

Chapter 8

Sexual Harassment

Objectives

This chapter focuses on sexual harassment in the target countries, i.e. its incidence and legal and other responses by state organs to address sexual harassment. The aim is to sensitise and enable judges and other stakeholders to make informed and human rights compliant decisions when dealing with cases of sexual harassment.

This chapter consists of four sections focusing on sexual harassment in Cambodia, India, Pakistan and Thailand – each section detailing its incidence in that country and legal and other responses by state organs to address it.

Sexual harassment and other forms of sexual violence in public spaces are an everyday occurrence for women and girls around the world. This reality reduces women's and girls' freedom of movement and ability to participate in school, work and in public life. It limits their access to essential services, and enjoyment of cultural and recreational opportunities. It also negatively impacts upon their health and well-being.¹

Sexual harassment is experienced in workplaces and educational institutions, and in both private and public organisations. Despite concerted national and international efforts to eliminate sexual harassment, there is no single definition of what constitutes prohibited behaviour. The CEDAW Committee has defined sexual harassment as follows:

Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.²

Increasingly, sexual harassment is being recognised as a violation of human rights and an affront to the dignity of persons, which seriously undermines equality of opportunity and treatment between men and women.³ Over the

past ten years, many initiatives against sexual harassment have been initiated in the Asia and Pacific region. Women's organisations have advocated change, governments have adopted new legislation or policies or taken up specific programmes, the judiciary have recognised the offence and provided remedies, and workers and employers have taken steps against it.⁴

8.1 Cambodia

8.1.1 Sexual harassment

Women face a daily risk of sexual harassment working in the hospitality, tourism and garment sectors in and around the workplace. Women make up 51.4 per cent of the workforce in Cambodia, with a large percentage working in the garment industry.⁵ There continues to be no explicit definition of sexual harassment under Cambodian law. Legal recourse for victims of sexual harassment is limited, and few workers and employers are aware of their rights and obligations in respect of sexual harassment. Although there are some studies on sexual harassment in the workplace, the prevalence and gravity of sexual harassment in the workplace is largely unknown due to under-reporting and under-investigation. International non-governmental organisations such as CARE have recently embarked on initiatives to raise awareness on sexual harassment in the workplace; advocate for stronger and more comprehensive laws; and for the development of national guidelines for the prevention and response to sexual harassment in the workplace.⁶

Sexual harassment: law

Constitution of Cambodia 2008: Article 31 of the Constitution should be used as the starting point to inform how provisions related to sexual harassment laws are interpreted and applied. Article 31 states, 'the Kingdom of Cambodia recognises and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women's rights and children's rights.'⁷ Article 31(2) states that all 'citizens shall be equal before the law, enjoying the same rights and freedoms and obligations regardless of race, colour, sex, language, religious belief, political tendency, national origin, social status, wealth or other status.'⁸ Article 38 'prohibits any physical abuse of the individual.'⁹ Article 45 states that '[a]ll forms of discrimination against women shall be abolished.'¹⁰

Criminal Code 2010: Section 250 defines sexual harassment as 'the abuse by one person of the authority conferred by his or her functions against another person for the purpose of applying pressure repeatedly in order to obtain sexual favours.'¹¹ There is no explicit definition of what conduct constitutes 'applying

pressure'. The sentence for sexual harassment offences is imprisonment from six days to three months and a fine of 100,000 to 500,000 Riels.¹²

Labour Law of Cambodia 1997: While there is no explicit provision on sexual harassment, section 172 makes mention of 'sexual violations' in respect of child labourers, apprentices and female employees.¹³ Article 172 states that 'all forms of sexual violation (harassment) is strictly forbidden'.¹⁴ The Labour Code, however, does not define sexual harassment, nor does it outline procedures for complaints, or create channels for workers to secure a safe working environment.¹⁵

Law on the Prevention of Domestic Violence and Protection of Victims 2005: This law mentions sexual harassment under the framework of 'sexual aggression' – a form of domestic violence. However, it does not relate to sexual harassment in the workplace. Equally, there is no definition or enumeration of what constitutes sexual harassment in the framework of domestic violence.

