



**ST. MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW**



LL.B THESIS

**SEXUAL HARASSMENT OF WOMEN
IN SCHOOLS AND AT WORK PLACES:
A COMPARATIVE PERSPECTIVE
(IN NIFAS SILK LAFTO SUB CITY – A CASE SURVEY)**

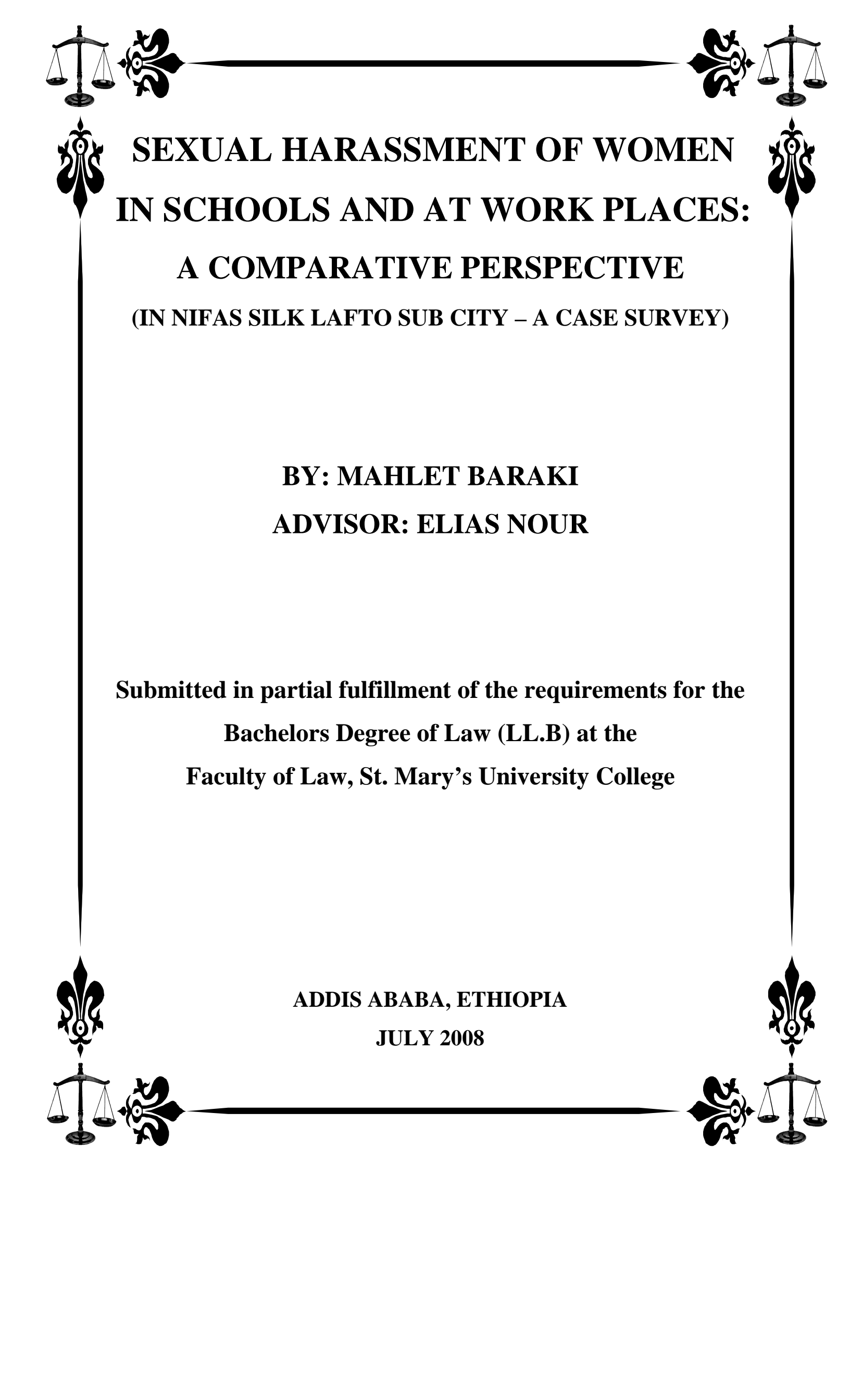
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ADDIS ABABA, ETHIOPIA

JULY 2008





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**Submitted in partial fulfillment of the requirements for the
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I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name: Mahlet Baraki

Signed:

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Introduction

Many women are victims of sexual harassment; they are losing their human right in addition to that it is making them dependent and less confident of themselves. The harassment also makes the harassed women to become less productive in their education and in their work. These are the main causes that initiated the writer of this paper to write on sexual harassment.

Sexual harassment at this time has become a growing problem of many countries including ours. The writer of this paper mainly focuses on sexual harassment which occurs in schools and at work places because it is in those places where most women are being sexually harassed. This paper will briefly discuss what our laws say about this issue. How schools and organizations regulations try to deal with sexual harassment to protect the female students and workers from being harassed.

Chapter one of this paper defines sexual harassment. It also shows what types of sexual harassment exists, what are the impacts and other important issues that are related to sexual harassment. Chapter two examines how Ethiopian laws deals with sexual harassment and Articles which can be used for sexual harassment cases. It also includes some regulations of school and work places and a data analysis for questionnaire that was filled by female students and female workers of Nifas Silk Lafto Sub-City.

Chapter three highlights laws of different countries and how they deal with sexual harassment in schools and at work places. And Chapter four includes a conclusion and recommendation by comparing our laws with that of other countries.

