

## Sexual Harassment at Workplace: Judicial Impact in Nigeria and India

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### Abstract

Sexual harassment in the workplace is a form of discrimination which has been universally and unambiguously prohibited by a plethora of Laws. However, it is left to judicial interpretation to determine its scope. This situation is worsened where there is no explicit definition of discrimination under the Labor System of a jurisdiction. Completely borrowing from International Treaties and subsuming Employment Law under the Constitution will make such rights illusory and insignificant. Thus, this paper seeks to examine the arduous efforts initiated in the judicial systems of Nigeria and India, in particular how these have impacted on both Societies. To address the research questions formulated, cases, rules, legislation and relevant literature from both countries were examined. The study concludes that Comprehensive domestic legislation is wanting in Nigeria while consistent diversified awareness measures are required in India.

**Keywords:** Comparative Study; Discrimination; Human Behavior; India and Nigeria; Judicial Impact; Sexual Harassment at Workplace.

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### Introduction

Generally speaking, sexual harassment involves 'the unwanted imposition of sexual gratification in the context of a relationship of unequal power' [1]. It is a societal problem that has bedevilled workplaces all over the world, with severe consequences for victims and organisations [2]. However, there is unlikely to be a universal definition of this 'term', due to cultural differences; for example, acceptable greetings in a particular region might be seen as harassment in another. Peters and Bourne [3] noted that the Jamaican culture is characterised by words / 'pet names' such as 'baby', 'honey', 'sweetheart', 'hotness', 'sexy', as well as vulgar jokes, blowing kisses and winking outside social domains and even at workplaces, making it difficult to define sexual harassment. Nevertheless, the definition of

sexual harassment must encompass two elements, i.e. 'sexual' conduct and 'sex-based' behaviour, which are unwelcome to the recipient [4].

Section 2 (n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, (No. 14 of 2013) (in.) (SHWWPPRA) defined sexual harassment as any unwelcome acts or behaviour, (whether directly or by implication) including physical contact and advances, request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, the verbal or non-verbal conduct of sexual nature at the workplace. Sexual harassment also means any sexually-oriented conduct that may endanger the victim's job, performance or demoralise his/her dignity...[5]. This 'act' may be bodily or psychological, inappropriate verbal intimations or odd affectionate gestures, regular social invitations for dinner or drinks, or unwelcome flirting, so far as the unspoken message is targeted at sexual favours [6].

According to Dickson J. [7], sexual harassment is the concept of using the position of power to import sexual requirements into the workplace, thereby negatively altering the working conditions of employees who are forced to contend with sexual demands. Interestingly, power misuse in the workplace could be sexual or non-sexual. Misuse based on harassment in the workplace involves the use of abusive, ethically derogatory words that are unbecoming of a working environment, such as use of a set of girls/employees or 'vulgar language' [8], such words are uttered in total disrespect of the dignity of a person in the workplace and represent a total violation of the Constitutional right of such Employee. There are two types of sexual harassment- (a) the *Quid Pro Quo* i.e., harassment that involves the conditioning of employment benefits on sexual favours, and (b) the *Hostile Environment* i.e., harassment not affecting economic benefits, but which creates an unfriendly or offensive working environment [9].

There is no statutory definition of sexual harassment in Nigeria. However, it is one of the dimensions of workplace insecurity faced by Employees in different sectors. [10,11,12,13] In the educational sector, numerous researchers have found that Students, Teachers and Administrative Staff suffer one form of sexual violence or another, ranging from fondling / grabbing sensitive body parts, sex for favour, unwanted sexual remarks and rape [14]. In the survey conducted among five commercial banks in Lagos, the workers, especially females, experienced and perceived various kinds of sexual harassment [15]. Another Nigerian survey conducted on selected workplaces revealed that 68 per cent of the sample size had been victims of sexual harassment in their work places [16]. In fact, the commonest form of sexual harassment experienced in the Nigerian workplace varies from sexual advances, unwanted touch, sex-related gestures, sexual remarks, money enticement, to intimidation. [17]. In the medical field, 58 per cent of their respondents (11.6 per cent males, 46.4 per cent females) surveyed had been sexually harassed. [18]. Thus, sexual harassment is very common in Nigeria; it has been recognised as far back as the 1980s' Cookey Commission report [19]. However, numerous researchers believe that a rise in sexual harassment in the workplace is due to several factors, such as the African patriarchal structure which ascribes power superiority to males over females [20], statutory constraints [21], low reporting rates and tolerance of sexual harassment due to stigmatisation, loss of job and humiliation [22]. Meanwhile, Nigerian society does not accept the concept of sexual harassment

and does not perceive harassment as an evil or a violation of the rights of individual's in the workplace [23,24]. This view was corroborated by the submission of the defendant's counsel in the recent case of *Stella Ayam Odey v. Ferdinand Daapah & Cuso International*, (2016) who posited that it is expected among adults that a man would naturally chase a woman and make romantic overtures, even in the office... [25], this indicates that it is mostly perceived as a part of the societal fabric in Nigeria.

