brought this case to the prosecutors the problem for protection is lie under the law the law doesn't say anything about sexual harassment there is legislative gaps.”¹

For instance, our penal code does not define sexual harassment as a crime. The relevant provision that criminalizes acts constituting sexual harassment, with out referring to the acts as sexual harassment, that means Article 625, states that proceeding is to be instituted up on complaint by the victim. As such charges brought under this article can be with drawn at any time by the victim. This can be effectively used by the harasser to prevent proceedings from being instituted. University and high school students who have made complaints do not go ahead with it. The main cause is the harasser's friends and family would beg the girl to drop her complaint. They would remind her that if she goes ahead with the complaint he would have to drop out of school and that she might be taking his future away from him. The fact that he has interfered with the victim's education and with her future is not taken in to account. It may also be the case that the harasser or his friends have complaint. She would be physically attacked. The police say that their main problem is that the girls usually with draw the charge alleging that they have made up with the harasser and that they do not want to go ahead with the charge. The police say that even though they know that she has not made up with the harasser, they can not stop her from with drawing her complaint.

However, charges brought under criminal law have to be proved beyond a shadow of doubt. The fundamental principle of criminal law is that the accused is presumed to be innocent until proved

guilty. However, it is difficult to prove allegations of sexual harassment, even in civil proceedings which require only preponderance of evidence, let alone in criminal proceedings. The main reason is that sexual harassment occurs in the absence of eye witnesses that means sexual activities carried out 'in private' means more than while alone. Many crimes are committed in the absence of non participant eye witnesses. This is way in many countries sexual harassment cases are instituted as civil proceedings. The usual evidence is witnesses who do not know what happened in the harasser's office, but who have noticed that usually when the women comes out of his office her hair is disarranged, that she looked upset or that she was crying.

Another legislative gap is under the Ethiopian law of extra contractual liability. The tort law deals with only one form of sexual harassment that means only physical form of sexual harassment. Like usual and verbal harassment do not constitute tort. Hence the avenue for instituting a tort action for sexual harassment is very narrow.

For sexual harassment cases to be litigated under the constitution and labor law, we need judges who are conscious of women's right particularly sex discrimination law. If judges recognize sexual harassment as sex discrimination (as they are obliged to by the CEDAW), then there would be a strong protection for women. But the application of the law to cases of violence against women as it is today is very discouraging.

4.3. Other Institutions

4.3.1. Under organizations

As the basic part of life, every body has to work and earn income. Financial independence is most crucial to women since it is one of the basic limestone's to ensure equality. Despite this, women are even more harassed and made to lose the test of work after they found employment. To asses the spread of sexual harassment the Ethiopian women lawyers association do some researches in such places the researchers have interviewed 250 female employees from 25 organizations. The interview includes a number of organizations from the basic section like ministries, sub cities, NGO's and Banks.

This research shows that in majority of cases the direct form of sexual harassment occurs when females apply to get a certain job. They would be asked for dates or other sexual favors in exchange of securing employment some may submit to this request to earn their living, while others are denied admittance in jobs they were qualified enough. Once women join the work force of an organization with or without complying with those requests things would be worsened. They would be harassed both by their male colleagues and supervisors.²

The EWLA research also shows the harassment of the male colleague's results in creating hostile work environment where they won't feel to exert all their efforts. Some of their colleagues send them pornographic pictures while others make sexual jokes or give comments about these ladies body parts and even in rare cases about their vitals. In certain situations where a female worker shares office with males, touching, leering, flirting would be part of her day to day life. Since it is a widely experienced incident, most women have developed an inherent immunity. They don't react to it, they just ignore, as it was a day to day routine.