Chapter One

Conceptual Framework

1.1. Definition

Sexual harassment does not have universal meaning. Different countries and scholars give different meanings to the word. For example Title VII The EEOC Guidelines, 29 C.F.R. Section 1604.11, defines sexual harassment as follows:

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment,*
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or*
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.”¹*

1.2. Scope of Sexual Harassment

Sexual harassment includes requests for sexual favours, sexual advances or other sexual conduct when:

- submission is either explicitly or implicitly a condition affecting academic or employment decisions or

¹ Available at http://a257.g.akamaitech.net/7/257/2422/03jul20071500/edocket.access.gpo.gov/cfr_2007/julqtr/pdf/29cfr1604.11.pdf

- the behaviour is sufficiently severe or pervasive as to create an intimidating hostile or repugnant environment or
- the behaviour persists despite objection by the person to whom the conduct is directed.²

Sexual harassment is one of the violations of women's human rights. Many countries have made laws which clearly show it is illegal and prohibited. Sexual harassment is the inappropriate sexualization of an otherwise non sexual relationship, an assertion by men of primacy of woman sexuality over her role as worker or professional colleague or student.³

Sometimes sexual harassment may be disguised as sexual flirting because most of the time it is often difficult to identify and can be confusing. Flirting can make a person feel happy, good, flattered, warm, comfortable, attractive, and confident. On the other hand, harassment can make a person feel bad, angry, upset, humiliated, sad, frightened, demeaned, degraded and shocked. Flirting behaviors can cross the line to the point where they make you feel uncomfortable. At this point it is important to ask the person to stop because it will be a sexual harassment.

Sexual harassment is subjective. Essentially, what this means is that the person who is receiving the offensive behavior is the one who decides if it is harassment. Sexual harassment can be both civil and criminal. It is criminal when it involves such unlawful touching or the threat thereof. The rest is a civil matter.⁴

² Available at <http://erd.dli.mt.gov/humanright/employdiscrimsexhar.asp#rights>

³ Available at www.webcom.com/wcs/harass.html#legal

⁴ Ibid

Sexual harassment is unlawful. Therefore a victim may be entitled to damages even though no employment opportunity has been denied and there is no actual loss of pay or benefits (i.e. in case of hostile environment). It causes physical and psychological injury to the harassed women.

Examples of Sexual harassment

- propositions or pressure to engage in sexual activity;
- repeated body contact;
- repeated sexual jokes, innuendoes or comments;
- inappropriate comments concerning appearance;
- harassment based upon gender in nontraditional employment.

If a supervisor requires an employee to perform sexual acts in order to keep a job, that's definitely it.⁵

1.3. Types of Sexual Harassment

Sexual harassment can be:

- Verbal: these are comments about appearance or body or clothes. It may also be indecent remarks.
- Non – verbal: This kind of harassment are looking or staring at a person's body or display of sexually explicit material such as magazines.
- Physical: this includes rape or sexual assault

Generally sexual harassment is of two types. These are:

a) Quid pro quo: The word *quid pro quo* is a Latin word which is to mean “this for that” or “something for something”. This is a type of sexual

⁵ Available at <http://labor-employment-law.lawyers.com/sexual-harassment/Work place-Sexual-Harassment.html>

harassment whereby a person in authority (most of the time a supervisor) or a person in a higher place or employer asks for sexual favours in exchange for a benefit or decisions that affects the individual.

b) Hostile environment: A hostile environment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. A hostile environment with respect to sexual harassment occurs when such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or learning environment. In addition, a hostile environment occurs when unwelcome sexually harassing conduct is so severe, persistent, or pervasive that it affects a person's ability to participate in or benefit from employment or an education program or activity, or creates an intimidating, threatening or abusive environment.⁶ To say a sexual harassment is hostile environment it should be a continuous harassment.

1.4. Sexual Harassment in Education

Sexual harassment that occurs in schools affects the learning process by harming the students that are harassed. In schools sexual harassment takes two forms. The first one is sexual harassment of student to student. This type of sexual harassment occurs most of the time and it is not given more attention by the students because it seems normal and the students fail to report it because of negligence.

⁶ Available at <http://www.provost.uiuc.edu/resources/campusconduct/gender.html>

The second one is staff to students. This type of sexual harassment occurs when students are being harassed by a member of the staff. When this kind of sexual harassment occurs most students are afraid to say anything to the concerned bodies: because they will be afraid that they might get hurt again if they take it out. This happens because when students report the sexual harassment to staff members and the harasser might get information that a report has been made against him.

1.5. Sexual Harassment at Work places

Sexual harassment is unethical and unprofessional. Not all sexual behaviour in work place is harassment. Therefore, a woman who feels that she is harassed should be careful in distinguishing whether there exists sexual harassment.

Sexual harassment negatively affects productivity, the spirit of work place. In the work places there is a different issue. That is, liability of the employer, the employer may be liable if she or he had known of the sexual harassment and has done nothing about it.

1.6. Impact of Sexual Harassment

Generally sexual harassment causes psychological and physical injury to the harassed women.

a) In education

It is a known fact that most of the students that drop out of school are females, from those females the cause for some of them for dropping out is sexual harassment. In education or schools sexual harassment has many impacts on the woman that are being harassed some of them are:

- staying in particular places of the school or the campus in order to avoid the harasser.
- changing schools.
- being absent from school so that they will not be able to face their harasser.⁷

b) At work places

Sexual harassment is a big risk to a business and it also has lots of impact on the work places. Some of the impacts of sexual harassment on the harassed working women are listed as follows:

- Emotional stress
- Low self esteem
- Low moral
- Being absent from work
- Declining productivity⁸

The above impacts may also be seen in the harassed women at schools.