Culturally, men in Nigeria trivialise sexual harassment, believing that a lady will never accept a sexual proposal until they are pressurised. Those females who succumb easily are seen as 'cheap'. The general male attitude is that females enjoy being sexually harassed and will finally give in. Nigerian cultures frown on open discussion of sexual matters. [26]. Furthermore, in Northern Nigeria it is believed that women should be indoors and not be heard. It is also a culture that tolerates domestic violence. This makes it difficult for Nigerians to easily disclose incidents of sexual harassment, unlike people from Western cultures [27]. This could be associated with low level of awareness, ignorance, protection of identity and fear of retaliation.

In addition, Nigeria does not have any specific legislation on sexual harassment in the workplace, despite numerous occurrences. Instead, decisions are based on international treaties and National Industrial Court rule [29]. Without sanctionable practical workplace measures and Laws which expressly categorises sexual harassment as either a criminal offence or liable to civil action, it might be difficult to checkmate sexual harassment in Nigerian society.

As in other countries, sexual harassment also exists throughout India [29]. Although the country began tackling sexual harassment in the case of *Vishaka & Ors v State of Rajasthan & Ors*, (2007) [30], it took almost two decades before legislation was enacted. This has made community information and compliance with the legislation almost impossible [31,32].

To address this, it is advocated that Nigeria enact a comprehensive local legislation as soon as possible. It should be noted that cases of sexual harassment have been heard in Nigeria since the National Industrial Court case of *Ejike Maduka v Microsoft Nigeria Limited & 2 Ors.*, (2013) [33]. Thus, this paper seeks to determine the effects of sexual harassment Laws before and after enactment of local legislation in India, compare that with the current legal framework of sexual harassment in Nigeria and make necessary recommendations for both

countries. In addition, considering the growing cases of sexual harassment in Nigeria, we identify a need to explore the legal framework protecting Employees against sexual harassment cases, and resulting- victimisation, unnecessary abuse, withheld benefits, poor job prospects etcetera. There are numerous reasons why this comparison could be academically beneficial, including; lessons Nigeria could learn from the volume of sexual harassment cases reported by National Crime Records Bureau of India. In addition, both countries are regarded as developing countries [34], colonised by the same masters [the United Kingdom] [35], and consequently operating a similar Common Law System [36].

Both countries are also signatories to the same International Treaties and Conventions, that is, (Convention on Elimination of Discrimination Against Women [CEDAW] and Convention and Recommendation on Discrimination, Employment and Occupation by International Labour Organisation [ILO] dealing with sexual harassment in the workplace and good working conditions respectively. However, Sexual harassment is a criminal offence in India, while in Nigeria it is indirectly a civil offence. As such, cases are adjudicated under Metropolitan Magistrate or Judicial Magistrate of the first class in India, while in Nigeria, they are adjudicated under the National Industrial Court. In furtherance, we also found that Nigeria has a similar culture which could explain similarities in attitudes to sexual harassment. Fore example, both countries a scribe superiority to males over females [37]. In South-Eastern Nigeria and some parts of India, (sons enjoy great socio-cultural prestige and some rites are strictly performed by them [38,39,40]. Impliedly, communities where there is a preference for the male child, tolerance for domestic violence, women would likely face discrimination and harassment of all kinds. There are also several religions, traditions and customs which both countries practice that project women as inferior to men, justifying abuse and exploitation. This is especially so in India where large parts of the country still practice a feudal family system [42].

Sexual violence could be linked to religious belief in Northern Nigeria, where there is a religious practice of 'Almajiri' (Islamic students or destitute) [43]. Some parents are in the habit of giving their children or wards to religious leaders, in the same way as Indians place extraordinary confidence in the 'Guru' (spiritual leader). These religious figures are deemed in the best position to instill discipline

in those children entrusted to them, but may also use their position for sexual exploitation [44]. Despite India's cultural heritage and the predominant illiteracy of its society [45], there is increasing confidence to speak against sexual violence, which in the past was regarded as a taboo subject [46]. This has resulted in a rich labour system that is worthy of adoption by other developing countries for the betterment of the society.

However, sexual harassment will have to be tackled both socially and legally to uphold the dignity of women and men as equal human beings in all walks of life [47]. Enacting comprehensive and effective legislation on sexual harassment in the workplace is important because it will have a positive effect in stamping out sexual advances in the workplace and eventually create a safer and healthy working environment [48]. Although, the mere presence of a sexual harassment policy is not enough to prevent it from occurring [49]. A clear understanding of the 'term' is the first step in dealing with it [50]. This indicates the need for persistent education [51], clear sexual harassment policies and adequate implementation mechanisms. Even if the implementation of the law may not totally resolve the problem of sexual harassment in the workplace, it will definitely keep it in check.

### Research Questions

1. Can mere ratification of International Treaties by Nigeria and India automatically guarantee the implementation of such Treaties?
2. Can the judicial systems of Nigeria and India solely ensure the implementation of International guidelines?

### Research Methodology

The authors adopted both doctrinal research and systematic review of the literature: the doctrinal research was adopted to expose the rules and legal propositions surrounding sexual harassment in both countries [52,53]. It involves traditional study by way of extracting knowledge through Common Law System i.e., examination of cases, statutes, rules etcetera [54]. The review was also adopted in tracing, collecting and critically analysing the answers to the research questions formulated in this study in a systematic order. This also involved the study of textbooks, published/unpublished work, conference proceedings, reported papers, online websites and articles [55].