International obligations: As a State party to CEDAW, Cambodia has an immediate and continuous obligation to 'condemn discrimination against women in all its forms'.¹⁶ The CEDAW Committee defines discrimination to include 'violence that is directed against a woman because she is a woman or that affects women disproportionately'.¹⁷ Under the Declaration on the Elimination of Violence against Women, violence against women is defined to include '[p]hysical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, *sexual harassment* and intimidation at work'.¹⁸ The CEDAW Committee has defined sexual harassment as 'unwelcome sexually determined behaviour [such] as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions'.¹⁹ The committee explains that '[s]uch conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment'.²⁰

The lack of a comprehensive definition of sexual harassment providing adequate protection to employees in the workplace leaves thousands of women workers exposed and vulnerable to harassment, intimidation and violence. It also encourages the culture of impunity amongst employers and businesses which enables discrimination and violence against women. In the absence of national legislation defining sexual harassment, it is recommended that articles 31, 38 and 45 of the Constitution be used as a basis to read into the law the definitions of sexual harassment set out in

international law, notably under articles 1 and 2 of the Declaration on the Elimination of Violence against Women.

Sexual harassment: Recommendations

The following recommendations are offered which may be helpful in bringing Cambodia in compliance with its obligations under international law:

- Investigate, prosecute and punish allegations of sexual harassment as a criminal offence under section 250 of the Criminal Code
- Ensure victims of sexual harassment are able to access remedies and reparations for sexual harassment under the civil code for damages (e.g. lost wages) incurred as a result of harassment in the workplace
- Engage in more public awareness raising on the issue of sexual harassment.

8.2 India

8.2.1 Sexual harassment

According to the National Crime Records Bureau of India, 82,235 cases of assault on women with intent to outrage their modesty and 9,735 cases of insult to the modesty of women were reported in 2014.²¹

Sexual harassment: law

Indian Penal Code 1860: The Penal Code criminalises a number of acts relating to sexual harassment. These include singing lewd songs directed at women in public spaces;²² demanding sexual favours despite indication of disinterest and making unwanted physical contact against a woman's will;²³ watching, capturing or sharing images of a woman engaging in a private act without her consent; following someone with or without their knowledge;²⁴ and using any word, gesture or act intended to insult the modesty of a woman, etc.²⁵ The Code further criminalises any act of threatening to harm a woman or her reputation or property when she makes a clear refusal of sexual advances.²⁶

The Information Technology Act 2000 (ITA): This Act criminalises the posting of any obscene or defamatory material on a public online platform intending to harass women and children.²⁷

Protection of Children from Sexual Offences Act 2012: This Act defines sexual harassment and prescribes penalties for it.²⁸ It also specifies the duties of the media, studio and photographic facilities to report cases of sexual harassment and prescribes penalties for failure to report or record such cases.²⁹ It designates a special court to ensure speedy trial of such offences.³⁰ It also

seeks to fast track the investigation and hearing of such cases, by setting a 90-day time limit for any inquiry into a sexual harassment complaint.

Section 11 of this Act defines sexual harassment as follows: 'A person is said to commit sexual harassment upon a child when such person with sexual intent':

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation. Any question which involves 'sexual intent' shall be a question of fact.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013: This Act prohibits the sexual harassment of any adult woman at the workplace. Section 2(n) defines sexual harassment as:

Any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The 2013 Act prohibits the following acts as well:

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment: or

- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.³¹

The Act requires every employer to constitute an internal complaints committee, and a local complaint committee, specifies the procedure for lodging complaints to these two committees and empowers a Metropolitan or a Judicial Magistrate of the first class to take cognisance of an offence of sexual harassment.³²

Sexual harassment: key judgments

Vishaka & Ors v State of Rajasthan & Ors [1997] INSC 665 (13 August 1997)

Key points:

- Measures for sexual harassment

A social worker in a village in Rajasthan was brutally gang raped. A women's rights organisation, which saw the failure of the state authorities to intervene in this case as a violation of fundamental rights to gender equality and the right to life and liberty, filed a writ petition before the Supreme Court. It argued that the executive and legislature had failed to take effective preventive measures against sexual harassment in the workplace and petitioned the Supreme Court for the enforcement of the fundamental rights of working women as guaranteed by the Constitution of India, assisting in finding suitable methods for realisation of the true concept of 'gender equality', and for directives to prevent sexual harassment of working women in all workplaces through judicial process, to fill the vacuum in existing legislation.