Yet another challenge emanates from their bosses. Most supervisors don't directly request for such favors. They rather use indirect methods like prohibiting annual leave; sick leave... giving lower evaluation marks, creating work loads. The ladies are expected to know of their bosses wishes though they are not expressly put forward. There is a wide spread understanding of implications of such actions. Due to this some bosses would be disappointed if a lady fails to understand the implicit message. The research also shows that almost 90% interviewees have been victims of such type of harassment in their current or former employment. Some have started to take it as a natural happening and even advising new employees not to react to such incidents. What makes the situation worse is that the same employee maybe harassed both by her boss and her co-workers at the same time. Occasionally they may join forces against her.³

In spite of all the harassment, reporting of such incidents is a rare event. Most of the female employees have reported about such harassment when it reached the point, which threatens their job itself. But many have chosen to ignore the incident rather than reporting since they know that the report would go to another male officer who would probably maintain solidarity with his male

companion than take any action others claimed that they have been harassed by the top person from where no complain beyond.⁴

Some participants on the research have suggested marriage as a way out from sexual harassment in work place, thorough others have opposed those indicating incidents where married women themselves have been harassed. Here as the employees consider themselves as grown up, they would not think about consulting their families regarding such incidents and usually discuss it with their female best friends. The married women have further indicated that this is something that a woman could not discuss with her husband.⁵

So far the indirect ways of asking sexual favors by bosses have been discussed. However, some supervisors would some times use the direct means. This starts by asking the ladies, especially secretaries and assistants, to work late in the evening due to heavy work load. During such evenings, first they would stand loosely at the back of the ladies as if they were showing them some work, next they would bend a little and put their hands either on the lady's neck or shoulder. If the boss thinks that the female worker is not willing, he may try to rape her in the office yet these incidents also remain unreported. It would be office gossip for certain weeks and be forgotten like any other event. But in the women's life it leaves a scare that is bound to live forever.⁶

However, there are minorities of women who positively encourage sexist behavior from male co-workers and employers and use their sexuality to get on at work. Often it is because they have found this, the only form of behavior, which brings them encouragement or reward in the job. But since it reinforces their position as a women with the in the work place, playing this particular game does little to enhance long term employment opportunities. Many women in this situation are aware of this dilemma. Some men use such attitude of women as an excuse. But this is not the majority of women's feeling and even those who do such things are not happy about their deeds and mostly feel ashamed of their life style.⁷

W/t Tigist the head of research office at EWLA said that there is a problem in the organization for the protection of female workers. According to her many women in the work places are harassed

by their male co-workers and also according to her EWLA were made different research to show the spread of sexual harassment in the work place and schools. Those researches show that the problem is still ignored and EWLA try to create awareness about the problem of sexual harassment but the problem is still continuing.

To sum up the above, all things shows that the problem for protection is lie in the organization. The organizations should create free environment for there female workers and also they should create equal favorable work conditions to there female workers like men's worker.

4.3.2 Under Academic Institutions

Women are made victims of sexual harassment almost through out their lives. Mostly such harassment starts when they start to show signs of puberty. The second scenario is when they join higher education as under graduate or post graduate on the following section I will try to show how sexual harassment occurs in the academic institutions and how schools protect there students from the harm of sexual harassment..

W/ro Mekdes a counselor at Nifas Silk Technical and Vocational College said that “Most of the time harassment by male students occurs while the students are out side the class rooms. These female students are forced to say ‘hello’ to a group of boys and at the same time answer for date for one of the friends. Usually their refusal is met by insults and threats from the rest of the group and sometimes the boy might go to the extent of hitting them.”

According to counselor W/ro Mekdes there are still some student's who have been harassed by male teachers. In most cases it starts by asking the girl to collect and bring or take and distribute exercise books from the teacher's office. Such things are done so that the students could come alone to his office when he would have the chance to touch her vitals or talk about some intimate issues. The second step is related to loss of exam paper where the student would be forced to go to his office and help the teacher find her exam paper. Here comes the crucial moment, the girl would be asked to satisfy the teacher's sexual desire in order to get her exam paper. Some teachers have even gone to the extent of force fully kissing the female students during such visits.

According to W/ro Mekdes there are some complaints presented to her but most of the time the complaint is resolved by advising the student not to bother the girl again. If the problem gets worse, we would contact the college police. If he is guilty, according to the college rule the student can suspend one year. With regards to teachers if the teacher has committed such act in different times over on students, first the school gives notice to stop his act. If he can't stop his act, he can be dismissed from his work. On this regard one teacher was dismissed from his job by committing harassment. The reason of his dismissal is he threatens his students with class admittance, grade and other opportunities if the female students fail to a sent to his sexual request. Some female students complain many times on the above ground because of that he is dismissed according to the college rule.