## Results and Discussions

Upon studying several research materials on the questions raised, the researchers discovered the following:

### *What is an International Treaty?*

International Treaties are generally referred to as Conventions and are often called- Conventions, Agreements, Accords, Covenants, Protocols and Exchanges of notes [56]. They can be bilateral, multilateral, regionalised or globalised in nature.

### *What does it denote to sign and ratify a Treaty?*

Under International Law, the word 'signature' has different legal denotations depending on how it is executed. It can either be definitive or simple. Definitive signature is the expression of the State to be bound by a Treaty, which is not subject to ratification, acceptance or approval. Simple signature applies to most multilateral Treaties and means the expression of a State by signing an International Treaty in order to be bound by it, which is subject to ratification, acceptance or approval. In this case, the State is just a signatory to the Treaty or Agreement but has not expressed its consent to be bound until it is ratified, accepted or approved by it. In essence, being a signatory to the International Treaty does not impose any obligation upon the State, further steps need to be taken before the State assumes responsibility.

In a personal communication with the Presiding Judge of National Industrial Court, Lagos Division, in April 2017, (Justice B.B. Kanyipdiscussion with Aina Adetutu, 2 April 2017) said; for the signed Treaty to be binding on the State, it must be placed before the National Assembly for approval. Once the said Treaty is approved, it signifies the State's intention to be bound by the initial signed International Treaty. The step taken after a State signs the International Treaty, by incorporating the guiding principles or rules into its domestic laws is called 'ratification', i.e. showing consent to be bound by the said Convention. Domestication of the Treaty is when the ratified Convention has been reduced into a National or Local Law of that State.

### □ *Nigeria and Sexual Harassment in the Workplace: International Treaties*

International Treaties signed by and binding on Nigeria viz-a-viz sexual harassment in the workplace are; -

- The International Labour Organisation Conventions and Recommendations on Discrimination, Employment, and Occupation (ILO).
- The United Nations General Assembly Resolution 48/104 Convention on the Elimination of all forms of Discrimination against Women (CEDAW). No. 19 of 1992. (signed 23<sup>rd</sup> April 1984, ratified 13<sup>th</sup> June 1985) yet to be domesticated.
- United Nations Optional Protocol on equal rights for women. [57] (signed in 2000, ratified 22<sup>nd</sup> November 2004) in force.
- The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Ratification and Enforcement) Act. [58]
- United Nation Charter on Human Rights.i.e. Universal Declaration of Human Rights 1948. (joined as a member on 7<sup>th</sup> October 1960, although not a treaty, it is the foundation of all rights and Protocol to the African Charter on Women's Rights. It could also be likened to CEDAW as it is geared towards the protection and promotion of women's rights).

There is still no provision in the national legislation prohibiting sexual harassment at workplace in Nigeria and sexual harassment definition is absence in the Labour Laws [59]. Therefore, it is correct to state that sexual harassment is neither defined nor codified as an offence under our criminal code [60]. However, Lagos State has become the first State in Nigeria to enact legislationcriminalising it [61]. The only difficulty will be that if civil obligations and penalties are imposed in the course of executing the Criminal Law, then it will be encroaching on the duty of the National Assembly, which has sole authority to legislate on matters relating to Labour [62]. In 2015, Federal Capital Territory, Abujaalso criminalised some sexual violence in private and public spheres which includes sexual harassment, but restricted to only Abuja residence [63].

In the absence of comprehensive legislation on sexual harassment in Nigeria, (CEDAW) and ILO Guidelines has been the guide to interpret any applicants' Constitutional rights and the determining rules applicable to regulate the issue of sexual harassment at workplace.

Constitutionally, cases of violation of human dignity, harassment, and discrimination on grounds of race, colour, sex etc., may be instituted in Court, though not sexual in nature [65]. However, since sexual harassment in the

workplace is perceived as dignitary injury, gender inequality, harm to employee(s) [66], and also held to be sex discrimination in employment in Nigeria [67], cases can be brought under these provisions. It will be presumed as a violation of fundamental human rights, not a barrier to decent working conditions as advocated by the International Labour Organisation. Consequently, the results will vary and might be diluted and insignificant.

Moreover, as the Nigerian Labour Law does not explicitly define discrimination, the parameter for measuring what amounts to discrimination within this context might be difficult to ascertain. In addition, the International Treaties ought to be read with Nigerian incorporated domestic laws to have proper effect. The ratified Conventions are in force but are yet to be domesticated into Nigerian law [69]. It is worth noting that despite its proliferation, cases of sexual harassment in the workplace were not brought before the Nigerian judiciary until 2013. This could be due to several factors, including: absence of clear statutory guidelines, culture, tolerance, ignorance of the law, power differences, politics, sexual benefits, and underemployment. Sexual harassment in the workplace has been given recognition by a plethora of laws, and judicial interpretation is that it is prohibited in employment.

#### □ *Sexual harassment at workplace and Nigeria judicial impact*

It is trite law that for International Treaties to be enforceable in Nigeria, two conditions must be satisfied- (a) the International Treaty must be ratified by the Federal Government of Nigeria. (b) It must be domesticated into the National Law [69]. In essence, International Treaties signed and ratified by the Federal Republic of Nigeria (FRN) cannot be directly enforced without fulfilling the provisions of section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria. Ratification alone does not give a Treaty the status of Law in Nigeria, an Act of the National Assembly is required for that purpose. The (Third Alteration) Act 2010, which amended the 2004 (Second Alteration) of the 1999 Constitution of the Federal Republic of Nigeria, provided in, section 254C(1) for an expansion of the jurisdiction of the National Industrial Court of Nigeria (NICN) i.e. the Court saddled with the responsibility for settlement of labour matters. Initially the NICN was empowered to adjudicate on any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker etcetera.