Case 8.1 Vishaka & Ors v State of Rajasthan & Ors

The Supreme Court, after a discussion of domestic law, CEDAW and general recommendation 19, laid down the following guidelines:

The **GUIDELINES and NORMS** prescribed herein are as under:

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

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1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers' steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

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5. Disciplinary Action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women.

Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.

10. Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

Apparel Export Promotion Council v A. K. Chopra 1999

Key points:

- Clarifying definition of sexual harassment

Brief facts of the case are that Ms. X was a junior employee of the Apparel Export Promotion Council. The respondent, Mr C, worked as a private secretary to the chairman of the Council. On several occasions Mr C made unwelcome sexual advances to Ms. X. She complained to the Council Directorate which suspended him and set up an inquiry.

The Enquiry Officer concluded that Miss X was molested by the respondent at Taj Palace Hotel on 12th August, 1988 and that the respondent had tried to touch her person in the Business Centre with ulterior motives despite reprimands by her. The Disciplinary Authority agreeing with the report of the Enquiry Officer, imposed the penalty of removing him from service with immediate effect on 28th June, 1989. Aggrieved, by an order of removal from service, the respondent [made several appeals reaching to the Supreme Court of India].

Case 8.2 Apparel Export Promotion Council v A.K. Chopra

The Supreme Court said:

An analysis of the above definition, shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India. [...].

The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. [...]. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law. [...]. In the instant case, the High Court appears to have totally ignored the intent and content of the International Conventions and Norms while dealing with the case. The observations made by the High Court to the effect that since the respondent did not actually molest Miss X but

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only tried to molest her and, therefore, his removal from service was not warranted rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer.

In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression molestation. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have demoralizing effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. [...]. Any lenient action in such a case is bound to have demoralizing effect on working women. Sympathy in such cases is uncalled for and mercy is misplaced. Thus, for what we have said above the impugned order of the High Court is set aside and the punishment as imposed by the Disciplinary Authority and upheld by the Departmental Appellate Authority of removal of the respondent from service is upheld and restored. The, appeals, thus succeed and are allowed. We, however, make no order as to costs.

8.3 Pakistan

8.3.1 Sexual harassment

‘All too often, working women have tales of their perversions: the lesser ones include gaze and glance, the occasional grope, the unwanted text message, the innuendo; the bigger ones include invitations to meet outside the office, over lunch or dinner – with plum assignments, promotions, job security and professional reputations hanging in the balance.’³³

Sexual harassment: law

There are general and special laws prohibiting sexual harassment in general and in the workplace. Section 509 of the Pakistan Penal Code states that:

Whoever

- (i) *intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman;*
- (ii) *conduct sexual advances, or demand sexual favours or uses verbal or non-verbal communication or physical conduct of a sexual nature*

which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of workplace, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behaviour, or conducts such behaviour with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

(iii) shall be punished with imprisonment which may extend to three years or with fine up to five hundred thousand rupees or with both.

Explanation 1: Such behaviour might occur in public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to workplaces, private gathering, or homes.

Explanation 2: Workplace means the place of work or the premises where an organisation or employer operates, this may be a specific building, factory, open area or a larger geographical area where the activities of the organisation are carried out. Sexual advances may occur after working hours and outside the workplace. It is the access that perpetrator has to the person being harassed by virtue of a job situation or job-related functions and activities.

Section 377A of the Pakistan Penal Code defines sexual abuse as follows:

Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.

Section 377B states that: 'Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description for a term which may extend to seven years and liable to fine which shall not be less than five hundred thousand rupees or with both.'

The special law dealing with sexual harassment in workplace is the Protection against Harassment of Women at the Workplace Act 2010. Section 2(h) defines sexual harassment as:

Any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the

attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.

