

Sexual Harassment at the Workplace

Overcoming Barriers to Justice

September 2023

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Acknowledgments

This study was compiled by the legal team at Verité Research. Eana Ibrahim was the lead researcher and author of the study. Overall research support was provided by Gayathri Mohan and Chanmini Perera. Editorial supervision was provided by Nishana Weerasooriya and Dinushika Dissanayake. The team is especially indebted to Dinushika Dissanayake for her invaluable feedback and support during the study. The team also wishes to thank several others who guided, shared their feedback and helped with other aspects of the research including legal practitioners, civil society organisations and entrepreneurs in interviews and roundtable discussions held in Colombo.

Sexual Harassment at The Workplace: Overcoming Barriers to Justice.

Colombo: Verité Research, 2023.

55 p, ; 28cm.

ISBN 978-624-5514-29-8

i. 333.133 DDC 23

1. Sexual harassment

2. Sexual harassment-Law and legislation

3. Sex discrimination in employment

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Introduction

Sexual harassment in the workplace is a worldwide occurrence that has an impact on victims/survivors on three levels: an individual, familial, and societal.¹ It is a violation of the right to dignity, security, health and well-being.² The impacts of sexual harassment can be detrimental to mental and physical health in terms of inducing stress, anxiety and depression over long periods of time resulting in physical ailments such as blood pressure, obesity and hypertension.³ It may contribute to higher turnover of employees as victims/survivors exit a company that is not effectively providing protection from sexual harassment and abuse in the workplace and protecting the right to work. In addition to human rights violations and economic, social and physical losses incurred by individual employees, the negative impact on a victim's health caused from sexual harassment may lead to disengagement from work which in turn results in economic losses to the company.⁴ Individual economic losses incurred to companies may impact the country's economy in the long run when labour force participation is reduced.⁵ This is particularly problematic in countries like Sri Lanka especially during a period of economic crisis and political instability.⁶ Moreover, workplace sexual harassment also violates the fundamental rights of workers such as the inalienable right to work, and the right to work with dignity.⁷ Key International instruments have condemned sexual harassment at the workplace and required states to take action and enforce relevant measures to prevent and address the occurrence of sexual harassment at work.⁸

Global statistics derived in 2022 paint a troubling picture on the prevalence of harassment and violence in workplaces across the world, affecting over one in five individuals in their employment.⁹ Such a widespread issue not only hampers individual well-being but also has significant economic consequences. In Sri Lanka, almost 6 working days are lost by companies each year due to the prevalence of workplace violence and harassment equating to a potential loss of 1.7 million dollars annually.¹⁰ Such lost working days in employment can be associated with low productivity, lack of punctuality in attending work on time, leaving work early and missing work.¹¹ Furthermore, sexual harassment can result in reputational damage, financial burdens, and legal liabilities for companies.¹² Similarly, research conducted in the United States as reported by the Harvard Business Review indicated that one sexual harassment claim can drastically reduce public perceptions of an organisation's fairness in how men and women are treated and in terms of hiring and promoting them.¹³

In 2022, the female labour force participation in Sri Lanka was recorded to be low, at just 33.1 percent of women in comparison to men which was at 70.7%.¹⁴ In 2021, Sri Lanka ranked 116 out of 156 countries in the world for having one of the biggest gender gaps in terms of labour force participation.¹⁵ Findings of low female labour force participation can be associated with a restrictive legislative environment, and the status as well as nature of employment in the country, and the inability to adapt to working environments which keep changing due to a lack of skills and/or qualifications.¹⁶ Furthermore

sexual harassment is also a factor that contributes to low female participation in work.¹⁷ Three fifths of women would take up employment if they were assured that they would not be vulnerable to sexual harassment in the workplace.¹⁸

A report published by the International Labour Organisation (ILO) in 2016, which uses Key Person Interviews (KPI's) of employers in the formal private sector and literature surveys of female employees in the formal and informal sector, found a significant lack of awareness about the seriousness of legal provisions on sexual harassment, especially in regional areas of Sri Lanka.¹⁹ Sexual harassment was stated in the 2016 ILO report to be a factor that discourages women from applying for work in sectors such as the transportation or the construction industry.²⁰ The ILO report also identified that low female labour force participation as indicated by KPI's arises from the lack of an approach to handle sexual harassment at work. The KPI's in the ILO report emphasised the need for a proactive approach in dealing with issues of sexual harassment at the workplace in order to retain female labour participation.²¹

Moreover, a UNDP report published in 2021, highlighted the positive impact on female labour force participation from strengthened legal and institutional infrastructure in Sri Lanka.²² Sexual harassment as such prevents women from meaningful participation at work by reducing the availability of choices such as the sector of work, decision to pursue senior or managerial roles, in addition to affecting the performance and productivity at work.²³

While it is recognized in the Sri Lankan context that women are vulnerable to being sexually harassed in the workplace, this type of harassment is not only confined to women. Working men are also vulnerable to being sexually harassed in the workplace,²⁴ in addition to other gender identities such as trans persons and LGBTQI persons.²⁵ Moreover, workplace sexual harassment may also add to existing inequalities within the local economic framework for different groups of persons in the Sri Lankan community such as persons with disabilities,²⁶ youth, migrant workers, and persons from the LGBTQI community.²⁷ Persons from these minority groups have

a higher chance of being victimised.²⁸ Research on the victimisation of minority groups at work in the formal sector, conducted by Equal Ground in 2019, revealed that only 38% of employers had mechanisms in place to address sexual harassment. 53% of employers had no gender-related policies and 56% did not have inclusive employment policies for LGBTQI persons.²⁹

Moreover, in Sri Lanka employee rights activists, trade unions and business stakeholders discovered that employers often ignore instances of workplace harassment of LGBTQI persons.³⁰ The lack of attention to these issues was attributed to the existing legal framework in Sri Lanka that criminalizes same sex relations.³¹ This legal stance could embolden employers to disregard cases of sexual harassment in the workplace against LGBTQI persons.³² Additionally, staff with a disability were found to have experienced higher levels of sexual harassment (over 11% more) than employees without a disability.³³ These findings are consistent with global statistics on the higher likelihood of persons with disabilities being subject to sexual harassment than persons without.³⁴ The Committee on Elimination of Discrimination Against Women (CEDAW) has 'repeatedly recognized the intersectional discrimination that is faced by women with disabilities.'³⁵ 'Persons with disabilities experience discrimination in laws and practices due to societies being structured on the assumption of ableness and disabilities not being accommodated'.³⁶

Sri Lanka's current macroeconomic crisis has resulted in needing external aid such as the International Monetary Fund (IMF) program.³⁷ One of the areas of focus of the IMF Agreement is to reform the labour market through promoting female labour force participation, which was severely impacted during the crisis.³⁸ As per the IMF Agreement, in consideration of a large gender gap in employment, the stipulated labour market reforms under the program will target the promotion of female labour force participation.³⁹ As highlighted above, sexual harassment at the workplace is a factor that reduces female labour force participation as it prevents women and other vulnerable persons from seeking employment and from being fully productive at the workplace.⁴⁰

Addressing sexual harassment at the workplace can therefore help companies mitigate and redress issues of labour force participation, thereby promoting economic growth which Sri Lanka requires to remedy the current economic crisis.⁴¹ Moreover, employers can build and sustain a good reputation by providing international standards of labour rights to employees.⁴² The need to redress sexual harassment at the workplace is reflected in the statistics of the economic cost of sexual harassment at the workplace, through the survey conducted on the detailed estimates of what workplace violence and harassment costs companies' in Sri Lanka.⁴³ The existence of strong national laws and accountability processes are a crucial foundation to tackle sexual harassment in the workplace and institutionalized discrimination based on gender.

This report aims to provide a legal gap analysis on sexual harassment through a non-discriminative lens of gender

and sexual construct. The legal gap analysis will compare Sri Lanka's international obligations against the national laws on sexual harassment at the workplace. Accordingly, recommendations will be provided based on the findings of the gap analysis and best practices, focusing on legislative and policy reform. Chapter 1 will define sexual harassment and its forms. Thereafter, chapter 2 will provide a legal gap analysis in consideration of international standards that are binding and non-binding. Chapter 3 will outline the current legal framework in Sri Lanka that addresses sexual harassment at the workplace, along with inherent systemic issues in the justice system. Chapter 4 will explore the institutional framework of Sri Lanka, followed by a brief outline of the local institutions that deal with sexual harassment in employment in chapter 5. Chapter 6 provides an overview of international implementation of legislation which is followed by recommendations of the report in chapter 7.

Methodology

This study is primarily based on desk-based qualitative research. The study encompassed a comprehensive review of international sources and domestic legislation. A limited aspect of primary research was obtained through limited key informant interviews (KIIs) and roundtable discussions. Three KIIs were conducted from September 2023 – October 2023, with an Attorney at Law; representative from the International Labour Organization, and a representative from a multinational company. All KIIs have been kept confidential. Through-out the study there will be partial attribution to informants but not complete attribution to maintain confidentiality at the request of

these informants. Additionally, there were two roundtable discussions held in September 2023, one with Civil Society Organisations (CSOs) and the second with representatives from the Private Sector. One Key Informant Interview (KII) was conducted in person, while two KIIs were held using virtual platforms. The roundtable discussions were conducted in person. The private sector roundtable had 12 participants, while the CSOs roundtable had 7 participants. This multi-faceted approach aimed to provide a nuanced and comprehensive understanding of workplace sexual harassment in Sri Lanka, laying the groundwork for informed analysis and recommendations in this report.

CHAPTER 1:

Defining sexual harassment

Several United Nations agencies such as UN Women, United Nations Development Programme (UNDP) and United Nations High Commissioner for Refugees (UNHCR) define sexual harassment as ‘unwelcome conduct of a sexual nature (any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature) that might reasonably be expected or be perceived to cause offence or humiliation.’⁴⁴

‘Unwelcome conduct’ does not extend to ‘involuntary conduct’.⁴⁵ A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. However, in order for the

conduct to qualify as sexual harassment, the sexual conduct is subject to becoming unwelcome whenever the person that the conduct is directed towards, considers it unwelcome.⁴⁶

There are three internationally recognised types of sexual harassment that can occur in the workplace that have been identified by international organisations such as the United Nations Women Watch⁴⁷ and the American Bar Association: a) quid pro quo harassment, b) hostile work environment, c) subtle sexual harassment.⁴⁸ Understanding the specific types of harassment can make it easier to identify incidents of sexual harassment as and when they occur and find appropriate solutions for redress.

1.1 QUID PRO QUO HARASSMENT

This type of harassment occurs where receiving a job benefit, such as an increase in salary/wages, a promotion, bonus or continued employment, is made conditional (implicitly or explicitly) on the victim acceding to demands to engage in some form of sexual behaviour.⁴⁹ Quid pro quo harassment is limited to the

relationship of an employer with supervisory authority over the employee. An employer will manipulate his/her authority to decline or permit a job benefit, by subjecting the employee to sexual harassment, as a condition to accept the job benefit.⁵⁰

1.2 HOSTILE WORK ENVIRONMENT

The frequency of the occurrence of the acts that can be construed as sexual harassment (offensive comments, unwelcome contact of a physical nature, offensive sexual materials etc.) will determine the 'hostility' of the environment. If such acts/conduct become part of the regular work environment, it is considered hostile work environment harassment. Such harassment usually creates an intimidating working environment

which may affect the performance of an employee.⁵¹ Singular and isolated incidents do not usually fall into this category unless the severity of the incident is egregious. Unlike quid pro quo harassment which can only be committed by a supervisory authority, a hostile work environment can be created by co-workers/managers and even customers.⁵²

1.3 SUBTLE SEXUAL HARASSMENT

Although not a legal term, this type of behavior can occur at the workplace that can be conducive to hostile environment or quid pro quo sexual harassment. Subtle acts of harassment include sexual innuendos, jokes etc.⁵³

CHAPTER 2:

Legal gap analysis

2.1 INTERNATIONAL INSTRUMENTS

This section analyses the international standards, in comparison to the local Sri Lankan legal framework on sexual harassment at the workplace. The analysis identifies that the Sri Lankan legal framework has many gaps in the law in comparison with the international standards. Table 1 below outlines the status of Sri Lanka in relation to the relevant international standards.