However, the jurisdiction was expanded to cover other labour issues, such as sexual harassment, unfair labour practices based on international standards etcetera. This expansion was referred to as the 'Changing Face of Nigerian Labour Law Jurisprudence' [70]. Meanwhile, our focus is on the provisions contained in section 254C(1)(g) & (h) of the 1999 FRN Constitution, dealing with the expansion. This Constitutional expansion has been the basis for adjudication of NICN on sexual harassment in the workplace. In the United States, Canada, India, etc., sexual harassment is seen as an act which is discriminatory. These countries have not only enacted domestic laws to that effect but also made the offence a criminal offence. This triggers a poser; can the expansion of NICN jurisdiction to adjudicate on workplace sexual harassment matters indicate domestication of the International Treaties signed and ratified by the Federal Republic of Nigeria?

Even though there is still no national law which creates responsibility on Nigerian Employers and Employees regarding sexual harassment in the workplace, the NICN has been able to set precedence in about Nine (9) cases. The landmark case of *Ejike Maduka v Microsoft Nigeria Limited & 2 Ors*, (2013) earlier cited, was instituted as a fundamental rights suit under sections 34 (Right to dignity of human person) and 42 (Right to freedom from discrimination) of the 1999 Constitution and under Articles 2, 5, 14, 15 and 19 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, CAP A9, LFN, 2004.

In this case, The Applicant was relentlessly sexually harassed by the 3<sup>rd</sup> respondent who tickled her and other female staff on their waist. She reported him to the 4<sup>th</sup> respondent and human resource manager of the 1<sup>st</sup> respondent, who did nothing about it. The working environment became hostile and subsequently, the Applicant's employment was terminated due to her refusal to succumb to the persistent sexual harassment. The allegation of assault and continuous sexual harassment against the 3<sup>rd</sup> respondent was established and the Court used its Constitutional empowerment provisions of Section 254C-(1) (f), (g), (h) & Section 254C-(2) of the 1999 Constitution Third Alteration Act, 2010; which conferred jurisdiction on the NICN, the Court also referred to CEDAW which define discrimination, and sexual harassment, in addition with Article 1(a) of the ILO which also defines discrimination and sections 34 & 42 of the Constitution of the FRN, 1999 as amended, and Articles 15 and 19 of the African Charter which provides the basic rights to work.

All these provisions were consulted in arriving at a determination on the matter.

Having considered all the above legal instruments, The Court held the termination to be a violation of the applicant's fundamental right to human dignity and awarded the sum of N 13,225,000.00 (Thirteen Million, Two Hundred and Twenty-Five Thousand Naira) approximately 107,814 USD against the (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>) severally, as general damages for the violation of the applicant's rights, alongside with the cost of litigation: N30,000.00 approximately- 246USD respectively.

The second sexual harassment in the workplace case decided by the NICN was Pastor (Mrs) Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Anor. Here, the claimant was employed by the 1<sup>st</sup> defendant but works with the 2<sup>nd</sup> defendant directly. The claimant was subjected to seductive advances, obscene talk, incessant local trips, sensuous compliments, & gestures, even during pregnancy, by the 2<sup>nd</sup> defendant. Finally, the claimant's continuous refusal earned her a punitive transfer, and eventually, termination of her employment. The Court resolved the matter in favour of the claimant, directed that she is posted to any other appropriate office relevant to her field of study in Lagos, but not as a Personal Secretary to the 2<sup>nd</sup> defendant. Subsequently, awarded the sum of N 5,000,000.00 (Five Million Naira Only) approximately 13, 587 USD against the 2<sup>nd</sup> Defendant for sexually harassing and violating the claimant's human dignity and self-worth/respect and the cost of N250,000.00 (Two Hundred and Fifty Thousand Naira Only) approximately 1, 358 USD was awarded against the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly and severally.

The third case decided by the NICN is Stella Ayam Odey v. Ferdinand Daapah & Cuso International (2017), earlier cited [71]. Here, the widowed Claimant was subjected to sexual harassment from a week after her employment till a period of 6 months. The harassment includes; saying her voice arrests him, slapping her buttocks and embracing her against her consent. Subsequently, the claimant's wedding invitation was given to the 1<sup>st</sup> defendant and He demand the Claimant resign on a tailored reason (that she will be relocating to another city named Abuja after marriage), but she refused. Consequently, her employment was terminated. The Court held the fundamental right of the Claimant to have been breached and awarded a special damage sum of #16,862,511.00 (Sixteen Million, Eight Hundred and Sixty-Two Thousand, Five Hundred and Eleven

Naira only) approximately 45, 822USD based on the contract agreement subsisting between the parties, with a sum of #7,000,000.00 (Seven Million Naira only) approximately 19, 021USD and the cost of N500, 000.00 (Five Hundred Thousand Naira only) approximately 1,359 USD against the defendant (s).