W/ro Mekdes also said that “most of the time we would advise the girl to avoid the harasser as much as possible.” She is also admitted that most of the girls who come for help claim that the sexual harassment has interfered with their studies and academic performance. If the situation gets worse, we would contact the campus police to handle the problem.

The campus police at Nifas Silk Technical and Vocational College have received some complaints of sexual harassment. According to Ato Kebede, who is the campus police said that the police does not interfere in those cases where a student has been subjected to unwanted sexual advances. He said “some female students reported to the police when male students make unwanted sexual advances but we interfere only if she has been threatened with injury or physically attacked. This is because we don't consider sexual advances as a crime even then we interfere only if there are witness” if there are witnesses we would call the harasser and advise him not to bother the girl again. If he continues despite our advice, he would be required to enter into an obligation to refrain from harassing the girl. If he violates this obligation he would be sent Woreda 19 Police station.

The same is true for Woreda 19 police station. Lieutenant Kassahun who is the head of Woreda 19 police investigation office said “most of the time we resolve the matter by advising the harasser. More over in most of the cases as the accusation is that of intimidation we do not take it as a crime that requires a serous measure.”

The education policy did not include the concept as a whole. And higher education institutions have either opted to deal with it in a fragmented way in their codes of conduct prepared to regulate behaviors of students and academic staff or ignore it all together⁸. Addis Ababa University is a good example for self initiated action. The university has a separate code of conduct for students⁹. Although the term sexual harassment is not included in the students code of conduct, Article 2.6.7 provides that “To threaten, bother or harass female students either by orally, in writing, force, is punishable” And the penalty is one year suspension with out notice. However, awareness of the students on the existence of the document is very low as has been proven by some students.

Even those who have the awareness have seen that dealing with specific cases proves that application of these provisions is not guaranteed. Only the good intention of individuals in the administrative ladder is facilitating¹⁰. Legally speaking there is loopholes in the codes as it fails to address avoid quid pro quo harassment. Instructors and students relationship has to be governed by certain codes of ethics and there should be awareness by both what that means. In addition to this because the procedure of handling complaints, i.e. issue of confidentiality, is not set clearly, it is very damaging, even more than the harassed student when information's about the cases are made public before hand¹¹. The procedural confusions may lead for victims of harassment to hide in silence for fear of the unpredictable out come.

The effective protection of female students from sexual harassment depends on counseling offices. This is because when students are subjected to sexual harassment the counseling office is usually where they go to seek assistance. The counselors at Abyot Kirs Preparatory School and Higher23 School have all said that they receive complaints from female students on sexual harassment by male student. If the harasser is a student he would be advised not to harass the girl. This would not be done if he is a teacher. They claimed that it is difficult to confront a teacher especially if there is no evidence. And usually students who allege that they have been harassed by a teacher have no evidence, as it took place behind looked doors.

One counselor blames female's students for the harassment. The Counselor said that “some female students come to school wearing fitting clothes and the teacher is only a man. He may involuntarily make sexual advances.” He also said that “some female students complain about

sexual harassment just to get the attention.” If this is the attitude of the conservers it should not be surprising that harassment by teachers is not exposed. It is the duty of counselors to help students, particularly female students to over come their difficulties.. It is their duty to report to the school administration complaints of harassment. To ignore complaints under the pretext of lack of evidence or using irrelevant excuses such as the victim’s manner of dressing is a clear breach of duty.

One encouraging thing at Nifas Silk Technical and Vocational College is that the college has two counselors. Female counselor for female students, male counselor for male students. The reason for the college has two counselors is most of the time female student doesn’t tell their problem freely to male counselor. On this regard Ato Beyene counselor of male students on this college said that “he work for ten years as a counselor but he can not have any complain but after W/ro Mekdes comes to this office as a counselor before 2 years she handle some cases.” When compared to the other institution, this school can be doing a good thing to avoid harassment.