2.1.1 Convention on the Elimination of Discrimination Against Women (CEDAW)

CEDAW is the leading international convention that strives to achieve gender equality and empower women and girls.⁵⁴ The spirit of the convention intends to reaffirm the dignity and the advancement of women in achieving their full development on equal grounds with men.⁵⁵ The CEDAW committee that consists of independent experts, monitors the implementation of the treaty, which has resulted in countering the effects of discrimination against women and addressing the lack of legal protection in countries that have ratified it.⁵⁶

Article 11 of the treaty outlines that states should 'take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights'.⁵⁷ Sri Lanka has not made any reservations to CEDAW during or after ratification.⁵⁸ Hence,

the provisions of this article are binding on Sri Lanka as a state party that has ratified the convention.

The Committee on the Elimination of Discrimination against Women, in addition to monitoring the implementation of the CEDAW, makes recommendations on issues that affect women, which it deems requiring more attention from state parties. Recommendations made by the Committee and its General Comments reflect the Committee's interpretation of the provisions of CEDAW, thematic issues and their method of work.⁵⁹ These recommendations are non-binding but considered as authoritative statements that clarify and describe the state's duties under CEDAW.⁶⁰ The General Comments also aim to clarify and suggest reporting duties of State parties and ways to implement treaty provisions.⁶¹ General Recommendation No.12 on 'Violence Against Women' (VAW) specifically recommends state parties to report on legislation and other measures that are in place to protect women from violence, with specific reference to sexual harassment at the workplace.⁶² The 1979 UN Convention on the Elimination of Discrimination against Women (CEDAW) does not expressly refer to violence against women. The CEDAW Committee first sought to define violence against women through General Recommendation No.19, which defined it as 'violence which is directed against a woman because she is a woman or that affects women disproportionately'.⁶³

General Recommendation No.19 on 'Violence Against Women' (VAW) introduced in 1992, focused on elimination of violence against women which comprehensively defined sexual harassment at work.⁶⁴ This Recommendation is CEDAW's key recommendation on VAW. General Recommendation No.35 on 'gender-based violence against women' is an update to General Recommendation No.19. General Recommendation No.35 highlights gender-based violence and its consequences and impact on women, exacerbated by economic, political, religious, cultural and environmental factors.⁶⁵ For instance, the definition of violence against women (*gender-based violence against women*) stresses the social causes of it such as male privilege, entitlement etc. Moreover, Recommendation 35 also recognises the intersectional nature of VAW. The updated Recommendation also refers to internet-mediated forms of violence against women.⁶⁶

2.1.2 International Labour Organisation (ILO)

The ILO is a unique tripartite⁶⁷ UN agency that sets international standards for labour and promotes decent working standards for all persons.⁶⁸ ILO Convention No.190 and its supplementing Recommendation No.206 set out the first international standards on the prevention, elimination and remedy to harassment at work. ILO Convention No.190 was adopted and came into force on 25 June 2019.⁶⁹ These international standards indicate that sexual harassment at work is not acceptable.⁷⁰

ILO Convention No.190 is an all-inclusive convention on sexual harassment at the workplace. The articles stipulated in the convention are the ultimate standard in adopting a labour framework on the prevention of sexual harassment at work. The convention is applicable to all spaces of work, including public and private sector employment as well as the formal and informal economy in both rural and urban areas and even extends to accommodation provided by an employer.⁷¹ It is also applicable to and includes protection for informal economy workers. Workplace policies on sexual harassment are required to be formulated as well as national policies on the same.⁷² However, Sri Lanka has not yet ratified this Convention.⁷³ Key Informant Interview (KII) with representative from the ILO country office in Sri Lanka noted

that out of the four votes from Sri Lanka at the International Labour Conference (ILC), one union delegate voted, the government had two votes and the employers abstained from voting to pass the 190 Convention.⁷⁴ The KII suggested that employers are cautious in being held responsible due to the nature of 'employer's liability' being broadly defined under the convention.⁷⁵

The first global survey on experiences of people in terms of harassment at work was an initiative of the ILO.⁷⁶ The survey which was conducted in 2021, encompassed roughly 125,000 interviews in 121 countries and territories using a standard set of questions which were translated into the relevant country's major languages.⁷⁷ Sri Lanka was not included in country list. The findings of the survey explored statistics on the frequency as well as the immensity of violence and harassment at work. Insights was provided into the main forms of violence and harassment and reasons that prevent people from talking about harassment.⁷⁸ A sample guide was also published for employers and workers as a guideline on how to prevent, address and respond if there are cases of sexual harassment at work.⁷⁹

2.1.3 UN Guiding Principles

While the state has a duty to fill the lacuna in the law, the same responsibility can be placed complementarily upon corporate organisations to have internal policies that bridge the gap that is left in the law. The UN guiding principles which were endorsed by the Human Rights Council in 2011 and considered to be the 'world's most authoritative framework for guiding responsible business practices', aims to act as a framework for businesses to follow human rights in their practices.⁸⁰ These principles also advocate the revision of state legislation that allows for discrimination whilst stressing the need for active action to eradicate sexual harassment.⁸¹

Among these guiding principles are the requirement for businesses to respect internationally recognized human rights such as the fundamental rights outlined in the ILO Declaration on Fundamental Principles and Rights at Work.⁸² The rights enshrined in this ILO Declaration

include the requirement by employers to ensure a healthy and safe working environment for employees.⁸³

2.1.4 UNDP - Sustainable Development Goals (SDG's)

The sustainable development goals came into force in 2015 with the objective of ending poverty in all its forms, addressing climate change and combating inequalities. While these goals are not legally binding, they are applicable to all countries who are expected to establish national frameworks to achieve the sustainable goals, follow-up and review action that has been taken. SDG 5 and 8 encapsulate the need to eliminate and prevent sexual exploitation of women and the promotion of safe and secure working environments free of sexual harassment. Sri Lanka's National Action Plan for the Implementation of the UN Security Council's Resolutions on Women, Peace and Security aim to contribute towards achieving the Sustainable Development Goals (SDGs). Moreover, focus area 06 of the action plan concentrates on the protection of women and girls against sexual violence.⁸⁴

2.1.5 UN - General Assembly Resolution

Article 2 of General Assembly Resolution 48/104 which was passed without a vote, states that violence against women encompasses 'sexual harassment and intimidation at work.'⁸⁵ The resolutions that are passed by the UN General Assembly are usually by way of voting and although not legally binding, represent the morals and opinions of the world community, from which the importance of the subject matter may be inferred.⁸⁶

The more recent General Assembly Resolution 73/148, passed in 2018 also without a vote, on the 'Intensification of efforts to prevent and eliminate all forms of violence against women and girls: sexual harassment',

advocates the adoption and strengthening of legislation that addresses sexual harassment, criminalising it where appropriate and to ensure that complaint mechanisms and reporting procedures are available as well as appropriate remedies. Enforcement is encouraged through police and the judiciary to grant remedies whilst avoiding revictimization.⁸⁷

2.1.6 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR strives to further the economic, social and cultural rights of persons as well as civil and political rights by encouraging states to adopt measures that will help achieve these rights.⁸⁸ Article 7(b) of the treaty recognizes the right of all persons to just and favorable conditions of work including safe and healthy working conditions.⁸⁹

An interpretation of Article 7 which is provided by the Committee for Economic, Social and Cultural Rights (CESCR) in General Recommendation number 23 outlines the fact that freedom from sexual harassment at work is included as a right of safe conditions at work, under Article 7.⁹⁰ This recommendation calls for states to employ legislation to protect as well as penalise sexual harassment at work with a broad definition on sexual harassment which is also in reference to harassment on the basis of sex, sexual orientation, gender identity, disability and race. Furthermore, this recommendation also calls for a national policy to be applied in the workplace, extending to both the public and the private sector. Sri Lanka is party to the ICESCR and acceded to the treaty in 1980. Although Sri Lanka acceded to the ICESCR there has been no enabling legislation in domestic law on the ICESCR. The Sri Lankan Courts have nevertheless referred to the ICESCR in cases such as *Gerald Perera v OIC, Wattala Police Station* in utilizing rights under the treaty such as the right to best standards of health.⁹¹

2.2 LEGAL GAP ANALYSIS OF THE INTERNATIONAL STANDARD VS LOCAL FRAMEWORK

Table 1 below provides the summarised legal gap analysis which compares Sri Lanka's current legal framework with the relevant international standards. Sri Lanka is a dualist country, therefore, despite ratifying an international convention, the country must enact enabling legislation.⁹² Article 27(15) of the Constitution of Sri Lanka establishes the need to foster respect for international law and treaty obligations in the enactment of laws.⁹³ The requirement of state duty to follow Article 27(15) is echoed in the case of *Weerawansa v AG*,⁹⁴ where

the Court held that the citizens of the country must be given the benefit of international law and treaty obligations. Additionally, *Bulankulama and others v. Secretary, Minister of Industrial Development and others*⁹⁵ outlined the fact that international standards may be soft law but they cannot be negated as Sri Lanka being a party to the United Nations. Therefore, these international standards will be binding if 'expressly enacted or become a part of the domestic law through adoption by the superior Courts and by the Supreme Court in their decisions.'⁹⁶

Table 1 – Legal Gap Analysis: International Standard vs. Local Framework

CONVENTION/RECOMMENDATION	DESCRIPTION OF SALIENT PROVISION	STATUS IN SRI LANKA	LEGAL GAP ANALYSIS
CEDAW Article 11	States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, equality between men and women.	Sri Lanka is a State party to CEDAW which was ratified on 5 October 1981. ⁹⁷	Article 12 of the Sri Lankan Constitution guarantees equality for all persons. However, there are no specific laws in place to ensure equality in employment. However, General Recommendation No.12 requires that legislation that provides protection from sexual harassment at work be enacted on an equal basis.
CEDAW General Recommendation No.12	Advocates for State Parties to include legislation on protection from sexual harassment at work.		There is no statute in the labour law framework that directly addresses sexual harassment at work. The statutes that indirectly cover the offence have been recognized to be insufficient. ⁹⁸ Moreover, CEDAW concluding observations on Sri Lanka call for the 'collection of disaggregated data on sexual harassment in both the public and private sectors, including on the sanctions imposed on perpetrators'. ⁹⁹ Although sexual harassment is an offence under section 345 of the Penal Code which covers sexual harassment in the workplace there is a lack of disaggregated data on sexual harassment in the workplace and measures taken to address such cases.