The fourth case decided by the NICN on the said subject matter is *Abisola Akinsetev. Westerngeco Seismic Nigeria Limited* (2014) earlier cited [72]. Here, the claimant was orally terminated and subjected to verbal harassment and such as 'you are a rogue and fraud', 'fucking nigger', 'you are fired,' as well as hostile environment. The Court held that there is no room for harassment and personal insult of any Employee in the workplace and held the act as a violation of the Claimant's right to dignity of person. Then awarded the sum of N2,856,600.00 (Two Million, Eight Hundred and Fifty-Six Thousand, Six Hundred Naira) approximately 7, 763USD against the defendants. Also see the most recent case of *Dorothy Adaeze Awogu v. TFG Real Estate Limited* (2018) [73], where the Claimant was directed to use her beauty to lure men to patronise the Properties being displayed by the Office otherwise she would be terminated. Eventually, she was terminated for failure to succumb to physical and sexual harassment from her Superior, and her inability to get Customers with her beauty. The Court resolved the matter in favour of the Claimant and awarded the cost of #2,500,000.00 (Two Million Five Hundred Thousand Naira Only) approximately 6, 944 USD and the sum of #300,000.00 (Three Hundred Thousand Naira) approximately 833 USD for cost of the suit against the Defendant.

From the foregoing, it is right to surmise that several cases are springing up and claimants are beginning to seek redress from the Court. However, the question is how well can this help reduce the pervasiveness of sexual harassment in the Nigerian workplace? The time is ripe for local legislation on the prohibition of sexual harassment in the workplace and for Employers' to have Policies and Rules in their Employee handbooks prohibiting sexual harassment in the workplace. If the ratified International Treaties are not domesticated into National Law, the power to prohibit sexual harassment in the workplace will continually be restricted to the NIC, since it is only the NIC that has the right to adjudicate over such civil matters. In numerous jurisdictions, including Canada, India, China, Lithuania, Tanzania, etcetera., sexual harassment in the workplace is seen as a criminal

offence, and the police are empowered to entertain such complaints. Howbeit, if sexual harassment in the workplace is not an offence under any national law, or codified in our Criminal Code, how can people desist from it?

Notably, victims of sexual harassment may obtain different results depending on the mode of commencement of the suit (be it under- Tort, Civil, Labour, Human Rights and Criminal Laws). However, in Nigeria, borrowing from the Constitution / International Treaties without domestication might make such rights diluted and insignificant. It will not serve as a punitive measure until it becomes a cognisable offence which is punishable by imprisonment and/or fine. This is beyond the provisions given to the NIC by virtue of section 254C of the 1999 Constitution of FRN as amended.

#### **India and Sexual Harassment at Workplace: International Treaties**

International Treaties signed by and binding on India viz-a-viz sexual harassment in the workplace are:-

- The International Labour Organisation Conventions and Recommendations, Ratified on the 3<sup>rd</sup> day of June 1960- in force.
- The United Nations General Assembly Resolution 48/104 Convention on the Elimination of Discrimination against Women (CEDAW). signed 30<sup>th</sup> July 1980, ratified 9<sup>th</sup> July 1993.
- Universal Declaration of Human Rights 1948 (UDHR). (India joined as a member on 10<sup>th</sup> December 1948) [74].
- The Beijing Declaration and the Platform for Action- (adopted 4<sup>th</sup> - 15<sup>th</sup> of September 1995 at the Fourth World Conference on Women)
- The International Covenant on Economic, Social and Cultural Rights (treaty signed 10<sup>th</sup> April 1979).

#### **Sexual Harassment at Workplace and India Judicial Impact**

Before 1997, there was no precise guide or legal framework for addressing sexual harassment in the workplace in India. Such matters were adjudicated based on the provisions of section 354, and 509 of the Indian Penal Code 1860, respectively dealing with the criminal assault and insult of a woman's modesty.

#### **Sexual harassment cases in India before Vishakha Guidelines**

In the case of *Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr.* [75]. the respondent indecently slapped the petitioner's buttocks at an official dinner in the presence of all the guests. The petitioner filed an appeal suit before the Supreme Court of India, and the Court inter-alia held the alleged act to have amounted to 'outraging of the petitioner's modesty', 'sexual overtones' and an affront to her dignity.

Also, in the case of *Jai Chand v. The State* [76] the Respondent, appealed the matter to Delhi High Court. The appellant had grabbed the respondent forcefully in the office after she finished her work shift. The appellant laid her on the post-operation bed, broke the string of her Pyjamas, gave her a bite on her left cheek, removed her sanitary pad and tore her underwear. However, the respondent did not give in, but pushed the appellant away and ran to the reception. The Court held inter-alia that the appellant outraged the modesty of the respondent.

It can be seen from these cases that the judiciary tried to reprimand acts of sexual harassment in the workplace, but the effect has not been conspicuous. However, on the 13<sup>th</sup> of August, 1997, the Supreme Court of India, in the landmark case of *Vishaka & Ors v. State of Rajasthan & Ors* acknowledged the absence of any domestic law to address the issue of sexual harassment in the workplace in India, when a public interest litigation was brought before it as a class action by certain social activists and NGOs on the rampant violation of the fundamental rights of working women. This case began at the Rajasthan High Court, wherein the petitioner was an Employee of Rajasthan State Government who tried to prevent child marriage as part of her duties as a worker of the Women Development Program. By so doing, she suffered social shun for her audacity. As that did not stop her from pursuing her official obligation, she was raped by five landlords of the community in the presence of her husband, as punishment for daring to disrupt their activities [77]. She subsequently filed a suit before the Rajasthan High Court, but the respondents were discharged and acquitted.