1.7. Sexual Harassment and Discrimination

Discrimination may occur on favoritism of race, colour, ancestry, place of origin, sex, religion and so on. In sexual harassment the harasser harasses a particular sex. Which makes it one of the forms of discrimination as it is made by discriminating one sex. This shows that sexual harassment comes with discrimination, which also is a violation of human rights.

⁷ Catherine Hill and Elena Silva, *Drawing the Line: Sexual Harassment on Campus*, 2005, p.28

⁸ “*Sexual Harassment Awareness: Continuing Education Unit Course*”, 2007, p.5

1.8. Evolution of Sexual Harassment Law in Different Countries

Here are some of the history of sexual harassment laws and how it comes to existence.

a) USA

Sexual harassment is a legal term, created for the purpose of ending harassment and discrimination against women in the working place. 25 years ago the feminist activists in the USA created the term sexual harassment.⁹ Even though sexual harassment existed before 1970s the expression sexual harassment was not used.

In 1964, the “Title VII of the Civil Rights Act” was passed by the Congress. This act prohibits discrimination at work places based on race colour, race, religion, national origin and sex.¹⁰ In 1972, the Congress passed Equal Employment Opportunity Act (EEOC); which prohibits discrimination in the work places based on race, sex and so on. In the same year, Title IX of the Education Amendments of 1972 which prohibits sex bias in educational institutions that receive federal funding was also enacted.

In 1974 the first sexual harassment case was viewed, but the term sexual harassment was not used.¹¹ In 1976 the lower court of Washington recognized *quid pro quo* sexual harassment as a form of discrimination in the case Williams vs. Saxbe.¹² In 1980 Equal Employment Opportunity Act

⁹ Margaret A. Crouch, *Thinking about Sexual Harassment: A Guide for the Perplexed*, 2001, p.4

¹⁰ Available at http://en.wikipedia.org/wiki/Sexual_harassment

¹¹ Available at www.de2.psu.edu/harassment/generalinfo/ - 21k -

¹² Ibid

(EEOC) issued guidelines forbidding “sexual harassment” as a form of sex discrimination.¹³

b) The EU

In 2002 EU council and parliament amended the 1976 Council directive on the equal treatment of men and women in employment to prohibit sexual harassment in the work place, naming it a form of sex discrimination and violation of dignity. The directive required all the member states of EU to adopt laws on sexual harassment, or to amend existing laws to comply with the directive issued in October 2005.

c) Other Countries

In the case *Vishaka vs. State of Rajasthan* (1997) it has been established that sexual harassment is illegal in India.¹⁴ In this case, the Supreme Court of India in addition has given guidelines which will protect women against sexual harassment in the work places. It also has considered any form of sexual discrimination as a violation of human rights.¹⁵ The guideline is called Vishaka Guidelines it imposes duty on employers to prevent the commission of acts of sexual harassment.

In Israel, the 1988 Equal Employment Opportunity Law made it a crime for an employer to retaliate against employee who had rejected sexual advances, but it was in 1998 that the Israel sexual harassment law made such behaviour illegal.¹⁶

¹³ Available at www.de2.psu.edu/harassment/generalinfo/ - 21k -

¹⁴ Available at http://en.wikipedia.org/wiki/Sexual_harassment

¹⁵ Dr. Tapan Biswal, *Human Rights, Gender and Environment*, 2006, p.155

¹⁶ Ibid

Chapter Two

Ethiopia's Laws against Sexual Harassment and Selected Survey

In Ethiopia, there are no laws which specifically deal with sexual harassment. When a case of sexual harassment is brought to the court some Articles will be interpreted in order to punish the harasser and to compensate the harassed.

Although sexual harassment is one of the problems women face in their day to day activity, it has been given attention. Most schools and work places also fail to include the issue of sexual harassment in their regulations as a problem. Below are the Articles that can be used in dealing with sexual harassment.

2.1. The FDRE Constitution

The FDRE constitution has listed the human rights that are going to be enjoyed by Ethiopians. From those there are Articles we can use when there is violation of one woman's human rights, sexual harassment.

Article 10 (1) of the constitution provides that "*Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.*" Human rights and freedoms to which a person is naturally entitled just by being a human cannot be violated and cannot be taken away from that person. Therefore, a person cannot violate the freedom of a woman by sexually harassing her.

Article 24(1) reads “*Everyone has the right to respect for his human dignity, reputation and honour.*” According to this Article everyone has the right to be respected. Respect means that a person cannot violate another person’s right just because he wants to do so. Therefore, one man cannot sexually harass a woman because it will be disrespecting that woman’s human dignity.

Article 25 of the constitution reads:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.”

This provision shows that all people are equal in the eyes of the law regardless of that person’s social origin, colour, sex, language, religion, political or other opinion, property, birth or other status. This is to mean that every law stands for and protects both sexes. Therefore, in the eyes of the law, discrimination because of sex is not allowed. As sexual harassment it self is a discrimination of sex it is against the law.

Similarly, Article 35(1) states that women are entitled to equal enjoyment of the rights that are enshrined by the Constitution. It reads:

“Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.”

2.2. The Criminal Code

Article 625 of the 2004 Criminal Code reads:

“Whoever, apart from the cases specified in the preceding Article, procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or of the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master or employer, or by virtue of any other like relationship, is punishable, upon complaint, with simple imprisonment.”

From reading this Article we can see that:

- A person in authority or an employer cannot ask a woman for sexual favours in exchange for anything because of the authority that person has on the work place. Another employee also cannot harass a woman.
- A teacher cannot sexually harass a student because he is a teacher and he has a power over her grade.
- That the harasser will be punished by simple imprisonment.

This Article can be used for sexual harassment cases that occur against woman both in the work places and in schools.