CONVENTION/ RECOMMENDATION	DESCRIPTION OF SALIENT PROVISION	STATUS IN SRI LANKA	LEGAL GAP ANALYSIS
CEDAW General Recommendation No.19	Commented on Article 11: Sexual harassment at the workplace was identified as a barrier to equality in employment.		Labour laws do not specifically address sexual harassment at work. Moreover, labour laws such as the Shop and Office Employees Act No. 19 of 1954 and the Factories Ordinance No. 45 of 1942 limit the number of hours that women are able to work and restrict women from doing night work which increases the inequality gap in employment and reflects the gender-based discrimination in accessing work.
CEDAW General Recommendation No.35 CESCR General Recommendation No.23 of 2016	Analyses gender-based violence against women and recognizes the prohibition of such violence to have become an international customary law norm.		There are no laws or regulations or action plans that suggest/acknowledge that the prohibition of gender-based violence has become a customary norm. However, domestic laws on the subject include the Prevention of Domestic Violence Act No.34 of 2005 and Chapter XVI of the penal code. The Chapter XVI of the penal code has offences based on violence but does not fit within the scheme of domestic violence. ¹⁰⁰ CESCR recommends that Sri Lanka effectively implement the national plan of action to address sexual and gender-based violence by ensuring that victims are not denied the right to make complaints in Tamil by offering interpretation at police desks, in government departments and at desks in hospitals for victims of gender-based violence.
ILO Convention No.190 and supplementing Recommendation No.206	The first international treaty that seeks to end violence and harassment at work. ¹⁰¹	Not ratified by Sri Lanka	Sri Lanka has not ratified this Convention. There are no laws and policies governing sexual harassment at the workplace as extensively as required by this Convention. ¹⁰² Germany, in the fourth UPR Cycle of Sri Lanka, recommended adopting the Violence and Harassment Convention, 2019 (No. 190), of the International Labour Organisation. ¹⁰³ However, S.345 of the Penal Code covers sexual harassment at the workplace and the Bribery Act as well as Anti-Corruption Act recognizes sexual bribery in the workplace.

CONVENTION/ RECOMMENDATION	DESCRIPTION OF SALIENT PROVISION	STATUS IN SRI LANKA	LEGAL GAP ANALYSIS
ICESCR Article 7 CESCR General Recommendation No.23 of 2016	Provides for the right of everyone to the enjoyment of just and favourable conditions of work including safe and healthy working conditions. Emphasises the right of all persons to just and favourable conditions of work, commenting on article 7 of ICESCR and calls for specific legislation on sexual harassment at work.	Ratified by Sri Lanka in 1980 ¹⁰⁴	Sri Lanka has not incorporated the treaty into domestic law. However, certain laws in the labour framework provide some protection to foster safe and healthy working conditions such as the Shop and Office Employees (Regulation of Employment & Remuneration) Act No. 19 of 1954, Wages Boards Ordinance No. 27 of 1941, Factories Ordinance No. 45 of 1942, Industrial Disputes Act No. 43 of 1950, the Employment of Women, Young Persons, and the Children Act No. 47 of 1956. There is no specific legislation on protection against sexual harassment at the workplace. However, Section 345 of the Penal Code covers the offence of sexual harassment which includes harassment at the workplace.
UNDP SDG goal 5 (target 5.2) ¹⁰⁵ SDG goal 8 (target 8.8)	5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation. 8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.	Not legally binding but universally applicable to all countries	Sri Lanka's National Action Plan for the Implementation of the UN Security Council's Resolutions on Women, Peace and Security 2023-2027 aims to contribute towards achieving these Sustainable Development Goals (SDGs). ¹⁰⁶
UN General Assembly Resolution 48/104 ¹⁰⁷	Declaration on the Elimination of violence against women	Recommendation	Sri Lanka's National Action Plan for the implementation of the UN Security Council's Resolutions on Women, Peace and Security 2023-2027 focuses on the protection of women and girls against violence, including sexual violence. ¹⁰⁸
UN General Assembly Resolution 73/148	Intensification of efforts to prevent and eliminate all forms of violence against women and girls: sexual harassment	Recommendation	

CHAPTER 3:

Current Sri Lankan legal framework

This chapter delves into the intricate landscape of sexual harassment in Sri Lanka’s legal framework, encompassing both criminal and civil dimensions. It becomes evident that while certain provisions exist, there are notable gaps and systemic barriers that demand scrutiny. In particular the absence of a dedicated workplace sexual harassment offense, coupled with systemic issues such as legal delays, demanding burdens of proof, and resource constraints, underscores

the complexity of the issue within the criminal justice system. Furthermore, this chapter sheds light on the limitations in addressing sexual harassment within the civil law and emphasises the necessity for legal reform to ensure comprehensive protection and justice for all. Table 2 below identifies the provisions relating to sexual harassment in Sri Lanka’s criminal and civil legal framework.

Table 2 - Legal framework of Sri Lanka on Sexual Harassment

CRIMINAL LAW		CIVIL LAW	
ACT	DESCRIPTION	ACT	DESCRIPTION
Penal Code Section 345	‘Unwelcome sexual advances by words or action used by a person in authority, to a working place or any other place, shall constitute the offence of sexual harassment.’ ¹⁰⁹	Industrial Disputes Act No. 43 of 1950	An Act to provide for the prevention, investigation and settlement of industrial disputes, and connected matters
Bribery Act No.11 of 1954 (repealed by the Anti Corruption Act No. 9 of 2023)	The Court has interpreted the definition of bribery in the Act as accommodating sexual forms of gratification. ¹¹⁰		
Anti-Corruption Act No.9 of 2023	The offence of gratification involves sexual favors which qualifies as sexual harassment. ¹¹¹ Gratification in this context takes place in the work environment.		

An analysis of the provisions in Table 2 above reveals that there is a lacuna in the law, in terms of provisions against sexual harassment in the workplace, in both the criminal and civil legal framework of the country. Section

3.1 below discusses the provisions in the criminal law on sexual harassment in conjunction with systemic issues in the legal framework and Section 3.2 below discusses sexual harassment under civil law.

3.1 BARRIERS TO JUSTICE UNDER THE CRIMINAL JUSTICE SYSTEM

The domestic law of Sri Lanka has the elements of the UN definition where the law defines sexual harassment in the Penal Code as harassment by assault/criminal force by action or words causing sexual annoyance or harassment to the recipient. The criminal law has two specific deficiencies: (1) Section 345 narrowly defines sexual harassment at the workplace; and (2) There are entrenched barriers in the criminal justice system such as delays in justice. These will be explained in detail in the sections below.

3.1.1 Narrow definition of sexual harassment

Section 345 of the Penal Code can accommodate offences related to sexual harassment at the workplace, there is no specific comprehensive provision in the Penal Code for workplace sexual harassment in Sri Lanka. There are two challenges with the definition: (i) it does not encompass the required definitions identified under international law; and (ii) it does not specifically articulate digitally enabled workplace sexual harassment. This section also briefly looks at the Bribery Act No. 9 of 1980 and the Anti-Corruption Act No. 9 of 2023 and its scope in addressing sexual harassment.

The explanation given in section 345 of the Penal Code expressly refers to 'unwelcome conduct' by a 'person in authority', however it does not cover all aspects of sexual harassment at the workplace.¹¹² This section is inclusive of some types of sexual harassment by way of words and actions that may include assault and the use of criminal force. The adjoining punishment for this offence is either imprisonment extending to five years or a fine or both. The Court has the discretion to award compensation to the victim of the offence based on the injuries caused to the victim. However the ILO Convention 190 provides a broad definition for violence and harassment in the realm of employment, which encompasses a wide range of harmful actions and threats, including gender-based violence and harassment. The Penal Code definition on sexual harassment on the other hand is limited in its scope of application in comparison to the definition of the ILO Convention 190.

Countries with legal measures to combat sexual harassment provide a more comprehensive definition for sexual harassment within criminal law, encompassing degrading, intimidating behavior, and pressure to engage in sexual acts across various contexts.¹¹³ For instance Article 341 of the Chad Penal Code provision as amended in 2017 covers instances of using significant pressure, even if not recurring, to obtain a sexual act, whether for the perpetrator's benefit or that of a third party.¹¹⁴ Gabon's Penal Code provision on the other hand categorizes harassment as an offense against morals, ensuring a broad approach to sexual harassment offences.¹¹⁵

In addition offences such as voyeurism are not adequately addressed in the Sri Lankan Criminal law framework.¹¹⁶ Voyeurism can occur at the workplace either by recording or physically watching persons in private spaces (in the bathroom etc).¹¹⁷ The Sri Lankan Penal Code provision does not also include specific definition for digital violence as a form of sexual harassment. Amendments to articles 209 and 236 of the Mexico City Criminal code provides enhanced penalties to offenses that involves digital or electronic media, communication devices, or the use of intimate sexual content in images, audio, or videos.¹¹⁸ This therefore portrays that specific elements and criteria for sexual harassment in the Sri Lankan Penal Code may seem limited and does not adequately address all forms of workplace misconduct that should be criminalized. Addressing these gaps are essential for comprehensive protection against sexual harassment.

In the case of *Republic of Sri Lanka v. Kathubdeen*,¹¹⁹ the accused faced charges of soliciting sexual favors for gratification. The accused was indicted in the High Court of Colombo under the former Bribery Act for soliciting and attempting to accept gratification (sexual intercourse) with the complainant as a reward/inducement for arranging a transfer. It was held by the Court that demanding sexual favors in exchange for a job transfer is within the definition of a 'bribe' under the Bribery Act.¹²⁰ Section 90 of the Bribery Act is now replaced by the Anti-Corruption Act No. 9 of 2023, and defines

gratification to include among other things, any sexual favour.¹²¹ However, the shortcoming of sexual harassment under the Bribery Act as well as the new Anti-Corruption Act¹²² is that it is only applicable to the public sector and not the private sector.¹²³ These acts primarily aim to combat corruption and unethical behavior within the public sector, where transparency and accountability are crucial due to the involvement of public funds and resources. Furthermore, these acts are focused on government officials, government agencies, and entities that engage with the government whereas private sector entities are typically subject to a different set of laws and regulations governing workplace conduct.

3.1.2 Entrenched barriers in the criminal justice system

Systemic issues in the justice system, as outlined below that act as barriers to justice include delays in taking up and processing cases, effectiveness and responsiveness of authorities, social stigma surrounding victims/survivors, procedural issues, the difference in the burden of proof in criminal law and civil law when it comes to the same offence, among other issues.¹²⁴

The criminal case of *Thusith Thilina Malagoda vs. Paleketiyage Samantha Manohari Palaketiya* dealt with an incident that involved sexual harassment, charged under Section 345 of the Penal Code.¹²⁵ This case portrays the inherent issues of delays in case disposal, and problems of procedure in the criminal justice system.¹²⁶ The decision of the Supreme Court in this case was delivered 8 years after the case was filed. Moreover, the same case dealt with two different Magistrates who heard evidence for both the prosecution and the defence. Since the Magistrate had changed in the middle of the case, the second Magistrate would not have heard the initial evidence of the victim which is problematic and evident of the victim not being awarded a fair hearing.¹²⁷ The accused was acquitted by the second Magistrate on the basis that Manohari was not a credible witness since Manohari delayed her complaint to the police as she had already complained to her immediate superior at work. However, the High Court decided that since the Magistrate had

changed mid trial the High Court judge should look into the weight of the evidence. The Court stated that the complainant's delay was reasonable, and it was explained reasonably in the evidence. Moreover, the Court stated that in those circumstances, the decision to overturn the acquittal was correct and affirmed the conviction and dismissed the appeal. This is just one case out of many that illustrates the procedural issues and delays that are inherent in the justice system.