Being dissatisfied with this decision and the increasing incidents of such violation, some social activists and NGOs approached the Supreme Court of India on the bases of public interest litigation, seeking for a Law to protect working women. Here, the Supreme Court of India, the learned Solicitor General and other members of the Bar (as *amicus curiae*) considered the following Constitutional provisions; Articles 14, 19, 15 & 21 of the

Constitution of India, 1950 dealing with rights of individual to be treated with human dignity and equality at work, without any form of discrimination. Meanwhile, only the State Government can ensure these rights; Article 51(c) of the Constitution of India, 1949 states that the State shall endeavour to foster respect for International Law and Treaty. Since there was no domestic provision for sexual harassment in the workplace in India at that time, the Supreme Court of India also referred to Article 42, 73(1)(a) & 253 of the Constitution of India, 1949 dealing with the power of the Parliament to make Laws.

It is pertinent to note that International Treaties and Conventions signed and ratified by the Indian Government cannot automatically become effective without domestication. It is the sole duty of the Parliament to do so. The Constitutional provisions highlighted were necessitated to lay legal foundation to utilise the International Treaties and Conventions signed and ratified by the State in this instant without domestication. Nevertheless, the Supreme Court of India is inter-alia empowered to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part of the Constitution [78].

Having considered the Constitutional provisions claimed by the Petitioner to have been violated by the Respondents in the instant case, as well as the International Conventions signed by the State and the judicial power vested in the Supreme Court, the then Chief Justice of India and others; created binding guidelines called 'Vishakha Guidelines' which was to levy a duty upon the Employer or other responsible persons in the work place or other Institution to prevent the commission of sexual harassment of working women temporarily and to serve as a legal framework for resolution, settlement or prosecution of sexual harassment cases pending the time the Parliament will enact a suitable law to fill the lacuna. Based on the Vishakha guidelines, the Government of India formulated a circular for Central Government Employees on the 13<sup>th</sup> of February 1998 [79]. This contains an official memorandum that prohibits, prevents and Redresses sexual harassment at all Central Government workplaces.

### **Sexual harassment cases in India after Vishakha Guidelines**

In the case of K. Pushparaj v. The Controller and Auditor [80] 38 female employees of the Accountant General's office alleged sexually

harassing behaviour by another employee towards them. The matter was referred to the Complaints Committee on Sexual Harassment and the Committee determined the matter to be a clear case of sexual harassment which requires disciplinary action as per Rules, but the accused was apologetic and repentant so his salary was reduced by 10 per cent, subject to no increments for a period of 3 years and the reduction was to have the effect of postponing his future increments. Being dissatisfied with this decision, the applicant appealed the penalty given and the Tribunal re-affirmed the penalty. He further appealed to the Court and the Court dismissed the application with exemplary costs of Rs. 6,000, which is approximately, 92.84USD in favour of 6<sup>th</sup> to 10<sup>th</sup> respondents.

In the case of On Behalf of Workman... v. State Of Maharashtra [81] the appellant had been sexually harassing the respondent for over a year at their workplace, the allegation having been proved by the Management and Disciplinary Committee, and the Appellant was dismissed from work. The Appellant been displeased with the decision, filed an appeal against the penalty meted upon him and the Court held the punishment of dismissal imposed on the Appellant to be proportionate to his misconduct.

A similar decision was also reached in the case of Apparel Export Promotion Council v. A.K. Chopra [82] where the Respondent sexually harassed the Appellant. Having been removed from service by the decision of the Disciplinary Committees, based on the report of the Inquiry Officer and confirmed by the Director General of the Council, He appealed to the High Court and the Court allowed his appeal and upturned the decision, by directing the appellant's reinstatement among other things. The respondent was aggrieved with the decision of the High Court and appealed to the Supreme Court. The Court held the punishment imposed on the Appellant to be commensurate with the offence committed, set aside the High Court decision and re-affirmed the earlier decision of the Disciplinary Committee and Departmental Appellate Authorities.

In the case of State of NCT of Delhi v. Gopal Goyal Kanda [83], an air hostess claimed to have been sexually harassed by her Employer. The air hostess committed suicide, leaving a written note stating the reason for her death. After the victim's decease, the mother lodged the note/ complaint before the police and she too subsequently committed suicide. Hence, the suit was filed on the ground of abetting the commission of suicide. The



court held inter-alia that the application stand disposed of because the legal grounds of filing the charges against, it is not considerable enough.

Thus, it may be concluded that despite the fact that the Court upheld the rights of the victims in sexual harassment cases, the argument of the perpetrators suggest that the Indian society does not fully appreciate the gravity of their conduct to the victims. In addition, the verdicts targeted the repentance of the violators rather than the repercussion of sexual harassment on the victims. Also, there were neither explicit punitive consequence for non-compliance with the Vishaka Guidelines nor were there proper implementations of the Guidelines by the various States / Departments / Institutions [84]. Finally, the Nirbhaya Gang Rape Case [85], which was a horrific sex-crime committed by 6 passengers of a bus that resulted in the death of a female passenger on a bus and inflicted severe injury on her accomplice, was the driving force behind the passing of the Criminal Law (Amendment) Act, 2013 that sought to amend existing laws regarding sexual offences in India [86].