The research conducted by EWLA shows that about 110 students in 11 high schools owned by the government. Amongst these; 94 have said that they have been harassed either by their teachers or other students¹². And also a study conducted by the center for Research, Training and Information on women in Development indicates that sexual harassment by male students affects the academic performance of female students¹³. The research also indicated that some university female students are unable to use the library at night because on their way to from the library they are sexually harassed by male students. As a result female students can not use reference books which are available only in the library. The research also indicates that power over a student’s grade to derive sexual benefits.

The protection of the problem lie under academic institutions the above sections shows this problem and also all academic institution should adopted sexual harassment policy to avoid the problem and to protect their female students from this harm and the ministry of education should published a sexual harassment policy for all level of education institutions on this regard the ministry of education had published a gender main streaming guideline and check list¹⁴. Although it is not comprehensive, debatable about its force of law and applicability at all levels of

educational institutions, it is by far the first government document but still has a practical problem related to its binding nature and also its jurisdiction.

In general sexual harassment is treated leniently or it is totally ignored by organizations and educational institutions. A research conducted by Ethiopian women's lawyers association in high schools indicated that 51 teachers (83-61%) have admitted that the accusation that schools have failed to protect students from sexual abuse in the school compound, is well founded. The research also indicates that school counselors have pointed out that "it is not an uncommon scene to see a teacher fondling and kissing a female student.¹⁵" the police regard sexual harassment as "lovers dispute" and even refer to claims of sexual harassment as such sexual harassment is a crime and as a violation of human right is not yet recognized. It would amount to a crime and as a violation of human rights is not yet recognized. It would amount to a crime only when the harasser has started to use physical force. Until then, there is not point in wasting the police time and budget. This seems to be the prevalent attitude. That sexual harassment interferes with the victim's academic or work performance, which contravenes the fundamental principle of equality and human dignity, seems to be ignored.

This is the reason that many victims of sexual harassment are silenced. And this is how sexual harassment is perpetuated.

4.4. Conclusion and Recommendation

Sexual harassment is a phenomenon that it difficult to define. Since the late 1970s numerous researches have been conducted investigating the meaning, nature, causes and effects of sexual harassment. Still now there is no single universally accepted definition of sexual harassment.

The basic definition of sexual harassment comes from the United States Equal Employment Opportunity Commission (EEOC). International legal instruments and many literatures define sexual harassment on the basis of the definition provided by the EEOC guide lines. In light of EEOC guide line sexual harassment is "the unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct was made

either explicitly or a term or condition of an individual's employment, submission to rejection of such conduct by an individual was used as the basis for employment decisions affecting such individual or such conduct has the purpose or effect of unreasonably interfering with all individual's work performance or creating an intimidating, hostile, or offensive working environment.”

Sexual harassment law has recognized two distinct types of sexual harassment: *quid pro quo* harassment and hostile harassment. The distinction between the two types of harassment is based on the relationship between the sexual harassment and the victim's employment or education.

In most cases women's position in work places and educational institutions is conditioned by two common assumptions. First, women's educational capacity and job opportunities and working environment should be related to her sex irrespective of the real requirement. Secondly, women are inferior to men. These wrongly taken assumptions about women result in a harsh educational environment or working benefit accompanied by sexual offers. This in turn creates an environment where women are treated differently and less favorably than men and generally a situation where sexual harassment prevails.

Power is one of the reasons why men perpetuate sexual harassment against women. Unfortunately, power imbalances within the community and specifically within organizations continue to perpetuate the existence of sexual harassment and assist the practice to flourish unchecked within the dynamics of academic institutions and the employment sector.

Different researches conducted reveal that sexual harassment may cause depression, anxiety, stress, headache, weight loss, sleepiness, lack of confidence and other related problems. Despite all these harms, most incidents of sexual harassment go unreported. This is even more true in Ethiopia. In educational institutions many female students accept sexual harassment as a normal incident so they do not take any measure to make it known. Still other large numbers of female students do not know the existence of sexual harassment policy in their school, hence rather than reporting to the appropriate organ they discuss with their friends and get a suggestion to tolerate it. And also lack of specific legislation on sexual harassment can be considered as one of the problems that prevent women from seeking legal redress. But the problem lies mainly in cultural beliefs, attitudes which

are also reflected by the policy and other people having the institutional power to protect female employees and students from sexual harassment.