Issues posed by the criminal justice system include the high burden of proof which is placed on the victim and by default the prosecution, to prove that the offence took place.¹²⁸ There is a higher burden of proof that is required to be fulfilled under the criminal law (beyond reasonable doubt) in comparison to civil law (balance of probability). Hence, under the criminal law, the victim may find it more difficult to provide evidence to a higher degree in comparison to the civil law. Moreover, KII's revealed that travel and legal expenses pose significant barriers for many individuals, particularly when cases experience delays.¹²⁹ There are private and national legal aid bureaus that can aid persons with financial shortcomings to hire legal services but the funding is also limited.¹³⁰ KII findings also noted that parties to a workplace sexual harassment complaint were previously able to settle matters within the police station. However, according to the KII there was recently a new circular issued which directed the police to immediately lodge the complaint with the Court which is being strictly enforced.¹³¹ This has therefore been an even further deterrent for victims/survivors to come forward according to the KII.

There are various issues that are prevalent in the Sri Lankan criminal justice system which act as barriers to justice. These issues include delays in Court proceedings, lack of judges and Court houses, and the requirement for reform within the law to expedite cases.¹³² These systematic issues require reform to uphold the rule of law and to facilitate the efficient functioning of the justice system. Arbitration trainings, digitalization of Court houses and commitment to commercial mediation were raised as mechanisms to expedite cases and contribute to efficient justice sector work.¹³³ The idea behind

these reforms is to expedite cases and to free up room for the cases that would physically require processing at Court.¹³⁴

3.2 LACK OF A SPECIFIC DEFINITION OF SEXUAL HARASSMENT UNDER THE CIVIL LAW

The Industrial Disputes Act No. 43 of 1950 (IDA) is a mechanism under civil law where complaints of work-related disputes that may involve sexual harassment can be taken up by the labour department.¹³⁵ In comparison to the criminal law, this mechanism may prove to be speedier as the complaint is not processed through the police or Courts, which may cause delays due to the inherent criminal justice sector issues discussed above.¹³⁶

Under the civil law, the IDA enables the circumvention of the delays in the criminal law system as complaints do not go through the police and the criminal Courts which produce delays in case management. However, the public sector cannot submit complaints through the IDA, as the Act is only applicable to the private sector.¹³⁷

Moreover, sexual harassment complaints under IDA are rarely submitted by female employees and there is also a possibility of the lack of frequency with which trade unions take up cases on behalf of victims.¹³⁸ Only 2-3 sexual harassment complaints were submitted through the IDA to the Labour Department between 2018 and 2019.¹³⁹

Furthermore, the labour department redirects sexual harassment complaints to the police in circumstances

where they do not have the capability of handling certain matters.¹⁴⁰ The redirection of such complaints to the police is inherently problematic as the Sri Lanka Police have themselves been alleged to be perpetrators of sexual harassment against victims/survivors who seek assistance at police stations.¹⁴¹ This is problematic as the institution of the state whose function is to protect victims/survivors, may also be the perpetrator of the offence.

However, KII's further confirmed that the offence of sexual harassment at work is not specifically defined under the IDA, although it can be broadly interpreted to encompass the offence.¹⁴² Furthermore, complaints of sexual harassment are usually filed in conjunction with issues of unlawful termination at the Labour Tribunal and rarely as a stand-alone since there is no specific provision. Additionally, KII's have noted that in practice when the Labour Tribunal has found that when the unlawful termination complaint is unsubstantiated, employers have then filed a defamation complaint against the alleged victim.¹⁴³ The risk of retaliation by the employer against the employee can be counterproductive and may act as a deterrent for victims/survivors pursuing workplace sexual harassment complaints under the IDA.

CHAPTER 4:

Institution and Policy framework

This section analyses the institutions and policies within Sri Lanka's justice framework for addressing sexual harassment at the workplace and other relevant issues. These institutions include:

the Ministry of Labour and Foreign Employment, Department of Labour, Sri Lanka Police, the Attorney General's Department and the Courts.

4.1 MINISTRY OF LABOUR AND FOREIGN EMPLOYMENT

The labour law framework of the country including the regulation of working conditions and the relationship between employers and employees, falls under the purview of the Ministry of Labour and Foreign Employment. The objectives of the ministry encapsulate 'protecting and empowering women and promoting gender equity' as well as ensuring globally accepted rights and conditions at work.¹⁴⁴ However, there is no specific objective of addressing sexual harassment at the workplace as a labour standard.

The Department of Labour (DoL) within the Ministry of Labour is responsible for the enforcement of labour laws through inspection services pertaining to the working environment and working conditions.¹⁴⁵ Labour inspectors are also involved in conciliation work. In addition to programmed visits and visits to address complaints, multidisciplinary visits are also facilitated. Such visits are carried out to cover every aspect of non-compliance, by a team from specialist divisions.¹⁴⁶

The Shop and Office Employees (Regulation of Employment & Remuneration) Act No. 19 of 1954, Wages Boards

Ordinance No. 27 of 1941, Factories Ordinance No. 45 of 1942, Industrial Disputes Act No. 43 of 1950, the Employment of Women, Young Persons, and Children Act No. 47 of 1956 and the Payment of Gratuity Act No.12 of 1983 are labour laws that govern and protect the rights of employees. These laws focus on regulating employment terms and conditions, safety of employees and account for methods of dispute settlement in the event of a disagreement as well as stipulating social security schemes for employees.¹⁴⁷ These laws have been found insufficient to oversee the offence of sexual harassment at the workplace as there is no specific statute that addresses sexual harassment at work.¹⁴⁸ However, a draft 'Employment Act' was published in 2019 by the Ministry, which addressed sexual harassment in the workplace. Nevertheless, the draft did not materialize into an Act.¹⁴⁹

There are various issues in the interpretation and implementation of the current labour framework which does not afford maximum protection to persons who are victims/survivors of sexual harassment, specifically in the workplace. The status quo on laws governing sexual harassment remains unchanged.

4.2 ATTORNEY GENERAL'S DEPARTMENT

The Attorney General represents and acts on behalf of the state in both civil and criminal matters.¹⁵⁰ Section 393(2) and (3) of the Code of Criminal Procedure Act confers the power to the Attorney General to advise any other state departments, public officers or police officers before any criminal proceedings are initiated.¹⁵¹ According to police statistics unit sexual harassment was one of the commonly reported minor crimes against women, although the reported cases on sexual harassment have dropped from the year 2020 which recorded

31 cases on attempt to commit sexual harassment to 16 cases on attempt to commit sexual harassment being reported in the year 2022.¹⁵²

CEDAW in its concluding observations on the eighth periodic report in Sri Lanka, recommended the establishment of a special unit at the Attorney General's department to address and accelerate handling cases of sexual violence.¹⁵³ However, there has been no such unit established to address cases of sexual violence.

4.3 POLICE

Section 109 of the Code of Criminal procedure stipulates the procedure for action to be taken against criminal offences.¹⁵⁴ Complaints of sexual harassment are addressed by the police at first instance before the Court process is initiated. Complaints may be made directly by the victim or through an attorney.

Sri Lankan society is largely patriarchal and there are instances where there is a stigma for victims/survivors of domestic violence, gender-based violence and sexual harassment.¹⁵⁵ Victim blaming and shaming in Sri Lanka for violence perpetrated against the victim, consequently places them in a position unable to seek help due to culturally instilled fear, shame or embarrassment.¹⁵⁶ Accordingly, societal prejudices may act as a deterrent for victims/survivors of sexual harassment coming forward. When a victim seeks the assistance of the police to file a complaint, the victim is often 'further victimized' due to the justice system not being fully equipped to handle cases of a sensitive nature on top of the cultural stigmatization surrounding victims/survivors in Sri Lanka. The issue of institutional desensitization to sexual harassment in the cultural context may further disincentivise victims/survivors.¹⁵⁷ According to discussions held at the roundtable this stigma acts as a deterrent for victims/survivors in filing complaints of sexual harassment with the police.¹⁵⁸

In a landmark 2019 ruling, the Supreme Court issued 20 guidelines for law enforcement to protect public

rights and prevent abuse of power, in response to a minor's fundamental rights petition alleging unlawful arrest, deprivation of liberty, unjustified detention, and degrading treatment during police questioning.¹⁵⁹ These guidelines establish principles and standards for law enforcement officials to protect the rights, dignity, and equal treatment of all individuals, with a particular focus on women, children, and vulnerable groups, while ensuring adherence to the law. Key aspects of the guidelines include the endorsement of special measures for vulnerable groups (e.g.- pregnant women) in line with international human rights standards. The guidelines further highlight that law enforcement must diligently prevent, investigate, and arrest perpetrators of violence against women and children, regardless of whether it occurs at home, in the community, or within institutions, whether the offenders are public officials or private individuals. Furthermore, these guidelines require law enforcement officials to prevent victimization of women, treat detainees without discrimination or violence, and strictly prohibit torture and attacks on reputation.¹⁶⁰

Despite the guidelines passed in 2019, on 24 July 2021, Civil Society Organisations Jana Bala Pawura (People's Power) in collaboration with Lawyers Forum for the People (LFP), filed a complaint at the Human Rights Commission of Sri Lanka (HRCSL). The complaint aimed to address cases where the complainant themselves were subject to sexual harassment by law enforcement within police stations. The complaint was lodged in relation to

two separate cases of sexual harassment at two police stations. The complaint also requested the intervention of the HRCSL to take legal action against the perpetrators and to take steps to prevent the recurrence of such incidents. Instances of sexual harassment by law

enforcement officers can act as a deterrent for victims/survivors to register complaints with the police, when the institution is perceived by victims/survivors as a possible threat to their safety.¹⁶¹

4.4 COURT SYSTEM

The judicial system of Sri Lanka has a Court system where the High Court and the Magistrates Court have the jurisdiction over criminal matters and the District Court has jurisdiction over civil matters. Offences of sexual harassment would be filed at the Magistrates

Court. Complaints of sexual harassment that are registered at the Ministry of Labour and Foreign Employment are referred to a Court of Arbitration (Labour Tribunal) by the Minister in charge, once the Labour Department sends a report to the Minister.¹⁶²

4.5 NATIONAL ACTION PLAN

The policy framework of Sri Lanka that protects women in employment includes several guidance and action plans¹⁶³ and sectoral policies.¹⁶⁴ Sri Lanka has adopted a national action plan to implement the UN security council's resolutions on women, peace and security.¹⁶⁵ This action plan devised by the Ministry of Women, Child

Affairs and Social Empowerment amongst other objectives, aims to, amend the current legislation to be gender sensitive, promote women's participation, and sensitize officials of the state in handling gendered issues relating to women.¹⁶⁶

CHAPTER 5:

International implementation of legislation

By the year 2022, over 130 countries including Sri Lanka had implemented legislation against sexual harassment at the workplace while 43 countries had not.¹⁶⁷ This section will look at legal measures adopted by certain countries to ensure the rights of all persons to a safe working environment without

encountering sexual harassment. The countries listed below were selected based on selections made by the ILO guide on Convention No. 190 and Recommendation No. 206.¹⁶⁸ The guide provides details of countries that have taken action in specific areas for protection against sexual harassment in the workplace.