The Act also requires both public and private organisations to constitute an inquiry committee authorised to deal with and inquire into complaints of sexual harassments in the workplace; lays down the procedure of inquiry and entitles victims to make complaints either to the inquiry committee or an ombudsman.³⁴ The Schedule to the Act lays down a Code of Conduct to be followed by the every employee including those in management and the owners of an organisation to ensure protection and safety of women against harassment in the workplace.

Sexual harassment: key judgments

Muhammad Sharif v The State, P L D 1957 Supreme Court (Pak.) 201

Key points:

- Sexual harassment
- Impartiality of judges (they cannot be theologians)

This is a case about a group of college girls who went on a college picnic. They were followed by a group of boys at the picnic spot and harassed by the boys asking to sing love songs for them and making obscene gestures. The girls reported the incident to the college principal who informed the police. The police found the boys guilty and charged them under sections 294, 354 and 509 of the Pakistan Penal Code. The Magistrate found three boys guilty and sentenced each one of them for one year's rigorous imprisonment under section 509 for insulting the modesty of women.

The Additional Sessions Judge, on appeal, acquitted the boys. The government appealed to the High Court against the decision of the Sessions Judge. The following discussion by the High Court following the views of the Supreme Court are illuminating in respect of internal bias and equal rights to enjoyment of outdoor activities by girls and boys.

The learned Judges found it impossible to sustain the conclusions of the learned Additional Sessions Judge, which both on matters of fact and of law appeared to them to be wholly untenable, set aside the order of acquittal and restored the order of the Additional District Magistrate with this modification that the conviction of Muhammad Rafiq petitioner under section 354 and the consequent sentence were set aside and he was convicted of an offence under section 352 and sentenced to three months' rigorous imprisonment under that section.

Case 8.3 Muhammad Sharif v The State

[On appeal, the Supreme Court rejected all objections of the petitioners] except that relating to the illegality of the sentence of rigorous imprisonment for the conviction under section 509.

[The Supreme Court said that] the learned Additional Sessions Judge displayed a serious lack of judicial equilibrium in preaching a sermon to the management of the college that girls should not be permitted to go out unescorted and without purdah and that the conduct attributed to the young men who followed and pestered them was perfectly natural. With his experience the learned Judge should have realised that his sole function, as an appellate Judge, was to consider whether the offence of which they had been convicted had been proved against the petitioners and that he was neither called upon nor expected to pronounce his own opinion as to [whether] in College authorities should permit their girl students to enjoy a holiday. In such matters there can always be room for some difference of opinion and a Judge should not assume the role of an adviser or theologian. The measure in which girl students should be allowed freedom is essentially the responsibility of those who manage an educational institution. It may be that in the present instance the College authorities considered that girls are as much entitled to fresh air as boys and that by permitting them to go unescorted and without purdah they are fostering in them a feeling of independence, confidence and self-reliance. The fact that a girl old enough to look after herself decides to walk in a public place without someone to look after her and without purdah can never be a ground for a miscreant to tease or annoy her for that reason. If the learned Judge thought that the appearance of educated girls in public places furnishes excusable provocation to the young men who come to or happen to be in that place then he was propounding an extremely pernicious doctrine which in its essentials comes perilously near the argument that because a mother adorns her infant daughter with costly ornaments and permits her to go to a neighbour's house, an evil minded person would have a justifiable excuse to rob her of her ornaments. This approach to the case was responsible for a basic error in the Additional Sessions Judge's judgment because he never addressed himself to the fundamental question in the case, namely, why did the several girls and at least two local men give evidence against the petitioners, which, if believed, would undoubtedly bring the case within the four corners of section 509.