In work places the possibility of retaliation is one reason why sexual harassment was remain un reported other reasons include an unwillingness to make a fuse, unfamiliarity with how to proceed with the procedure, fear that there will not be serious treatment of the compliant and the great possibility that serious measures will not be taken against the harasser .employers and schools nurture sexual harassment ,rather than taking the initiative to protect their female employees and students from sexual harassment in the absence of vicarious liability for the sexual harassment of there employees and students , employers and schools have no incentive to take protective and preventive measures. More over cultural beliefs and attitudes are prevalent among those people who should protect students and employees from sexual harassment (unless there is physical injury we can not interfere.) (There are no wetness) are the usual excuses given to ignore complaints made by the victims.

Another main problem is that sexual harassment as legal concept is unknown. It is not only the victims who do not unknown of their right to a legal redress but also many officers, and school counselors do not known about sexual harassment law. sexual harassment is not known as an illegal act which can be a cause of court action even if it is not accompanied by physical attack and if law enforcing bodies do not known which legal provisions can be sited to litigate a case of sexual harassment, it should not be surprising that no case of sexual harassment has ever been brought before a court of law.

To avoid the problem of sexual harassment the one thing is changing the beliefs and attitudes of the society. For this the one powerful avenue is the legal system. However, it is not tort law, criminal law or labour law and other international instrument which Ethiopia ratified can bring this change. If those laws can't properly applied.

If sexual harassment is approached as a tort, the context which makes it a gender based injury is lost. Tort law compensates individuals for the injury they sustained and also plays a preventive

role. But fundamental change in social attitudes and cultural beliefs can not be brought about by compensating individuals one at a time.

On the other hand criminal law with regards to sexual harassment as an abuse of institutional power. Because of that, it recognizes only sexual harassment by men having institutional authority over the victim and also employers and schools can not be held vicariously liable under tort law and criminal law.

Having those problems mentioned in mind, the following recommendations are suggested, to reduce and eliminate sexual harassment.

A. a law on sexual harassment should be adopted which includes:-

- ❖ Any legislation dealing with sexual harassment should first of all explain what constitutes sexual harassment by way of providing a definition of sexual harassment.
- ❖ The definition should clearly specify that the act has to be an unwelcome incident, not one that is invited by the harassed.

B. The legislation should be providing details of what constitutes sexual harassment by way of examples or specific instances. examples of such provisions could be as follows:

- ❖ Repeated propositions for a date
- ❖ Sexually colored remarks
- ❖ Any unwelcome physical, verbal, non verbal conduct of being sexual in nature.

C. The legislation should cover quid pro quo and hostile environment sexual harassment and explain adequately when the two types of incidents occur.

D. The act should explain how the two types of sexual harassments apply specifically to educational and employment institutions

E. The act should clearly specify the penalties to be imposed on the harasser and the amount of compensation to be awarded to victims.

F. An express statement that employers and schools can be held vicariously liable for the sexual harassment of their employees or students. The employer responsibility of ensuring a work place that is free of sexual harassment, the act should specify that employers could be held vicariously liable for harassment that occurred during the employee's course of employment with in the institution.

With regards to educational institutions, the elements of vicarious liability should be clearly detailed to show in what kind of circumstances, institutions could be held vicariously liable in the event of sexual harassment.

G. Schools and work places should

- ❖ Should have there own policy on sexual harassment.
- ❖ Teach what sexual harassment is and its effects.
- ❖ Should address cases of sexual harassment faster.
- ❖ Should encourage women to being cases involve sexual harassment.
- ❖ Solve the problem of implementing the existing polices.
- ❖ Cases of sexual harassment should be seen by female teachers, workers to avoid future intimidation.

H. The government should give legal training for women and open training programmed on the legal concept of sexual harassment to lawyers and judges.

I. Medias also publicly advocate on woman human right and the equality of both sexes.

J. Takes measure to increase the number of women lawyers and judges, and also the number of women members in committees to be established by schools and organizations to hear complaints of sexual harassment.

K. The society its part must teach its children about equality of sex.

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