Subsequently, on 3<sup>rd</sup> September 2012, sexual harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Bill (2012) was passed into Law by the Lower House of the Parliament. It was confirmed by the Upper House of the Parliament on 26<sup>th</sup> February 2013 and received the President's assent on 22<sup>nd</sup> April 2013, but became effective on 9<sup>th</sup> December 2013 [87]. On 24<sup>th</sup> July 2017, Press Information Bureau, Government of India, Ministry of Women and Child Development launched a Sexual Harassment electronic-box for registering related complaints.

Meanwhile, since the emergence of the Sexual Harassment Act, the report of sexual harassment cases has increased drastically. Subsequently, section 354A, of the Indian Penal Code, 1860 and Section 14 of the Industrial Employment (Standing Orders) Act, has been inserted to reflect the SHWWPPRA provisions on sexual harassment in the workplace.

Figure 1 depicts the variances in 2014 to 2016 reports on sexual harassment in 29 States and 7 Union Territories in India. This ranged from no report to increase in reports (see supplementary below). A review of the differences in the yearly reports shows that the reasons for variances in the reports of sexual harassment differ from State to State. The likely causes are: Underreported incidences, false or inaccurate reporting, Population, Exposure or Delayed justice, Improper implementation of Sexual harassment Laws [88], literacy levels [89], Culture,

Religion, Illegal migration, Level of awareness at grass root, Corruption, Extralegal methods adopted by some States in tackling the sexual harassment [90, 91], and Poverty, among others. There is need for empirical research to ascertain the reasons for the differences in reporting incidence in the regions and the impact of sexual harassment laws on the Society due to the fact that majority of the likely reasons highlighted in this study are based on news articles.

From the foregoing, there is a clear need to understand the effect and the level of awareness of the Sexual Harassment Law in the Indian Society. Sharma and Sunita revealed that between 2007-2014, the incidents of sexual harassment were least seen, as compared with reports of rape [92]. This is in line with our findings prior to the enactment of the Sexual Harassment Act, because there was no specific legal provision until 2013. 2014 was the first year in which an official report on sexual harassment crime was released, The Sharma and Sunita's study is therefore inconclusive and the differences in the decrease was not addressed. Similar to our findings, another researchers observed that factors responsible for increased sexual crimes in India are; economic, political, and societal in nature [93]. Bhat and Deshpande [94] summarised the causes of increase between 2010-2015 reports as; male domination, inferior job position, aggressive masculine trait of male gender, misperception about the friendly nature of women, higher academic profile and lower job opportunity. Conclusively, Natarajan [95], noted that the increase is due to the deep-rooted culture of 'eve teasing' (sexual harassment at public places while going to work or school or about your day to day activity). However, these appear to be generalised and do not offer an in-depth explanation for the diversity of such factors from State to State as this research has done.

In Nigeria, there is no documented crime of sexual harassment, because there is no clear legal provision for sexual harassment. In addition, culture encourages keeping silence on these matters [96], thereby indirectly indulging the perpetrators.

The findings in India and Nigeria are in line with a Canadian study conducted by Benoit et al. [97] which found that the factors responsible for increase or decline in the measurement of sexual violence are under-reported crimes and incomprehensive language of the public documents or legal framework respectively. This happens where there is no clarity in the law regarding forms of sexual violence and the structure of the criminal justice system, which limits the General Social Survey (GSS) and the Uniform Crime Reporting Survey (UCR) to 'those