5.1 COUNTRIES WITH LEGAL MEASURES TO PREVENT SEXUAL HARASSMENT AT THE WORKPLACE


Some of these implementation practices can potentially be contextualized to amend Sri Lanka's legal framework. **Table 3** below provides a compilation that examines select countries, including Canada, Philippines, USA, Peru, Japan, Mexico, Iraq, and Gabon, to shed light on the diverse approaches taken to define


sexual harassment, establish legal remedies, outline reporting mechanisms, and delineate responsibilities of employers and employees. By exploring these different approaches, this section highlights global efforts to combat sexual harassment and promote safer and more inclusive workplaces.

Table 3 - Countries with legal measures to prevent sexual harassment at the workplace.¹⁶⁹


Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
Canada 	'any action, conduct/comment, including of a sexual nature that can reasonably be expected to cause offence/humiliation/other physical/psychological injury/illness to an employee, including any prescribed action, conduct or comment' ¹⁷⁰		Mandates workplace policy to include a statement that 'violence and harassment in the workplace is prohibited' ¹⁷¹	Accessibility complaints for federal public servants and parliamentary employees, involving physical or psychological harm, property damage, or financial loss ¹⁷² , are addressed by the Federal Public Sector Labour Relations and Employment Board through the grievance process.	Canadian Government amended the Human Rights Act to outlaw employment discrimination, including discrimination-based harassment, based on gender identity and expression.	Labour standards protections in relation to harassment and violence are applicable to unpaid student internships in the federally regulated private sector. ¹⁷³	Committees are required to formulate policies on workplace harassment. Employers working in a federally regulated industry or workplace, should develop a workplace harassment and violence prevention policy depending on the size of the employer. ¹⁷⁴ These policies may be formulated with the policy committee, the workplace committee or health and safety representative.		Violence and harassment at work are fully integrated in the workers' compensation schemes of a number of provinces and territories (such as, Quebec, Saskatchewan and Ontario) and give rise to a range of benefits provided in case of injuries that arise to the employee during the course of work.		


Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
Philippines 		Section 19 of the Safe Spaces Act 2018, foresees fines in case of non-compliance with provisions related to employers' preventive duties or in case of not taking action on reported acts of gender-based sexual harassment committed in the workplace. ¹⁷⁵		Employers must establish an independent internal mechanism to handle sexual harassment complaints. This body should include representatives from management, supervisory and rank-and-file employees, & the union if applicable. This internal complaint mechanism must be led by at least half of its female members. ¹⁷⁶		Prohibits sexual harassment at work among peers, against a superior and against subcontracted employees.	Employers or other persons of authority, influence or moral ascendancy in a workplace shall have the duty to prevent, deter or punish the performance of acts of gender-based sexual harassment in the workplace.	Employees & co-workers have a duty to:- - Refrain from and discourage sexual harassment, -Offer support to colleagues who are victims, -Report witnessed incidents of gender-based sexual harassment in the workplace.		Mandates organisations to oversee its provisions. Department of Labour & Employment: monitors private sector, Civil Service Commission: oversees public sector, & conducts yearly compliance inspections; Department of Education.	


Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
USA 				In New York the standard for proving a harassment claim has been significantly eased. A worker no longer has to prove that the harassment was 'severe or pervasive' or that a comparator was treated better or that they filed a complaint internally.	Employment discrimination is prohibited by law based on domestic violence. ¹⁷⁷ Employers must provide reasonable accommodation (accessing domestic violence shelter services, psychological counseling, safety planning, legal services, support for prosecuting the offense or Court appearances). Employees are protected by law from discrimination (on sexual orientation/gender identity). ¹⁷⁸	New York's State sexual harassment protection now covers workers, including independent contractors, consultants, employees of contractors, non-employee categories like gig workers, temps, and interns, paid or unpaid.	Employers are legally responsible for workplace harassment (engaging, encouraging, permitting). They must take steps to prevent and reduce harassment in their workplaces by implementing internal policies. Employers must also investigate allegations and apply sanctions when necessary.	An increasing number of US states and cities have passed statutes requiring sexual harassment training, and other federal and state laws, regulations and Court decisions have made it clear that employers should provide anti-harassment training to all employees in all states.	In New York a worker prevailing on a harassment claim shall, by law, recover reasonable attorney fees from an employer and may recover punitive damages as well as economic and compensatory (emotional injury) damages. Puerto Rico provides for 15 days leave in case of sexual harassment at work. ¹⁷⁹		

Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
Peru 				Law requires employers to establish a Sexual Harassment Committee/ Delegate, depending on the workforce size. Workplaces with 20+ employees: have an Intervention Committee. Smaller workplaces: an anti-sexual harassment delegate will fulfill this role. Cases involving outsourcing/ intermediation companies: complaints should go to the main company/user, who must conduct the investigation through its Intervention Committee. The investigation can be initiated by any party involved, at the victim's request (third party/ independently).		When the victim is an employee, the following rights should be guaranteed ¹⁸⁰ : a. Protection from dismissal due to such violence. b. Workplace change without harm to employment terms. c. Five days of absence. d. Employment suspension. e. Right to return to the same/similar position.	Peru introduced a new law requiring employers to adopt anti-harassment policies and investigation procedures, provide anti-harassment training, carry out annual sexual harassment risk assessments and set up a Sexual Harassment Committee or Delegate, depending on the size of the employer.				The Ministry of Labour launched the 'Work without Harassment' program to assist victims of workplace sexual harassment. It offers timely intervention, legal and psychological support, aiding victims throughout investigations and judicial proceedings concerning their labor rights. ¹⁸¹

Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
Japan 	The term “power harassment” is used to define acts and speech: (a) taking advantage of the harasser’s position of authority; (b) harming the workplace environment; and (c) beyond what is necessary or appropriate for work operation. ¹⁸²				Companies must create measures to prevent hostile working environments related to pregnancy, childbirth, childcare, or caregiver leave. ¹⁸³ Government guidelines on workplace harassment law prohibit ‘outing’ an LGBTQI+ person or insulting someone’s sexuality or gender identity as power harassment.	Prohibits harassment among colleagues, including subordinates, superiors, and different employment statuses. ¹⁸⁴ Power harassment can happen between colleagues as well as workers with different employee statuses, such as permanent employees and contract workers.	Companies with more than 50 employees must put in place measures to prevent sexual harassment. ¹⁸⁵ The new Anti-Power Harassment law prevents employers from firing or mistreating employees who report harassment.				

Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
Mexico 	'acts of harassment, bullying or ill-treatment against workers, which may harm their integrity or health'. ¹⁸⁶			Mexico's Secretariat of Labor and Social Welfare introduced a model protocol to combat workplace violence. It outlines procedures for assisting victims, promotes gender equality, and aims to eliminate workplace violence. This includes protective measures, the creation of an 'Attention and Follow-Up Committee' with company and employee representatives to oversee the protocol's application.		The Federal Labour Law and the Social Security Law were amended to extend protection to domestic workers, including protection against discrimination in employment conditions.		The employer may terminate the employment relationship where a worker has committed an act of violence, has insulted or mistreated co-workers, the employer or his/her family, the management personnel or clients and suppliers. ¹⁸⁷			

Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
Iraq 	sexual harassment is forbidden in all aspects of employment (job searches, training, recruitment, and working conditions). It also prohibits any conduct that creates a hostile/offensive work environment for those it targets. Sexual harassment under this law encompasses unwelcome/unreasonable physical or verbal conduct based on sex, impacting the dignity of individuals and leading to job-related consequences when rejected. ¹⁸⁸	The 2015 Labour Law states, 'whoever violates the provisions of the articles contained in this chapter relating to discrimination, forced labour and sexual harassment, shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding one million dinars or by any of the two sanctions,' (art. 11-2).	According to article 42 of the 2015 Labour Law: The worker has the following rights: a. To have equal opportunities and be recruited and work under equal conditions, without any discrimination. b. To have a working environment, free from any harassment.						In cases of workplace discrimination or harassment, the employer may be liable for damages, including non-pecuniary harm like mental distress. The compensation should effectively deter further violations by being proportionate to the candidate or employee's suffering. ¹⁸⁹		

Country	Categories										
	Definition of Sexual Harassment	Criminal laws	Civil laws	Reporting mechanisms	Equality	Extension of Workplace/ employees	Employers responsibility	Employees responsibility	Remedies	Monitoring mechanism	Awareness
Gabon 	Repeated inappropriate behavior or suggestive speech, linked to a person using their authority or influence to seek sexual favors, is considered sexual harassment.	Offenders may face imprisonment up to six months and a fine of up to 2,000,000 francs. ¹⁹⁰ any perpetrator of moral or sexual harassment in the location of work or during work, incurs major disciplinary sanctions pursuant to applicable laws. ¹⁹¹		'A trade union/ recognized association can act on an employee's behalf with their written consent before the relevant authorities/Courts. ¹⁹² Victim carries the initial burden of proof for moral/ sexual harassment. The defendant must demonstrate that their actions don't constitute harassment.' ¹⁹³ Staff representatives, union delegates, & public sector union organisations have whistleblower rights. ¹⁹⁴		Protection is extended against moral and sexual harassment to all employees, civil servants and trainees. ¹⁹⁵	Employees, civil servants, trainees, or interns cannot face punitive actions or discrimination, including pay, training, reviews, or promotions, for experiencing or refusing repeated acts of moral or sexual harassment or for providing testimony against such acts. ¹⁹⁶				

5.2 COUNTRY SPECIFIC EXAMPLES OUTLINED BY THE ILO FOR MEASURES AGAINST SEXUAL HARASSMENT AT THE WORKPLACE, IN COMPLIANCE WITH ILO CONVENTION 190.¹⁹⁷

This section delves into the classification of nations into distinct legal systems, particularly focusing on the Civil Law System and Mixed Legal Systems in terms of addressing sexual harassment in the workplace in compliance with ILO Convention 190. This section sheds

light on the distinctive characteristics and approaches employed on workplace sexual harassment within these legal systems, fostering a deeper understanding of their practices.

Civil Law System

Romania¹⁹⁸



Civil laws

Fine is imposed in case an employer does not comply with the measures ordered by the Court in a judgment related to violence and harassment.

Article 26 of Law No. 202 of 2002 on equal opportunities and equal treatment for women and men, as amended in 2015 and 2018.

Slovenia¹⁹⁹



Definition of sexual harassment

Any undesired behaviour associated with any personal circumstance; *Article 7, Employment Relations Act 2013.*

North Macedonia²⁰⁰



Civil laws

A person filing the complaint under the Act in terms of breach of equality shall be exempted from payment of administrative fee and another charge;

Article 22(6), The 2006 Law on Equal Opportunities for Women and Men, as amended in 2015.

Portugal²⁰¹



Civil laws

Strengthens protections against victimisation and dismissal to victims and witnesses of harassment practices.

Prevents the application of disciplinary sanctions against complainants or victims and witnesses, unless they acted with willful misconduct, taking into account the circumstances mentioned in the proceedings triggered by sexual harassment or mobbing, until its final judgement with res judicata, regardless of the right to adversarial proceedings; *Article 29(6) The Labour Code, as amended in 2017.*

Civil Law System

Italy²⁰²



Employer's responsibility

Employers are required to ensure working conditions that guarantee the physical and emotional integrity and dignity of workers, and also to agree with trade unions on informative and training initiatives aimed at preventing sexual harassment at work;

Article 2087 of the Civil Code, Paragraph 3-bis of the Code of Equal Opportunities as amended in 2018.