In regard to the application of section 509 there can be no question that the acts attributed to the petitioners, particularly to Muhammad Rafiq, did amount to an insult to the modesty of the girls. If a party of young men follow a group of college girls who are holidaying in a public place, pass indecent remarks on and make obscene gestures to them, ask one of them to sing a love song and refer to one of them as kafir (beloved) they must, in the present state of society in Pakistan, be held to intend to insult the modesty of the girls and unless the law is reduced to a farce the application of section 34 to other members of the party would be fully justified, where the girls are followed and pestered persistently and systematically for several hours. The High Court was, therefore, right in holding that the matter had not been approached by the learned Additional Sessions Judge in a correct manner and that he was wrong in setting aside the trial Court's judgment of conviction.

Ms. Tahir Tahir v Vice Chancellor of Quaid-e-Azam University, Islamabad, 2013 MLD 225

Key points:

- Sexual harassment of students by teachers

This is a case of sexual harassment of a university student by her teacher. She complained to the university management who set up an inquiry and found the teacher guilty of blackmail and sexually harassing his female student. The inquiry recommended termination of the teacher. The teacher appealed against the decision to the Federal Ombudsman.

Case 8.4 Ms. Tahir Tahir v Vice Chancellor of Quaid-e-Azam University

The Ombudswoman's discussion is reproduced below:

9. [...] I have gone through the statements of appellant, respondent No.2 and the witnesses and have examined the annexed documents. The question to ponder is whether the Protection Against Harassment of Women at Workplace Act, 2010 is applicable to educational institutions and whether it only permits an employee of any organization to make a complaint. It will be useful to reproduce section 2, subsections (l) and (c) which reads as under:
 'Section 2 subsection (l) "Organization" means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semi-autonomous body, Educational Institutes, Medical facilities (sic) established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984 (XLVII of 1984) and includes any other registered private sector organization or institution.
 'Further subsection (n) "Workplace" means the place of work or the premises where an organization or employer operates and includes building, factory, open area or a larger geographical area where the activities of the organization or of employer are carried out and including any situation that is linked to official work or official activity outside the office.
 'Section 2(e) "Complainant" means a woman or man who has made a complaint to the Ombudsman or to the Inquiry Committee on being aggrieved by an act of harassment.'
10. From the plain reading of the above sections it is clear that the university being an educational institution is an organization within the meaning of section 2 subsection (L) of the Act. Further under section 2 subsection (e) the application of the Act is not restricted to the employees of an organization. Sexual harassment as defined is not in any way limited in its application to the employees of an organization. In view of this it is held that the female students even otherwise being part of the university cannot be deprived of the remedy provided by the Act if sexually harassed. The objection of the appellant that the Act is not applicable to the educational institutions has no force in it, therefore this argument is rejected.

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11. The arguments of the learned counsel for appellant that the Act is not applicable to the students as it only permits an employee of an organization, is not based on legal hypothesis. The fact remains that work means physical and mental effort or activity directed to the production or accomplishment of something that one is doing, making or performing especially as an occupation or undertaking a duty or a task therefore, the Act equally applies to employer, employee and students.
12. On 29-7-2011, the members of syndicate resolved to designate the syndicate as management and competent authority under section 2(j) and (d) of the Protection against Harassment of Women at Workplace Act, 2010. The syndicate again met on 20-8-2011 to discuss the report of inquiry committee along with show cause notice issued to the appellant. The record shows that Dr. Wasim did not attend the meeting of the syndicate held on 20-8-2011 as he was member of the committee who conducted inquiry in case of the appellant.
13. The arguments of the learned counsel for appellant that Ms. Tehrim Tahir (respondent No.2) made a complaint against the appellant just to pressurize him to grant her more marks is unfounded as respondent No.2 made complaint at the advice of her fellow students.
14. This is also evinced from the minutes of the seventh meeting of the committee held on 20-7-2011 that the appellant was given an opportunity to cross examine respondent No.2 and her witnesses but he declined to cross examine any of them. A certificate in this regard duly signed by the appellant is on record.
15. In the view of foregoing, it is held that the appeal in hand strictly falls within the definition of harassment under section 2 subsection (h) of Protection against Harassment of Women at Workplace Act 2010. The appellant Noor Mustafa Awan is found guilty of sexually harassing respondent No.2 through verbal communication of sexual nature and sexually demeaning attitude, and have failed to make out a case in appeal justifying interference of this forum.
16. In the wake of what has been discussed above this appeal is dismissed.