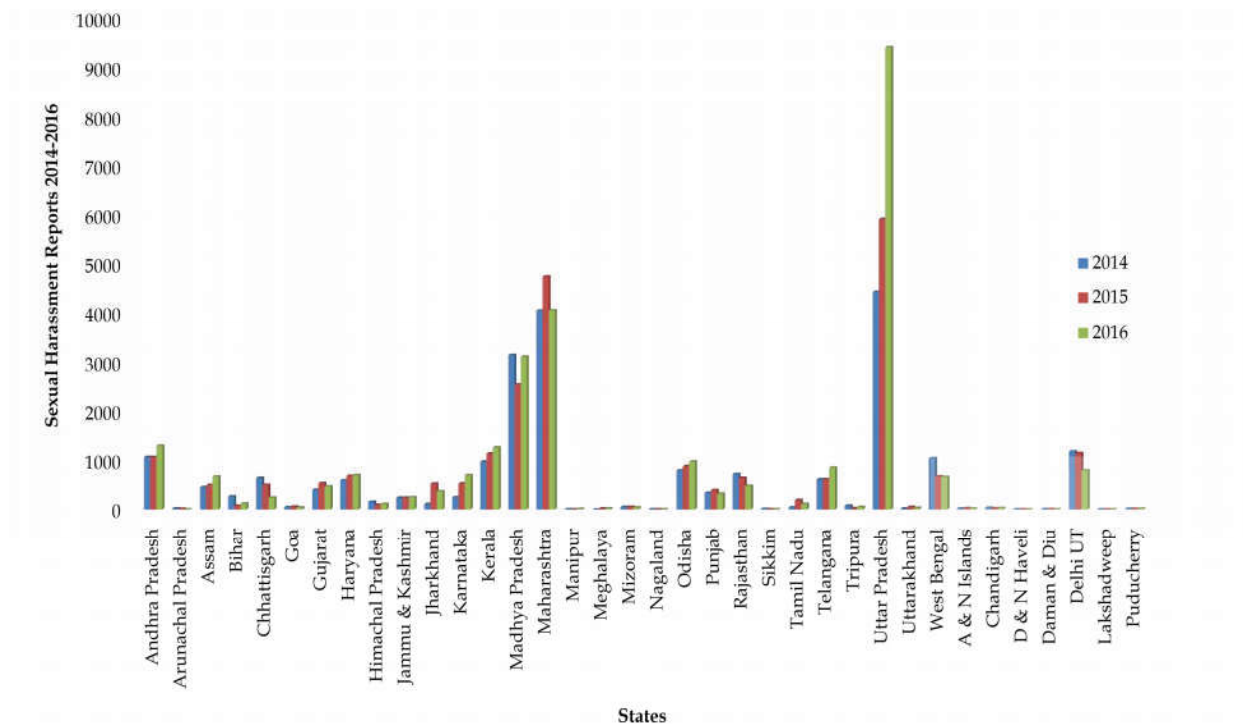


Fig. 1:

matters that reach the criminal threshold’, instead of all reported sexual violence crimes. Furthermore, the rate of self-reported sexual assault in Canada remained unchanged between 2004-2014 [98]. This also supports our findings regarding the 2014-2016 sexual harassment reports in India, where there is no significant difference in some States on sexual Harassment within 2014 to 2016 (see supplementary file).

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Source: National Crime Records Bureau, India (2014)

Figure 1: 2014 Incidence of Sexual Harassment Report in difference States in India.

Figure 1: Sexual Harassment Reports in India (2014-2016) Recommendations

*From the foregoing, the researchers recommend the following:*

- Enactment of domestic law with respect to workplace sexual harassment in Nigeria
- Establishment of bodies that address issues of sexual harassment at workplace in Nigeria.

- Sexual harassment should be codified as a criminal offence in Nigeria and not in some particular Region or State.
- Proper implementation of India Sexual Harassment Act.
- Education of ‘religious leaders’ in order to reduce the socio-cultural challenge in India.
- Education of Indian Police Personnel and Employees during inductions at workplaces
- Ensuring transparency from the Indian Police when pursuing sexual harassment cases.
- Proper education of the International Complaint Committee and the Local Complaint Committee in India
- Creation of awareness within both countries
- Ensuring mandatory provision of Internal workplace handbook/policies in both countries
- Organisation of seminars, workshops and training on sexual harassment at workplaces in both countries.
- The Employers and Employees in both private and public workplaces should be vested with responsibilities and subject to a higher authority to serve as checks and balances in both countries.

## Conclusion

In summation, this research study set out to answer two (2) questions-whether the mere ratification of International Treaties by Nigeria and India automatically guarantee the implementation of such Treaties; and whether the judicial systems of Nigeria and India solely ensure the implementation of International guidelines;

In answering these questions, we discovered the followings:

In Nigeria, there is no comprehensive sexual harassment legislation, but the judiciary has been innovative in using International guidelines in adjudicating on sexual harassment matters. However, this is insufficient, because the international legislation has not been domesticated and has no punishment provision. For thorough administration of justice, the implementation of Conventions involves stages (signature, ratification, domestication, creation of awareness, and implementation) if all these stages are not exercised judiciously, then the basis of the judgment become questionable. Therefore, enactment of domestic legislation with clearly explained procedures for prevention and management of sexual harassment, coupled with the delegation of responsibilities to the Employers and Employees to ensure a workplace free from sexual harassment is more likely to create consciousness and give the society increased safety from such offence in workplaces. Otherwise, the impact of the judiciary might not be maximised.

While in India, some horrific incidence has forced the judiciary to address the issue of sexual harassment in the workplace, but the gap between formal policies and practice remains wanting. Meanwhile, the current study has been able to establish the likely causes of disparities in the report of sexual harassment incidents in India to be the variance in the level of awareness and understanding of the legislative provisions in urban and rural society, couple with the internal issues faced by distinctive regions. So, those root causes must be addressed in various States and Union Territories for better effect of the Sexual Harassment Act. This study has also highlighted the need for further study on delayed justice, religion, illegal migration, extra-legal precautions, population, literacy, culture, corruption, poverty, and its effect on sexual harassment in India.

However, in both cases, the natural predisposition towards male dominance and deep-rooted

cultures has hampered the sensitivity, awareness, and danger in sexual harassment. What we can say therefore is that the judiciary alone cannot solve deep-seated societal attitude without a reasonable input of the society or addressing internal challenges and behaviours that disadvantage some groups.

Likewise, there is a need for prompt release of annual reports on sexual harassment crimes in India. This is a limitation of the -2016 and 2017 reports, as 2016 reports was published 3<sup>rd</sup> November 2017 and 2017 is yet to be published in October, 2018). Addressing this would help monitor the trend of reported cases, which will determine the measures to be proposed or taken. We also acknowledge the lack of empirical evidence in this study, which should be an area of further study for researchers.

### *Key Message*

This research focuses on the Interpretation of the Courts to the term sexual harassment at workplace based on available legislations. It reveals the behavior of the societies towards the law. It also concluded that only the judiciary can neither silence nor curb societal abnormality without the contributions of the people.

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