Denmark²⁰³



Extension of Workplace/employees

'Applies to any work performed for an employer' (sect. 2.1), including 'work in the employer's private household' (sect. 2.2.). Protection extends to all offensive behaviour, including bullying and sexual harassment (sects 22-24) and work-related violence during working hours;

The 2020 Executive Order on psychosocial working environment

Brazil²⁰⁴



Equality

Employers (companies, public agencies, individuals, and professional unions, from all economic sectors and non-profit entities) are required to adopt measures to prevent LGBTQI+ employees, outsourced employees, interns or clients from being directly or indirectly exposed to violence and harassment rooted in LGBTQI- phobia or transphobia or to sexual harassment and cyberbullying based on sexual orientation or gender identity.

Public Labour Prosecution Office's Committee for the Promotion of Equal Opportunities and the Elimination of Discrimination at Work issued Technical Note 02/2020

Uruguay²⁰⁵



Monitoring Mechanism

'The State will be responsible for designing and implementing awareness, education and supervision policies for the prevention of sexual harassment in the workplace and teaching environment, both in the public as in private fields', and foresee the General Labour and Social Security Inspectorate as the body competent to monitor compliance in the public and private sphere, (Article 5). In addition, provides that 'the Inspectorate will have broad powers to investigate the reported facts ... to interrogate the complainant, the accused and witnesses and to collect all relevant evidence', and to issue notifications and sanctions (Article 8). further provides that 'when trade unions receive complaints regarding sexual harassment, they are entitled to request to the Inspectorate General of Labour and Social Security the initiation of inspection in the workplace'. (Article 10);

Sexual Harassment Law 2009, as amended in 2017.

Civil Law System

Spain²⁰⁶



Monitoring mechanism

In 2009, technical criteria for the intervention of labour inspectors in cases of violence and harassment at work were adopted. Both internal and third-party violence – of both a physical and psychological nature (including sexual, moral and discriminatory harassment) – are covered. The document contains the procedure to be followed by labour inspectors in those cases, as well as the injunctions measures, including the power to order the suspension of work in case of imminent threat to workers' health, and sanctions provided by the OSH, labour and criminal regulations. As an annex, it includes an explanatory guide for the detection and appraisal of violence and harassment-relevant behaviours. In 2021, technical criteria for the intervention of labour inspectors in relation to psychosocial risks, which explicitly include harassment and other inappropriate conduct, were also approved.

Mixed Legal System

Niger²⁰⁷



Civil laws

'No worker may be punished, or subjected to discrimination for having been a witness to acts of sexual harassment or for reporting them.'

Article 122 of Decree No. 2017-682/PRN/MET/PS in regulation of the Labour Code

Mixed Legal System

Puerto Rico²⁰⁸



Employer's responsibility

An employer who engages in, encourages or permits workplace harassment shall be civilly liable to the persons affected. It shall be the responsibility of every employer to take the necessary measures to eliminate or minimize the occurrence of workplace harassment.

Article 5 of Law No. 90 of 2020

Djibouti²⁰⁹



Equality

In case of any dispute related to harassment, including sexual harassment, the burden of proof is shifted. In particular, when the employee presents evidence suggesting the existence of harassment, 'it is up to the defendant to prove that these acts do not constitute such harassment and that their decision is justified by objective elements unrelated to any harassment. The judge shall form his or her opinion after ordering, if necessary, all the investigative measures he or she deems useful.'

Amendment in 2018, article 4-quater of the Labour Code

Common Law

Australia²¹⁰



Extension of Workplace/employees,

A workplace means a place where work is carried out for a business or undertaking, which includes any place where a worker goes or is likely to be while at work. This includes phone, email or online such as through social media platforms; *OSH Laws, Australia 2021a; 2021b*)

New Zealand²¹¹



Extension of Workplace/employees

Grants employees affected by domestic violence the right to:

- a) take at least ten days of paid domestic violence leave;
- b) ask for short-term flexible working arrangements. This can be for up to two months; and
- c) not be treated adversely in the workplace because they might have experienced domestic violence.

The 2018 Domestic Violence – Victims’ Protection Act

Continental European Legal System

Latvia²¹²



Equality

Unemployed persons, persons seeking employment, and persons subject to the risk of unemployment are protected from discrimination due to their sex, race or ethnic origin, and from conduct which is unwanted in the opinion of this person (including a conduct of a sexual nature), with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment. According to the last amendments on 16 April 2020 the owners of micro entities and self-employed persons without income are covered by the Law until the end of 2020;

Law on Support for Unemployed Persons and Persons Seeking Employment as adopted on 9 May 2002 (last amended on 16 April 2020)

Continental Inquisitorial System

Republic of Korea²¹³



Definition of sexual harassment

‘An act of an employer (or business owner) or employee (or worker) that causes physical or mental suffering or worsens the working environment of another employee/worker by taking advantage of his/her status or relationship within the workplace beyond the appropriate scope of work.’

Labour Standards Act 2018 Article 76(2)

CHAPTER 6:

Recommendations

In July 2023 the government has proposed changes to the labour law framework on the basis of outdated laws that have proven to be “complex, discriminatory and inflexible.”²¹⁴ Some of the proposed reforms include addressing night-time restrictions as well as making provisions to address sexual harassment at work.²¹⁵ The above gap analysis identified three specific barriers for victims to access to justice: (1) legal barriers, the lack of a comprehensive legal definition on sexual harassment; (2) entrenched barriers in the criminal justice system; and (3) cultural barriers and a lack of awareness around the issue of sexual harassment. The following recommendations are aimed at addressing each of these three barriers. See Table 4 for a summary of the three barriers

identified and the specific broad based recommendations to overcome these barriers.

This section will also examine recommendations for reform from an interim perspective and a long-term perspective targeted at key stakeholders in the public sector and the private sector. The section advocates for legislative changes regarding employer liability for sexual harassment, suggesting that employers be responsible to implement necessary corrective measures to prevent and address workplace sexual harassment. The recommendations also consider non-legislative actions aimed at specific stakeholders within the system.

Table 4: Summary on Key Barriers and Solutions to Sexual Harassment at the Workplace

	Legal barriers – Lack of Comprehensive Legal Definition on Sexual Harassment	Entrenched barriers in the criminal justice system	Cultural Barriers & Lack of Awareness
Challenges identified	<p>a. Sexual harassment not specifically defined in the Industrial Disputes Act No. 43 of 1950</p> <p>b. S.345 of the Penal code provision provides narrow definition on sexual harassment</p>	<p>a. Delays in administering justice</p> <p>b. High costs from lengthy legal proceedings</p> <p>c. High burden of proof</p> <p>d. Insufficient judicial resources</p>	<p>a. Inherent patriarchal society imposing traditional gender roles</p> <p>b. Stigma and victim blaming</p>
Solutions	Include comprehensive definition on sexual harassment in Civil Law (Refer subsection 6.1.1)	Mandate employers to have policies on workplace sexual harassment. (Refer subsection 6.1.1)	Promote sexual harassment awareness and prevention in school curricula. (Refer subsection 6.6)
	Include comprehensive definition on sexual harassment in the penal code (Refer subsection 6.1.2)	Mandatory Internal complaint mechanisms and inquiry committees. (Refer subsections 6.1.1 and 6.7)	Training law enforcement for sensitization in handling cases of sexual harassment. (Refer subsection 6.5)
		Facilitating access to Alternative Dispute Resolution through labour tribunals. (Refer subsection 6.1.1)	Training employees in the workplace to create awareness and share information on preventing sexual harassment. (Refer subsection 6.5)
			Local platforms to encourage victims/survivors of sexual harassment to report instances of sexual harassment. (Refer subsection 6.10)
			Conduct campaigns on combating sexual harassment to help in destigmatization and education on internal policies on workplace sexual harassment. (Refer subsections 6.8 and 6.9)

6.1. LEGISLATIVE REFORM

The legal gap analysis has identified the following barriers for accountability and redress in the criminal justice system: (1) legal barriers including the lack of a comprehensive legal definition on sexual harassment; and (2) entrenched barriers in the criminal justice system. Therefore recommendations for legislative reform are mainly aimed at the imposition of civil remedies aimed at circumventing the issues in the criminal justice system

discussed in section 6.1.1. Furthermore, there is also a need to simultaneously amend section 345 of the Penal code to incorporate a more comprehensive definition of sexual harassment as outlined in section 6.1.2 below.

The civil legislative reform proposes employer's liability as a complimentary mechanism to the current criminal justice system which will allow for victims/survivors to

have access to justice through civil remedies, but also provide accountability for employers who do not address sexual harassment at the workplace.

Therefore, a new bill is required, specifically focusing on sexual harassment at the workplace in line with the ILO Convention No.190 extending to the public and private sector. However, the law must be contextualized to the Sri Lankan context and the realities of the civil legal systems. KII findings from the ILO suggest a phased approach for sustainable implementation.²¹⁶

6.1.1 Civil Law Reform

The following recommendations highlight key areas that can be included in the employment/civil bill, based on best practices outlined in this report:

- i. Provide a comprehensive definition of sexual harassment as adopted by countries such as Canada and Japan. The definition can include a range of unacceptable behaviours and practices, or threats, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.²¹⁷
- ii. Establish an inclusive approach to who can be a victim of sexual harassment (persons from the LGBTQI community, persons with disabilities, trans persons etc). Provide for the enforcement of laws that mandate companies to draft internal policies that are gender neutral and inclusive with special attention given to persons with disabilities and LGBTQI persons. For instance, a listed private company in Sri Lanka, has made efforts to formalize a LGBTQI inclusive workplace culture. Terms such as 'gender identity' and 'sexual orientation' have been included in all the Company's human resources policies since 2015. The conglomerate, has also partnered with Equal Ground to conduct awareness sessions on LGBTQI inclusion.²¹⁸
- iii. Require all employers to formulate and publish workplace sexual harassment policies that should be accessible to all employees. Sexual harassment policies are already implemented on a voluntary basis in some institutions. For instance, the University of Colombo has their own 'Sexual Harassment Prevention Policy' which applies to their staff and is extensively outlined and is accessible on their website.²¹⁹ The policy articulates what constitutes a safe and respectful environment, promotes gender equality, and provides clear procedures for reporting and addressing sexual harassment within the University of Colombo.²²⁰ Furthermore the California Code of Regulations require employers to construct a written policy on sexual harassment and disseminate to all employees who must acknowledge the policy by signing or emailing their acknowledgment.²²¹
- iv. Require the employer to establish a complaint procedure and an inquiry committee, tailor-made to reflect the size of the company. For instance, in Peru there is a requirement for employers to set up a Sexual Harassment Committee or Delegate, depending on the size of the employer. In workplaces with fewer than 20 employees, an anti-sexual harassment delegate will assume the role of the Intervention Committee. In Japan under the Law to Prevent Harassment in the Workplace, companies with more than 50 employees must put in place measures to prevent sexual harassment such as taking steps to punish perpetrators.²²²
- v. Provide the composition of the inquiry committee to have equal representation of women, minority groups and independent members to ensure equality and to eliminate bias. For instance, under the Prevention of Sexual Harassment (POSH) Act in India, if an organisation has 10 or more employees, there must be an internal committee ("IC") to redress complaints on sexual harassment at workplace. The committee must consist of a Presiding Officer who is a woman employed at a senior level at workplace, there must be two members from amongst employees (who are committed to the cause of women or

who have had experience in social work or have legal knowledge) and one Member from an NGO or associations committed to the same cause. The law also states that at least half of the total members of the IC should be women.²²³ Nonetheless, this approach should be inclusive and encompass individuals from various backgrounds, including the LGBTQI community, people with disabilities, and all genders, rather than being limited solely to women.