2.3. Labour Proclamation

The labour proclamation 377/2003 like other laws does not specifically deal with sexual harassment. Here are the Articles we can use.

Article 32(1(a)) with the title termination of contract of employment without notice puts that a worker who has faced an act which is contrary to her human dignity and moral or other act punishable under the Penal Code. A

woman who has been a victim of sexual harassment in the work place by her employer can terminate the contract of employment without giving a notice to her employer.

The Article reads:

- 1) The following shall be good cause to terminate a contract of employment without notice:*
 - a) if the employer has committed against the worker any act contrary to his human dignity and morals or other acts punishable under the Penal Code;*

An employer can exercise the right given in Article 32(1)(a) only within fifteen working days from the occurrence of the act. If she has not left her work within those days, she will be barred by a period of limitation.

Article 39(1)(d) shows that a worker who has completed his probation and has faced the things in Article 32(1)(a) shall have the right to get severance pay from the employer. The woman who is harassed has a right to get thirty times her daily wage of the last week of service as a compensation.

2.4. Sexual Harassment in Ethiopian Schools and Work places

Sexual harassment at this time is one of the problems women face in their work places and at schools. Most schools and organizations do not have a regulation or other materials which show the rights and duties of the students that learn in the schools; and the workers in the organizations. Some of those who have it fail to include sexual harassment in their regulations. The women who are harassed in those areas most of the time do not have the knowledge of sexual harassment. They do not know if it is legal or not and what to do when it occurs. Some organizations and schools issue clear

regulations against sexual harassment. Below are sample regulations of schools and organizations which have included sexual harassment as a problem.

The St. Mary's University College Handbook for Students has a detailed way of dealing with sexual harassment and sexual violence. It clearly shows what is prohibited and illegal and how it can be reported.

Article 1.2.1. shows that:

- asking for sexual favour in exchange for a grade (it might be directly or indirectly) or by threatening put an influence;
 - touching in order to push a person to have sexual intercourse;
 - giving sexual opinions to students on their clothing and their body;
- are prohibited.¹⁷

Article 1.2.2. states how a victim of such acts can report. A victim can report the act done to the Academic Dean of the University College by writing the name the harasser, where the act occurred, the date of occurrence on the form that is prepared by the College. Then it will be investigated by the Academic Dean.¹⁸

It also shows that if the report is a lie and is made for the purpose of revenge, the person who filed the report will be punished by the Regulations of the University College and by the laws of the country.

The collective agreement of Commercial Bank of Ethiopia and the association of the workers regulates the relation of the workers and their relation with the company. Article 8(19) provides that an employer cannot

¹⁷ St. Mary's University College Handbook for Students, 2003, p.4

¹⁸ Ibid

might be on student or on staff members. The teachers may ask the students for a sexual favour in return for grade.²³

When this occurs the Gender Mainstreaming Guidelines put mechanisms to be used by schools to handle it. It suggests that the students and the teachers should be made aware of harassment and its consequences. The book also suggests schools should have rules and regulations which punish harassers (they can be students or teachers) and give advice to the female students what to do when it occurs and how to report it to the school; and also that the harassers should be punished by being suspended and finally dismissed from the school.

²³ “*Gender Mainstreaming Guidelines and Checklists for Education Bureaus, Teacher Training Institutions & Schools*”, 2004, p.50

2.5. Data Analysis

A representative sampling was randomly taken to show the existence and scope of sexual harassment in Nifas Silk Lafto Sub City, it included two school and two work places.

Schools

The schools in which the representative sampling was taken from are: Nifas Silk TVET College and Kefetegna 20 Middle Level Technical and Vocational Training Institute. Both schools are located in Nifas Silk Lafto Sub City. From students that learn in these schools 30% were given questionnaires. The students were not selected, they were randomly picked.

In Nifas Silk TVET College 245 female students and in Kefetegna 20 Middle Level Technical and Vocational Training Institute 150 female students filled the questionnaires. Here are the questions that were in the questionnaires and the responses that were given by the students.

1. What is your knowledge of sexual harassment?

School	Response					
	Nothing		A little bit		Everything	
	number	percentage	number	percentage	number	percentage
Nifas Silk TVET College	40	16.3%	125	51%	80	32.7%
Kefetegna 20 Middle Level Technical and Vocational Training Institute	21	14%	99	66%	30	20%

2. Is there sexual harassment in your school?

School	Response			
	Yes		No	
	number	percentage	number	percentage
Nifas Silk TVET College	142	58%	103	42%
Kefetegna 20 Middle Level Technical and Vocational Training Institute	84	56%	66	44%

3. Are you a victim of sexual harassment?

School	Response			
	Yes		No	
	number	percentage	number	percentage
Nifas Silk TVET College	124	51%	121	49%
Kefetegna 20 Middle Level Technical and Vocational Training Institute	72	48%	78	52%

4. If your answer for number 3 is yes, who was the harasser?

School	Response					
	A teacher		A student		Other	
	number	percentage	number	percentage	number	percentage
Nifas Silk TVET College	23	9.4%	102	41.6%	-	-
Kefetegna 20 Middle Level Technical and Vocational Training Institute	24	16%	48	32%	-	-

5. Did you try to stop the sexual harassment?

School	Response			
	Yes, I have.		No, I haven't	
	number	percentage	number	percentage
Nifas Silk TVET College	71	29%	50	22%
Kefetegna 20 Middle Level Technical and Vocational Training Institute	42	28%	30	20%

6. Is sexual harassment included in your school's regulation?

School	Response					
	Yes		No		I don't know	
	number	percentage	number	percentage	number	percentage
Nifas Silk TVET College	73	29.8%	50	20.4%	122	49.8%
Kefetegna 20 Middle Level Technical and Vocational Training Institute	66	44%	66	44%	18	12%