8.4 Thailand

8.4.1 Sexual harassment

Sexual harassment has become a more visible issue in recent years. There has been more public and political discourse on what constitutes sexual harassment and what legal recourse, if any, is available to victims of sexual harassment.

Sexual harassment: law

Labour Protection Act 1998: Section 16 of the Labour Protection Act prohibits and penalises sexual harassment, stating that a work chief, supervisor or inspector is not permitted to sexually harass an employee. Under section 147, any person who violates section 16 may be fined up to 20,000 baht. This prohibition does not extend to harassment among employees of the same ranking. The law does not provide a definition of

what conduct constitutes sexual harassment, nor does it enumerate a list of behaviours which may be classified as harassment.³⁵

The Civil and Commercial Code 1925: Section 420 allows an employee who has been sexually harassed to claim compensation for damages incurred as a result of the harassment.³⁶

Criminal Code 2008: Sexual harassment may be prosecuted as ‘public bullying or harassment’ under section 397 or an ‘indecent act’ under section 278. Under section 278, a perpetrator is subjected to a fine of up to 20,000 baht and up to 10 years’ imprisonment. The sentence under section 397 was amended in February 2015 to increase punishment from one month’s imprisonment to five years’ imprisonment and from a fine of 1,000 baht to a fine of 10,000 baht.³⁷ In both cases, there is no minimum sentence for an offence involving sexual harassment.

The Cabinet of the Thai government issued a Cabinet Resolution on sexual harassment in June 2015. The resolution introduced a preliminary definition of sexual harassment. Accompanying the Cabinet Resolution was a set of guidelines on how to address and prevent sexual harassment.

International obligations: As a State party to CEDAW, Thailand has an immediate and continuous obligation to ‘condemn discrimination against women in all its forms’.³⁸ The CEDAW Committee defines discrimination to include ‘violence that is directed against a woman because she is a woman or that affects women disproportionately’.³⁹ The Declaration on the Elimination of Violence against Women has defined violence against women to include ‘[p]hysical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, *sexual harassment* and intimidation at work’.⁴⁰ The CEDAW Committee has defined sexual harassment as ‘unwelcome sexually determined behaviour [such] as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions’.⁴¹ The committee explains that ‘[s]uch conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment’.⁴²

Thailand’s laws related to sexual harassment remain largely undeveloped. There is at present no clear or explicit definition of sexual harassment in the law, and the current legal recourse and remedies for sexual harassment do not appreciate the gravity or seriousness of the offence.

Discriminatory attitudes continue to pervade all levels of investigation, prosecution and adjudication of sexual harassment. As such, victims of

sexual harassment continue to suffer with little or no access to justice, remedy or reparations for this form of gender-based violence.

Sexual harassment: Recommendations

The following recommendations are offered which may be helpful in bringing Thailand in compliance with its obligations under international law:

- Allegations of sexual harassment should be treated as criminal offences under sections 397 or 278 of the Criminal Code.
- Victims should not be precluded from accessing remedies and reparations for sexual harassment under the civil code if a compoundable claim of sexual harassment is settled through an informal agreement.
- More public awareness raising must be undertaken on the issue of sexual harassment.