- vi.** Facilitate access to labour tribunals to specifically address sexual harassment complaints, enabling an alternative recourse to dispute resolution. This system would typically encompass specialized mediation and conciliation services designed specifically for handling sexual harassment complaints. Under the oversight of labor tribunals, victims/survivors can be provided an alternative to the conventional civil legal process, which can be complex and time-consuming.
- vii.** Extend the applicability of the bill to formal and informal places of work. For instance in Australia, under Occupational Safety and Health (OSH) laws, a workplace means a place where work is carried out for a business or undertaking, which includes any place where a worker goes or is likely to be while at work including phone calls, emails or work done online such as through social media platforms.²²⁴ In Denmark, the 2020 Executive Order on psychosocial working environment specifically ‘applies to any work performed for an employer’ including ‘work in the employer’s private household’.²²⁵ In Mexico the Federal Labour Law was amended to extend protection to domestic workers.²²⁶
- viii.** Outline punishments (warnings, dismissal) for different degrees of the offences of sexual harassment at work that are proportional to the harm caused to the victim. For instance, Belgium has legislation such as the Employee Welfare Act of 1996 which stipulates sanctions (fines) for non-compliance ranging from 400 Euros to 4000 Euros.²²⁷
- ix.** Provide a provision for compensation for victims/survivors. For instance, in Iraq under Article 8 of the 2013 Employment Relationship Act employers could be held responsible for workplace discrimination or harassment and may be required to provide compensation, which includes addressing non-pecuniary harm such as mental distress. The compensation should serve as a deterrent by being commensurate with the pain and suffering experienced by the candidate or employee.²²⁸ Furthermore In several provinces and territories in Canada, including Quebec, Saskatchewan, and Ontario, the workers’ compensation schemes have effectively incorporated provisions for addressing workplace violence and harassment. These provisions result in a variety of benefits being extended to employees in cases where injuries occur during the course of their work.²²⁹
- x.** Provide for employers to proactively engage with trade unions to conduct training sessions. For instance, in Gabon, trade unions can also represent victims/survivors of sexual harassment at Courts with the written consent of the employee.²³⁰ Further the German Equal General Treatment Act in Germany, legally requires employers to sign agreements with trade unions for trainings of employees.²³¹
- xi.** Provide that sexual harassment policies are multi-lingual, taking account the diverse culture of Sri Lanka and adherence to the Official Language Policy. While the English language might be a common denominator for many workplaces, it is essential that sexual harassment policies at the workplace are also available in the Sinhala and Tamil language to ensure language accessibility. The objective is to create an environment that ensures accessibility and equality for all employees.
- xii.** Provide that content, form and implementation of policy and procedure is accessible to all employees. Cultural and language differences may intersect with psychosocial risks and lead to harassment at work. The ILO Convention No. 190 and Recommendation No. 206, advocate for workplace risk assessment and

management to consider all factors that may increase the possibility of harassment.²³² For instance, the Irish Harassment Order, 2012, includes accessibility regulations for people with disabilities and for people who do not speak English. It specifically requires that the content, form and implementation of the policy and procedures should be accessible to all. For example, translation of policies and procedures into Braille or large print formats and languages other than English, as appropriate.²³³

- xiii.** Provide for timely internal audits conducted by employer to renew and update the policies on sexual harassment based on their efficacy.
- xiv.** Provide for extra support measures to be adopted by the employer for employees who are harassed. For instance ILO Convention 190 also requires measures such as: (a) support to help victims/survivors re-enter the labour market; (b) counselling and information services, in an accessible manner as appropriate; (c) 24-hour hotlines; (d) emergency services; (e) medical care, treatment and psychological support; and (f) crisis centers, including shelters.²³⁴

6.1.2. Criminal Law Reform

- The international definition of ‘violence and harassment’ at the workplace is more comprehensive and inclusive than Sri Lanka’s current definition of sexual harassment in the penal code. There is a potential need for reform to align the Penal Code with international standards and provide broader protection against various forms of violence, and harassment that reach the requisite level of harm which should be criminalized.
- The definition should encompass various manifestations of sexual harassment, including criminalizing voyeurism. It can even branch out to offenses of sexual harassment that involves the use of digital or electronic media or using images, audio, or videos that have sexual content. For instance, the Mexico City Criminal Code amendments include stricter penalties for digital violence against specific vulnerable groups, such as senior citizens, disabled individuals, homeless people, or indigenous populations. Furthermore, increased penalties are applied when digital or electronic media, or any other communication device, are utilized in the commission of the offense, or when the offense involves the use of images, audio, or videos containing intimate sexual content.²³⁵

6.2 ATTORNEY GENERAL’S DEPARTMENT WITH THE AID OF THE LAW COMMISSION/LEGAL AID

The establishment of a specialized unit specifically designed to expedite the handling of sexual harassment complaints. This unit should be dedicated to ensuring swift case processing, resulting in successful prosecutions, and concurrently, it will be focused on reducing the existing backlog of cases related to sexual harassment. This can be done in line with the child protection unit that was initiated from August 2004 to investigate and prosecute child abuse cases with a view to enhancing child protection.²³⁶ The UNICEF country office annual report for Sri Lanka in the year 2019 indicates that the Attorney

General’s Department handled 7,140 cases related to child sexual abuse and rape, with the aim of resolving the entire backlog by the first quarter of 2020.²³⁷ According to UNICEF many of these cases were pending for an average of 6–8 years.²³⁸ Additionally, the Government of Sri Lanka (GoSL) has introduced the nation’s first-ever database to document the prevention, response, and management of cases involving violence against children.²³⁹ The approach in handling cases of child abuse in reducing case backlogs can be used as a model to handle sexual harassment cases.

6.3 MINISTRY OF FOREIGN AFFAIRS

- Ratify the ILO Convention on Sexual Harassment at Work (No.190)

6.4 MINISTRY OF LABOUR/DEPARTMENT OF LABOUR

- In order for audits on sexual harassment in the workplace to be transparent and impartial, a third party should conduct the audits. The Ministry of Labour, more specifically the Department of Labour (DoL) can bring company audits under their purview as labour inspections are already a service within their mandate. Once an audit is complete, the DoL can publish their findings on the Ministry website. These findings can include incidents that had taken place as well as how the administration dealt with the alleged offender. This can be a transparent method for assessing the ranking of a company in how they adhere to preventing sexual harassment at work. Roundtable feedback identified that the Labor Department had workplace harassment audits 18

years ago, for two consecutive years which were funded through international donor support.²⁴⁰ Moreover, the importance of extending labour inspections to the informal sector was underscored by KIIs who noted that inspections usually occur in the formal sector which accounts for only 25 to 30 percent of the workforce.²⁴¹ The KII further noted that even in the formal sector itself, the Ministry has only about five or six hundred labor inspectors which does not cover the entire sector.²⁴² To extend the labour ministries purview over the informal sector, this may require further legal amendments – especially when considering that domestic worker’s are not a legally recognized employment category under the law.

6.5 MINISTRY OF WOMEN, CHILD AFFAIRS AND SOCIAL EMPOWERMENT

Sri Lanka’s National Action Plan for the Implementation of the UN Security Council’s Resolutions on Women, Peace and Security developed by the Ministry advocates for the digitalization of data on sexual violence which records the complaint, the duration taken to address complaints and next steps.²⁴³

- The Ministry should create an inclusive platform for anonymous reporting of workplace-related sexual harassment incidents. The intention of creating a safe and anonymous space for victims/survivors to share their experiences would be to create a supportive community which furthers the common interests of victims/survivors. The platform can also disseminate information by including local rules

and regulations on reporting, hotlines of community support providers and contact details of which authority to contact. A model to follow can be the application devised by UN Habitat.²⁴⁴ However, the application is limited to their internal employment structure. The Ministry of Women through its 1938 hotline established a support system for addressing complaints concerning any type of discrimination against women, violations of women’s rights, harassment, and domestic violence.²⁴⁵ However it was reported that only 79 complaints on sexual harassment were received from January 2020 to May 2021 through the 1938 hotline.²⁴⁶ It was also stated that the reported complaints only addressed the tip of the iceberg as many cases go unreported.²⁴⁷

For instance, India has designed an application to address sexual harassment at the workplace by raising awareness and disseminating information.²⁴⁸ The Sexual Harassment Electronic Box (SHe-Box) is a mechanism put forth by the Government of India to facilitate the registration of complaints related to sexual harassment (in accordance with the Protection of Women from Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013). Any woman can use the SHe-Box. The 'resources' section of the SHe-Box contains detailed information on sexual harassment of women in the workplace.²⁴⁹ However, there are multiple critiques of the application which include: a) the application is limited to the formal sector and doesn't include the informal sector, b) limited to women only, c) anonymous complaints cannot be made as it requires details such as name, email address, mobile number, individual identification number (Aadhaar) and d) Supreme Court employees are not covered.²⁵⁰

- Cultural issues of prejudice and desensitization of sexual harassment act as barriers for victims/survivors to submit complaints. Training opportunities can be provided for police and other institutions specified under chapter 3, that come into contact with victims/survivors of gender-based violence and harassment, to sensitize and educate on the approach to be taken. Article 10(e) of the ILO Convention 190 requires specialized police units or specially trained officers to support victims/survivors of

gender-based violence and harassment.²⁵¹ The National Action Plan for the Implementation of the UN Security Council's Resolutions on Women, Peace and Security developed by the Ministry suggests including a module on gender in the induction of all public officials, to educate them to be gender sensitive.²⁵²

The Public Service Commission aims to enhance the efficiency of public services while fostering professional ethics among public officers. The Public Service Commission can therefore be the body to implement the trainings that are crafted by the Ministry of Women and Child Affairs. In the Philippines, the 2018 Safe Spaces Act mandates different entities and bodies to monitor its provisions (Department of Labour and Employment for the private sector and the Civil Service Commission for the public sector).²⁵³ These institutions are required to conduct yearly spontaneous inspections to ensure compliance of obligations under the Act.²⁵⁴ In addition, the Act also places responsibility on the Department of Education, the Commission on Higher Education, and the Technical Education and Skills Development Authority for conducting regular spontaneous inspections to ensure compliance of school heads with their obligations under this Act. Similarly the Public Service Commission, may also take up a supervisory role over public bodies in terms of inspections.