7. Do you know that sexual harassment is unlawful and is punishable by law?

School	Response			
	Yes, I do.		No, I don't	
	number	percentage	number	percentage
Nifas Silk TVET College	171	69.8%	74	30.2%
Kefetegna 20 Middle Level Technical and Vocational Training Institute	132	88%	18	12%

As shown from the collected data, most students know at least something about sexual harassment. It also shows that more than half of the students have been victims of sexual harassment in Nifas Silk TVET College whereas in Kefetegna 20 Middle Level Technical and Vocational Training Institute

48% are victims. The data shows that even students that have not been sexually harassed know the existence of sexual harassment in their schools. The larger numbers of the harassers are students; they do this because for them it is like having fun. Which show that the students who are doing this will need to know that sexual harassment is illegal and punishable. If they are aware of the punishment they might try to think twice before harassing female students.

To teach these male students that sexual harassment causes damage to the female students and the victims should be compensated for the damage, regulations of schools should include sexual harassment. And more laws in our country should be enacted to decrease this sexual harassment.

In Nifas Silk TVET College, more than half of the students have been sexually harassed. The data also shows that most of the students know that sexual harassment is illegal and punishable under the law. While I was collecting data I also learnt that the number of students in the school has decreased from semester one. The Academic Assistant Dean Ato Girma Zeleke told me that one of the causes might be sexual harassment. Both schools have included sexual harassment in their regulation.

Work places

The work places from which the representative sample was taken from are: Nifas Silk Lafto Sub City and Alek Terrazzo Factory PLC. From Nifas Silk Lafto Sub City 58 and from Alek Terrazzo Factory PLC 60 working women filled the questionnaires. 30% of the total female workers in these organizations were randomly picked. Here are the questions that were in the questionnaire and the responses that were given by the workers.

1. What is your knowledge of sexual harassment?

Organization	Response					
	Nothing		A little bit		Everything	
	number	percentage	number	percentage	number	percentage
Nifas Silk Lafto Sub City	2	3%	38	66%	18	31%
Alek Terrazzo Factory PLC	18	30%	36	60%	6	10%

2. Is there sexual harassment in your work place?

Organization	Response			
	Yes		No	
	number	percentage	number	percentage
Nifas Silk Lafto Sub City	34	58.6%	24	41.4%
Alek Terrazzo Factory PLC	38	63.3%	22	36.7%

3. Are you a victim of sexual harassment?

Organization	Response			
	Yes		No	
	number	percentage	number	percentage
Nifas Silk Lafto Sub City	29	50%	29	50%
Alek Terrazzo Factory PLC	36	60%	24	40%

4. If your answer for number 3 is yes, who was the harasser?

Organization	Response					
	My supervisor		My colleague		Other	
	number	percentage	number	percentage	number	percentage
Nifas Silk Lafto Sub City	12	20.7%	15	25.9%	2	3.4%
Alek Terrazzo Factory PLC	30	50%	6	10%	-	-

5. Did you try to stop the sexual harassment?

Organization	Response			
	Yes, I have.		No, I haven't	
	number	percentage	number	percentage
Nifas Silk Lafto Sub City	20	34.5%	9	15.5%
Alek Terrazzo Factory PLC	24	40%	12	20%

6. Is sexual harassment included in your organization's regulation?

Organization	Response					
	Yes		No		I don't know	
	number	percentage	number	percentage	number	percentage
Nifas Silk Lafto Sub City	15	25.9%	18	31%	25	43.1%
Alek Terrazzo Factory PLC	30	50%	18	30%	12	20%

7. Do you know that sexual harassment is unlawful and is punishable by law?

Organization	Response			
	Yes, I do.		No, I don't	
	number	percentage	number	percentage
Nifas Silk Lafto Sub City	50	86.2%	8	13.8%
Alek Terrazzo Factory PLC	36	60%	24	40%

The above data shows that sexual harassment exists in both Nifas Silk Lafto Sub City and Alek Terrazzo Factory PLC. In the work place more female workers know something about sexual harassment. And also that is illegal and unlawful.

In Nifas Silk Lafto Sub City more of the victims of sexual harassment were harassed by their colleagues. But in Alek Terrazzo Factory PLC the larger number of the victims has been harassed by their supervisors.

Most of the victims found in both Nifas Silk Lafto Sub City and Alek Terrazzo Factory PLC have tried to make a stop to the sexual harassment. In the work places found in Nifas Silk Lafto Sub City the female workers know that sexual harassment is illegal and punishable. In the regulation of Alek Terrazzo PLC sexual harassment is not included. On the other hand in the regulation of Nifas Silk Lafto Sub City sexual harassment is included.

From the data collected it can be seen that sexual harassment is one of the problems that most women face in the work places and at schools located in Nifas Silk Lafto Sub City. Therefore, legislators should give due attention to this problem and the effect that it has on the women. The effect will also create a problem in the teaching and learning process and in the working environment.

Chapter Three

Sexual Harassment Laws in Different Countries

3.1. United States

Sexual harassment in school

Two types of sexual harassment occur in the schools of United States. The first one is student to student or peer to peer. This kind of sexual harassment is a harassment made by a student to another student.

*"More than two-thirds of students (68 percent) say that peer harassment happens often or occasionally at their College, and more than three quarters of students (80 percent) who experienced sexual harassment have been harassed by a student or a former student."*²⁴

The second one is staff to student; this kind of sexual harassment is done by staff members to students.

"One-fifth of students (18 percent) say that faculty and staff often or occasionally sexually harass students. Conversely, only one-quarter of students (25 percent), say that faculty and staff never harass students. About 7 percent of harassed students have been harassed by a professor."