Notes

- 1 UN Women, 'Quito: a city committed to preventing sexual harassment in public spaces' (2015) <http://www.unwomen.org/en/news/stories/2015/4/quito-a-city-committed-to-preventing-sexual-harassment-in-public-spaces> accessed 13 October 2015.
- 2 CEDAW Committee, General Recommendation No. 19, 1992, para 18.
- 3 S. Pradhan-Malla, 'Sexual Harassment in the Workplace in Asia', Expert paper submitted in Expert Group Meeting organised by the UN Division for the Advancement of Women, held in Vienna, Austria (2005), <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/pradhanmalla.sh.pdf> accessed 11 October 2015.
- 4 N Haspels et al, 'Action against Sexual Harassment at Work in Asia and the Pacific' (ILO, Bangkok, 2001), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_159_en.pdf accessed 13 October 2015.
- 5 CARE, 'Safe Workplaces, Safe Communities (SWSC) – Violence against women, both domestic and in the workplace, is commonplace' (2015), <http://www.care-cambodia.org/swsc> accessed 10 January 2017.
- 6 CARE 'New research from CARE explores perceptions of sexual harassment in Cambodia' (2014), <http://www.care-cambodia.org/single-post/2014/11/25/New-research-from-CARE-explores-perceptions-of-sexual-harassment-in-Cambodia> accessed 1 December 2017.
- 7 Constitution of Kingdom of Cambodia 2008, Article 31.
- 8 Ibid, Article 31, para 2.
- 9 Ibid, Article 38.
- 10 Ibid, Article 45.
- 11 Criminal Code of the Kingdom of Cambodia 2010, Article 250.
- 12 Ibid.
- 13 The Labour Code of the Kingdom of Cambodia 1997, section 8, Article 172.
- 14 Ibid.
- 15 Human Rights Watch 'Work Faster or Get Out: Labour Rights Abuses in Cambodia's Garment Industry' (2015), <https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry> accessed 15 October 2015.
- 16 See chapter 2, section 2.5 of this book.
- 17 Ibid.

- 18 Declaration on the Elimination of Violence against Women, UNGA Res 48/104 (20 December 1993) UN Doc. A/RES/48/104, Article 1.
- 19 CEDAW Committee, General Recommendation No. 19, 1992.
- 20 Ibid.
- 21 National Crime Records Bureau, 'Incidence of IPC Crimes under Sexual Offences During 2014' (2014), <http://www.ncrb.gov.in/StatPublications/CII/CII2014/Table%201.7.pdf.pdf> accessed 1 December 2017.
- 22 Section 294.
- 23 Section 354A.
- 24 See sections 354C and 354D.
- 25 Section 509.
- 26 Section 503.
- 27 Section 67 and 67B.
- 28 See sections 12 and 18.
- 29 See sections 20 and 21.
- 30 Section 28.
- 31 Section 3.
- 32 See sections 4, 6, 9 and 27.
- 33 Rafia Zakaria, 'The hell of harassment', *Dawn* (Karachi, 10 February 2016), <http://www.dawn.com/news/1238495> accessed 4 November 2016.
- 34 See sections 3–4 and 8.
- 35 Baker & Mckenzie, Thailand (2015), http://www.bakermckenzie.com/files/Uploads/Documents/Supporting%20Your%20Business/Global%20Markets%20QRGs/Termination,%20Discrimination%20and%20Harassment/qr_thailand_terminationdiscriminationharassmentguide_2009.pdf accessed 15 October 2015.
- 36 Commercial and Civil Code, Book 2, page 320.
- 37 The Royal Thai Gazette, 'Amendment to Criminal Code of Thailand B.E. 2557 (2014)' (only in Thai, December 2014), http://www.nitipohnchai.com/uploads/4/2/1/1/42116973/%E0%B8%9E.%E0%B8%A3.%E0%B8%9A.%E0%B9%81%E0%B8%81%E0%B9%89%E0%B9%84%E0%B8%82%E0%B9%80%E0%B8%9E%E0%B8%B4%E0%B9%88%E0%B8%A1%E0%B9%80%E0%B8%95%E0%B8%B4%E0%B8%A1_%E0%B8%9B.%E0%B8%AD%E0%B8%B2%E0%B8%8D%E0%B8%B2_%E0%B8%84%E0%B8%A7%E0%B8%B2%E0%B8%A1%E0%B8%9C%E0%B8%B4%E0%B8%94%E0%B8%A5%E0%B8%AB%E0%B8%B8%E0%B9%82%E0%B8%97%E0%B8%A9.pdf accessed 10 December 2016.
- 38 See chapter 2, section 2.5 of this book.
- 39 Ibid.
- 40 Declaration on the Elimination of Violence against Women, UNGA Res 48/104 (20 December 1993) UN Doc. A/RES/48/104, para 1.
- 41 CEDAW Committee, General Recommendation No. 19, 1992.
- 42 Ibid.