6.6 MINISTRY OF EDUCATION

- To tackle the issue of sexual harassment at its roots and promote early education, the inclusion of sexual harassment awareness and prevention in school curricula can be considered; It can be incorporated into an academic medium as part of civic learning or can be taught in an artistic medium through drama or plays. UN General Assembly Resolution 73/148 advocates instilling in young children the importance of respecting and treating people with dignity and implementing activities in school that would foster this attitude in children.²⁵⁵ UNESCO

proposes the implementation of Comprehensive Sexuality Education (CSE) for all countries, a 'curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality'.²⁵⁶

- Younger learners in lower grades are introduced to simple concepts of family, respect and kindness and older learners are introduced to concepts such as gender-based violence.²⁵⁷ Moreover, a study conducted by UNESCO in 2012 identified laws and

policies in 28 Asian and Pacific countries, which includes Sri Lanka, on the topic of sexuality education.²⁵⁸ The study noted that HIV and sexual and reproductive health (SRH) education although a part of Sri Lanka's school curriculum is only mandatory for students in grades 6-9, leaving many students without access to this important information in grades 10-11.²⁵⁹ The study further observed that 5 out of 28 countries, had a legal framework that included a full set of laws and policies relating to sexual education. Some of the 15 countries include Bangladesh, Cambodia, China, India, Indonesia, Mongolia, Nepal, Pakistan and others.²⁶⁰ Bangladesh, Philippines, and Vietnam have population and reproductive health policies that specify the need for sexuality education to be provided from the primary level.²⁶¹

However, sex education has been a controversial issue in Sri Lanka.²⁶² There have been criticisms suggesting that sex education will undermine the culture and traditions in the country. This argument centers around the concept being westernised and therefore seeks to delegitimize it as a threat to traditional values and moral standards that are deeply rooted in the culture and traditions of Sri Lanka.²⁶³

- Roundtable suggestions on education include extending the education framework on workplace sexual harassment to talent pools within external staffing and recruiting companies, such as NightOwl Consulting.²⁶⁴ Staffing agencies often offer free training/ courses to help market candidates.²⁶⁵ A module on workplace sexual harassment can be incorporated into their training, which will be of use once they are hired by companies.²⁶⁶

6.7 SMALL AND MEDIUM ENTERPRISES & MULTI-NATIONAL CORPORATIONS

Small and Medium Enterprises & Multi-National Corporations can proactively prevent sexual harassment in all organizational activities and ensure survivor-centered grievance mechanisms. They can set tangible deliverables across the organisation that incorporate survivor centered sexual harassment into all organisational and corporate activities.²⁶⁷ Tangible deliverables include enhancing the scope of trainings, regular information sharing on the punishment for sexual harassment, cross-department collaboration to detect sexual harassment etc.²⁶⁸ Grievance mechanisms should revolve around policies that are 'survivor-centered' focusing on the needs of the survivor (dignity and best interests) in the grievance mechanism.²⁶⁹ Employers and supervisors should receive training on non-discrimination, particularly towards minority groups in the workplace, and how to respond to victims/survivors of sexual harassment.

6.7.1 Small and Medium Enterprises

The grievance mechanism can be structured around the size of the company. As noted earlier in the legislative reform section if a company has less than 10 employees, the law can stipulate the number of members required

to be in the investigation committee/panel and the requirement for equal gender representation. Smaller companies can appoint and train a designated officer who can function to address and update on complaints of sexual harassment at work.

- In July 2019, Peru introduced a legislation requiring employers to set up a Sexual Harassment Committee or Delegate, depending on the size of the employer. In workplaces with fewer than 20 employees, an anti-sexual harassment delegate will assume the role of the Intervention Committee. The investigation procedure can be initiated by an involved party, at the request of the victim or a third party, or ex officio.²⁷⁰ Once a workplace sexual harassment policy is enforced, it should be communicated to all staff and a method of acknowledgment should be facilitated to hold everyone accountable. As noted previously, the California Code of Regulations requires employers to construct a written policy on sexual harassment and disseminate to all employees who must acknowledge the policy by signing or emailing an acknowledgment.²⁷¹ During the round table discussion it was also suggested to

raise awareness on workplace sexual harassment policy to potential job hires at the interview itself.²⁷²

6.7.2 Multi-National Corporations

- Larger companies can appoint an inquiring committee with equal representation of females, males and minority groups representatives. For instance, under the Law to Prevent Harassment in the Workplace in Japan, companies with more than 50 employees must put in place measures to prevent sexual harassment.²⁷³ Once a workplace sexual harassment policy is enforced, it should be communicated to all staff and a method of acknowledgment should be facilitated to hold everyone accountable.

KIIs conducted with a MNC in Sri Lanka noted that their policies cover workplace sexual harassment which includes bullying/discrimination based on sexual orientation are biannually reviewed and updated. During the updating process of these policies, global standards are drawn from to ensure that global best practices are contextualized.²⁷⁴ Refreshers are also conducted every year on what the policies entail in addition to a mid-year performance review where sign-off is required for employees, in order to acknowledge the awareness of these policies. Biannual checks and monitoring are conducted on how much of the workforce has been trained.²⁷⁵ However, these workplace policies only apply to the top tier of their workforce which makes up 10% of their employees.

- According to the KII there are different mechanisms in place to address a grievance of workplace sexual harassment:²⁷⁶ a) through an internal officer/ HR related and non-HR related who has been given specific trainings on how to handle complaints on workplace sexual harassment, b) through an online platform, c) through a toll-free hotline available in all 3 languages from 8 a.m. to 10 p.m (also a counseling helpline as well for private issues/mental health issues), d) speaking to Human Resources, where grievance boxes are also available along with counselors, and e) bystander intervention, where an employee can intervene if they feel safe enough, in a scenario involving workplace sexual harassment.

In terms of the procedure to handle a grievance, as per the KII, the following are some of the best practices which involves: -

- a. A preliminary investigation to assess complaint validity.²⁷⁷
- b. Sanction determined considering factors like negligence, past record, and intention.
- c. Outcomes categorized as 'extreme, high, low, or medium' with corresponding actions.²⁷⁸
- d. Interim measures to include remote work, safety support, and suspension of the perpetrator and transfers considered if necessary.
- e. Employees to have the option to file a police complaint alongside the internal inquiry.²⁷⁹

6.8 CHAMBERS OF COMMERCE

- The Chambers of Commerce can promote the utilization of community helplines, including the Courage, Compassion, and Commitment Foundation (CCC Foundation) hotline, also known as the CCC line, and the Women in Need hotline.²⁸⁰ CCC line is a free telephone counseling service, which aims to

provide emotional support and guidance to people facing various challenges. It encourages individuals of all ages to seek assistance for issues such as domestic violence, family disputes, mental health concerns, and more.²⁸¹ Women in Need hotline on the

other hand is available 24 hours for any person to call and receive mental and psychological support.

- The Chambers of Commerce can conduct campaigns on preventing workplace sexual harassment.²⁸² In Ecuador the Chamber of Industries and Production (CIP) in October 2020, launched a comprehensive campaign on the prevention and elimination of violence against women at work, at home, at school and in society, which can be duplicated by Chambers of Commerce.
- The Chambers of Commerce can also incorporate the internal policies outlined in the civil bill on ILO 190 convention within its Code of Conduct/Code of Ethics for companies to follow. Klls raised concerns of incentivizing companies to voluntarily report on their practices and policies on addressing workplace sexual harassment.²⁸³ As an incentive for companies to abide by the Code and implement such policies, the Chambers of Commerce can introduce a system that awards companies annually for their positive enforcement of policies.

6.9 TRADE UNIONS

- Trade Unions can engage with Civil Society Organisations that are in the space of combatting sexual harassment, who may be able to assist in providing training and information sharing sessions which are unbiased. For instance, the German Equal General Treatment Act mandates employers to take all necessary steps to prevent sexual harassment and protect employees. This requirement extends to taking preventative measures, specifically in relation to training.²⁸⁴ Under Article 2087 of the Italian Civil Code of Equal Opportunities, employers are required to agree with trade unions on informative and training initiatives aimed at preventing sexual harassment at work.²⁸⁵ This model can be used for Sri Lanka as well by incorporating the requirement for employers to agree with Trade Unions conducting training sessions for employees. Trade unions should also partake in the development and implementation of a company's sexual harassment policy to ensure fair and transparent discussions.²⁸⁶
- Trade Unions can engage in the role of representing victims/survivors of sexual harassment in Court. In Gabon, Article 9 of the Law on the Fight against Harassment in the Workplace states that 'any representative trade union organisation or any legally declared association may, with the written agreement of the employee, bring any action on his/her behalf before the competent authorities or Court.'²⁸⁷

6.10 CIVIL SOCIETY ORGANISATIONS

- Civil Society Organisations can hold employers accountable in an approach which considers promoting and monitoring or naming and shaming a company in order to incentivize them to comply with sexual harassment policies. In Nepal, with the support of the ILO, a Convention No. 190 Action Group was established, whose members have been nominated by the Government and workers' and employers' organisations. The Action Group coordinates capacity-building activities for employers' and workers' organisations.
- To acknowledge and contribute to work that has been done to promote the prevention of workplace sexual harassment, participants at the roundtable discussion suggested creating an information repository as a collective effort to counter workplace sexual harassment which can build on existing resources.²⁸⁸

- Have local platforms that actively address sexual harassment to empower women to seek help, effectively addressing the issue of underreporting and to shed light on the issue of sexual harassment in Sri Lanka by building a public conversation around the topic. By engaging with social media platforms and movements focused on combating sexual harassment, civil society organizations (CSOs) can play a pivotal role in addressing the issue and advocating for its prevention. They achieve this by not only encouraging victims/survivors of sexual harassment to step forward but also facilitating the redress process. Sexual harassment is among the most pervasive rights violations in the world and is disproportionately experienced by women.²⁸⁹ As discussed in this report, regardless of the legal framework in place to combat sexual harassment, there is a phenomenon of underreporting due to social stigma and long delays in the criminal justice system. Furthermore, there is currently no credible data available on sexual harassment in the workplace in Sri Lanka.

The details of entities that currently exist in the sphere of workplace harassment and their contributions to counter workplace sexual harassment in Sri Lanka are discussed below.

The ‘#MeToo’ movement which was coined in 2006 and took off in 2017 in the USA²⁹⁰ which gave a platform to many women to come forward against sexual harassment of many forms, had a late bloom in Sri Lanka.²⁹¹ In 2021, an incident of sexual harassment that took place in the government media sector was publicized.²⁹² Further local social media movements include ‘Not your nangī’,²⁹³ which aims at empowering women while also combatting sexual violence faced by women in Sri Lanka. Women in Need,²⁹⁴ Women and Media Collective,²⁹⁵ and ‘Bakamoono’²⁹⁶ are few local organisations and social media movements that have a wide reach and are engaged in the protection of women who face sexual violence and sexual harassment, while assisting them in different capacities and providing them with a platform to raise their voices and speak their experiences.

Endnotes

- 1 International Labour Organization and Lloyd's Register Foundation, 'Experiences of violence and harassment at work: A global first survey', (2022), at <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_863095.pdf> [accessed 12 June 2023], p.3.
- 2 *ibid.*
- 3 'The Impacts of Workplace Sexual Harassment' at <<https://www.respectatwork.gov.au/individual/understanding-workplace-sexual-harassment/impacts-workplace-sexual-harassment>> [accessed 10 October 2023].
- 4 'The real cost of Workplace Sexual Harassment to Businesses' at <<https://theconversation.com/the-real-cost-of-workplace-sexual-harassment-to-businesses-122107>> [accessed 10 October 2023] provides 'a study has found an average damage of US\$22,500 per employee in lost productivity and employee turnover due to sexual harassment'.
- 5 Engage for Success, 'Why addressing sexual harassment at workplace is vital and how to effectively combat it', at <<https://engageforsuccess.org/productivity/why-addressing-sexual-harassment-at-workplace-is-vital-and-how-to-effectively-combat-it/>> [accessed 07 September 2023]
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