27 percent of harassed female students have never told anyone about the harassment. Their main reason for not reporting is that it was no big deal or it was not serious. *"The American Association of University Women (AAUW) Educational Foundation's recent survey on sexual harassment found that four in five 8th through 11th grade students had experienced some form of sexual harassment while at school. Students are targets of sexual*

²⁴ Catherine Hill and Elena Silva, *Drawing the Line: Sexual Harassment on Campus*, 2005, p. 20

*harassment ranging from having sexual rumors spread about them to being touched, grabbed, or pinched in a sexual way”.*²⁵

In the United States Almost all Colleges have policies on sexual harassment, but only 79 percent of the students know about the existence of the policies. Pocantico Hills School is one of the schools found in the United States. The school in its Regulation as expressly dealt with sexual harassment. Starting from number 0110-R of the regulation it has defined sexual harassment, how the students and employees can report and to whom they can report. It also has included how the investigation is conducted and at what level. The penalties are also stated. This regulation covers sexual harassment by and on students employers; and also by outsiders.

Title IX

Title IX is the law that is used when sexual harassment occurs in schools; it protects students from unlawful sexual harassment, whether it take place in the school or out of the school. Every College is required to have a Title IX representative.

Sexual harassment at work

There are four types of laws that can apply to sexual harassment in work places: equal employment opportunity, labour, tort and criminal.²⁶

In the United States sexual harassment is one of the problems that made companies lose a lot of money. The number of sexual harassment cases filed

²⁵ Kathryn W. M., David K., *Sexual Harassment in Schools a Policy Guide: What it is, what to do.*, 1998, p.4

²⁶ Available at www.de2.psu.edu/harassment/generalinfo/international.html

to EEOC (Equal employment opportunity commission) is increasing in recent years.

At this time some employers are making the employees sign a 'Love Contract'. This contract is signed by employees who are dating. This contract includes things like the employees who are dating have consented to the relationship and there is no sexual harassment. By doing so the employer will be excluded from liability if one of them brought a claim of sexual harassment, because they have signed that there is no sexual harassment.²⁷ This contract will also stop employees from bringing a claim of sexual harassment in order to blackmail a person. Here are legislations which are used to bring a claim of sexual harassment in the work place.

Title VII

Title VII prohibits intentional discrimination and practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex. Usually it is by this law that claims of sexual harassment are brought under.

Charges of sexual harassment may be filed in person, by mail or by telephone by contacting the nearest EEOC (Equal employment opportunity commission) office. The EEOC (Equal employment opportunity commission) is established by the congress to enforce Title VII.

Title VII of the Civil Rights Act shows that charges must be filed with the EEOC within 180 days of the alleged discriminatory act. The charge may be filed within 300 days of the discriminatory act, or 30 days after receiving

²⁷ Good Morning America TV show aired May 11, 2008 at 9:40AM

notice that the state or local agency has terminated its processing of the charge. This law allows the victims of sexual harassment to recover damages including punitive damage.

Title VII does not specifically refer to sexual harassment, it has been held that sexual harassment is a form of sexual discrimination. It covers sexual harassment caused by supervisors, co-workers and non-employers such as customers.

In *Faragher v. City of Boca Raton* and *Burlington Industries, Inc. v. Ellerth*:-

*“On June 26th, the Supreme Court concluded its 1997-98 term by announcing decisions in two sexual harassment cases in which the Court established a new standard for employer liability for the sexual harassment acts of supervisors. At issue in these cases was the extent to which an employer can be held vicariously liable for the sexual misconduct of its supervisors in hostile work environment cases-cases in which there was no tangible adverse employment action against the victim employee.”*²⁸

From these cases the court decided that an employer is subject to vicarious liability to a victim for an actionable hostile environment created by a supervisor over the employee. An employer is liable if she or he had known of the sexual harassment and is silent about it or let the sexual harassment continue.

Employers may be liable for monetary compensation and other forms of relief to employees who are victims of sexual harassment by:

- *the owner or manager;*

²⁸ *“Sexual Harassment Awareness: Continuing education unit course”*, 2007, p.19

- *supervisors, whether or not the employer knew of the sexual harassment;*
- *coworkers, when the employer knew or should have known of the sexual harassment and failed to take immediate corrective action;*
- *non-employees in the work place when the employer knew, or should have known of the sexual harassment and failed to take immediate corrective action.*²⁹

On the other hand the EEOC has made guidelines on discrimination because of sex. It prohibits discrimination in the work places because of national origin, religion, sex and employment selection procedures. It is a substantive interpretation of the statutes. The courts only use it when the interpretations are found to be reasonable and consistent with the purposes of the statutes.³⁰ The Civil Rights Act of 1991 expanded the severity of the results of a sexual harassment case by allowing the addition of punitive damages to the already existing compensatory damages.

Civil action for deprivation of rights

Civil action for deprivation of rights allows an action against state or local officials for intentional gender discrimination, including sexual harassment, as a violation of the right to equal protection of the laws which is enshrined in the Fourteenth Amendment to the United States Constitution.

²⁹ Available at <http://erd.dli.mt.gov/humanright/employdiscrimsexhar.asp#rights>

³⁰ Robert B. and Dianne A., *Employment Discrimination Law: Cases and materials on equality on the work place*. 6th edition, 1999, p.38

The different states in the USA have different laws on sexual harassment. Some of which are strict than the federal laws. For example, in **Texas** the Penal Code criminalizes sexual harassment by public servants.³¹ In **Delaware** in the Criminal Code § 763 it is provided that:

A person is guilty of sexual harassment when:

- (1) The person threatens to engage in conduct likely to result in the commission of a sexual offense against any person; or*
- (2) The person suggests, solicits, requests, commands, importunes or otherwise attempts to induce another person to have sexual contact or sexual intercourse or unlawful sexual penetration with the actor, knowing that the actor is thereby likely to cause annoyance, offense or alarm to that person.*

In **California** an employer is required to have a policy which meets or exceeds the content of DFEH (Department of fair employment and housing) which is the equivalent of the EEOC. The DFEH puts that sexual harassment is unlawful and that the victim of sexual harassment deserves compensation. The victim of sexual harassment can file a complaint within one year to the DFEH commission.

Proving sexual harassment in the United States

In proving the existence of sexual harassment in the absence of evidence the first thing needed is establishing the necessary elements to show that there is sexual harassment. After that the victim must prove that the unwelcome nature of the event by showing that it was not solicited or it was uninvited. Next the victim must show that the severity and pervasiveness

³¹ Chua Vernon, Ong Wee Kai & Mohan Gopalan, *Sexual Harassment Laws in the USA: Compiled for the Association of Women for Action and Research*, 2007, p.6

from a reasonable woman's point of view; this is done because some women might find normal things as offensive or as sexual harassment.³² Sometimes the prior history of the harasser may be used to show that the defendant is capable of harassing. And if there are claims of damages for psychological or mental distress a medical evidence needs to be presented.

In addition, in cases of hostile environment the victim must show that there is a continuing violation. Here the women will not file a claim until it can be seen that the harassment exists and it is continuing from a reasonable women's point of view. This is because there is no uniform approach in the courts.³³

3.2. France

In France sexual harassment is unlawful and punishable. Here are the laws of France that are used for cases of sexual harassment. In France sexual harassment is considered as a form of sexual violence.³⁴

Penal Code

The French Penal Code imposes the punishment against sexual harassment:-

*“The harassment of another person for the purpose of obtaining favours of a sexual nature is punished by one year's imprisonment and a fine of €15,000.”*³⁵

³² Robert B. and Dianne A., *Employment Discrimination Law: Cases and materials on equality on the work place*, 6th edition, 1999, p.418

³³ Ibid

³⁴ Abigail C. S., *Defining Sexual Harassment in France and the United States: Arguments of Activists and Public Figures*, 1997, p.18

³⁵ Article 222-33 of the French Penal Code, 1992

The above Article is for the punishment of a sexual harassment which is called *quid pro quo*. This kind of sexual harassment is asking for sexual favors in exchange for something.

And as to legal persons:

“Legal persons may incur criminal liability in the conditions set out under Article 121-2 of the offences defined under Article 222-22 to 222-31.

Penalties incurred by legal persons are:

1° a fine, pursuant to the conditions set out under Article 131-38;

2° the penalties referred to under Article 131-39.

The prohibition prescribed by 2° of Article 131-39 applies to the activity in the exercise of which or on the occasion of the exercise of which the offence was committed.”³⁶

Labor Law

In addition to the Penal Code, the French Labor law has Articles that deals with sexual harassment. Article 122-46 provides that an employee who has refused to fulfill the harasser wish of getting a sexual favor cannot be subject of discrimination because of the refusal.

Article 122-54 on the other hand puts that the issue of sexual harassment in the work place can be solved by mediation. The mediation can be initiated by any person in the company and that the mediator should be a neutral person. In the mediation process the mediation will be given information of the relation between the parties. Then the mediator will try to reconcile them. If they fail to agree, the mediator will inform them of the possible

³⁶ Article 222-33-1 of the French Penal Code, 1992

sanction that is provided by the law and the procedural guarantees that the victim has. After that they will know what will wait for them and decide to continue the mediation or go to the court.

A court can award an employee who is the victim of sexual harassment damages and within certain conditions reinstatement. Each party may refuse reinstatement, and require or accept instead indemnification for the victim. This indemnity cannot be less than six months of salary.³⁷

The employer may be held liable for third party actions where she or he has failed to take all necessary measures to prevent harassment, and may be liable if she or he failed to take action especially when she or he was informed. Where sexual harassment is perpetrated by a hierarchical superior or a colleague, the private or state employer may inflict a disciplinary measure on the perpetrator. Failing this, she or he maybe held liable for the harassment.³⁸

In France, complaints of sexual harassment or harassment based on sex are made to the police who in turn submit them to the Procureur de la Re´publique who may order an investigation and either pursue proceedings or take no further action on the matter. The senior examining magistrate at the High Court may conduct an investigation into a complaint and submit it to the Procureur de la Re´publique. The Procureur de la Re´publique represents the Public Prosecutor’s Office and can decide to order an investigation into the facts of which he is aware and pursue proceedings or take no further action on a case. Complaints can also be brought to Criminal

³⁷ Article 122-13 and 122-14-4 of the French Labor Law

³⁸ Professor Aileen McGolgan, *Report on Sexual Harassment in the Work Place in EU Member States*, 2004, p.51

Court for ruling on the offences. The Industrial disputes body assesses deficiencies in the social or employment legislation standards.³⁹

Civil Code

In Article 1382 of the French Civil Code it is stated that who ever causes damage to another is obliged to compensate in both intentional and unintentional wrong of torts. In addition, Article 1383 which stipulated that any person who has caused damage will be liable as to the amount of the damage that the person has caused. From this we can see that the court will decide on how much the damage is worth in the sexual harassment that a victim has faced. These claims made for liability of tort will be barred ten years from the date in which the damage was caused. If it was committed against a minor the period of limitation will be extended to twenty years.⁴⁰

3.3. Philippines

The Philippines has a law which deals with sexual harassment, it is called “Anti-Sexual Harassment Act of 1995”. This act can be used for sexual harassment caused in work places and in schools.

*Work, Education or Training-related Sexual Harassment Defined -
Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other,*

³⁹ Professor Aileen McGolgan, *Report on Sexual Harassment in the Work Place in EU Member States*, 2004, p.62

⁴⁰ Article 2270-1 of the Civil Code of France

regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

The act states the conditions which constitute sexual harassment in the work place:

(a) In a work-related or employment environment, sexual harassment is committed when:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;*
- (2) The above acts would impair the employee's rights or privileges under existing labor laws; or*
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.*

The Anti-Sexual Harassment Act of 1995 further states the conditions which are considered as sexual harassment in an education or training environment.

(b) In an education or training environment, sexual harassment is committed:

- (1) Against one who is under the care, custody or supervision of the offender;*

- (2) *Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;*
 - (3) *When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or*
 - (4) *When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.*
- Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.⁴¹*

Section 4 provides that it is the duty of the employer or the head of work related, educational or training environment or institution to prevent the sexual harassment by promulgating rules and regulations and to investigate the causes of sexual harassment when it occurs. In section 5, the employer or head of office, education or training institution shall be liable for damages arising from the sexual harassment caused in that work place or school.

Section 7 puts the penalties that a person will face if he commits sexual harassment. Which are:

- Imprisonment from 1 month up to 6 months and
- Fine from 10,000 pesos up to 20,000 pesos*.

In this section the period of limitation for a claim is also written, which is 3 years.

⁴¹ Section 3 of The Philippines Anti-Sexual Harassment Act of 1995

* Peso is the currency of Philippines

3.4. Israel

Israel has a law called “Prevention of Sexual Harassment Law” which deals with sexual harassment. This law looks at sexual harassment as a discriminatory practice, restriction of liberty, an offence to human dignity. It entails both criminal and extra contractual liability.

In the work place an employer is liable for the civil consequences of sexual harassment done by anyone under him or her. The employer has to publicize a rule or regulation and should efficiently treat victims compliant. When an employer fails to do anything, she or he will face additional fine and additional fine for each week in which the offence continues.⁴²

Article 5 imposes imprisonment of 2 years for sexual harasser and 4 years of imprisonment for a person who has sexually harassed and also made another kind of harassment. In this law a victim will be entitled to a punitive damage up to 50,000 Shekel*.

⁴² Article 8 of the Israeli Prevention of Sexual Harassment Law

* Shekel is the currency of Israel.

Chapter Four

Conclusion and Recommendation

4.1. Conclusion

As seen in Chapter Two Ethiopian laws does not have much to offer with regard to sexual harassment. All the Articles found in the laws are used by interpretation. It is known that it will be hard for judges to decide on the issues of sexual harassment as the interpretation of every judge is different; there might be a misuse of Articles.

For example if we see Article 32(1(a)) of the Labour Proclamation No. 377/2003 we can only use it if the sexual harassment is caused by the employer. What if the sexual harassment is caused by an employer or by a non-employer? Under this Labour Proclamation there is no Article which deals in this regard. In order to avoid problems like this we can take experience of other countries to make laws which can deal with sexual harassment.

As it is stated in Chapter Three, the French Criminal Code imposes a punishment of 1 year imprisonment and fine of €15,000 for sexual harassment. And in the Labour Code an employer who is a victim of sexual harassment is entitled to compensation for the damage. This can be useful because the data in Chapter Two shows that in schools and work places found in Nifas Silk Lafto Sub City at least half of the women which filled the questionnaire are victims of sexual harassment. This shows that sexual harassment needs attention, and indicates the need to enact a law which specifically deals with it. Especially in schools and work places the women are affected by sexual harassment as they spend most of the days learning

and working. The work place and the school cannot be a peaceful if they cannot spend their days with freedom by being harassed. It is obvious that in this kind of environment the women will not be able to learn and work up to their maximum knowledge, efforts and potential. The following are good practices in other legal systems from which we can draw some lessons:-

The French labour law has included a provision which allows sexual harassment to be solved by mediation. This can be a good thing to think about in making a law which deals with sexual harassment, as the mediation saves the time that will be spent by going to court.

In USA Colleges and work places are bound by law to include sexual harassment in their regulations. And every College must also have a Title IX representative who can help the students when sexual harassment occurs. One example is Pocantico Hills School's Board Regulation⁴³ this regulation even covers sexual harassment caused by outsiders. This helps the school's community. Laws of USA also include how an employer can be liable for a sexual harassment caused to an employee by another employee or non-employee. We can also take this as an example in making a law for sexual harassment.

In the Philippines Anti-Sexual harassment law gives a broad definition of sexual harassment, which also is useful. And will avoid gaps which will be created by defining sexual harassment. Therefore, the judges can see what constitutes sexual harassment. It is also important that this law binds all schools and work places to have rules and regulations that deal with sexual harassment.

⁴³ Pocantico Hills School Board Regulations, 2006

On the other hand the Israeli Prevention of Sexual Harassment Law makes the employer liable for civil consequences of the sexual harassment caused in the work place. This will decrease the negligence caused by employers when there is sexual harassment in the work place.

4.2. Recommendation

In view of the problem of sexual harassment which working women and female students face in their everyday life, a law which expressly deals with sexual harassment should be enacted. It is the suggestion of the writer of this paper that the new law should include:

- a) A clear and broad definition of sexual harassment.
- b) What sexual harassment victims can do when it occurs and where they can go when it occurs.
- c) Where and to whom they can report when it occurs in schools and at work places, in order to enable them make use of other ways of solving the problem before going to court.
- d) What to do if the person who takes the report is the harasser; this happens most of the time in schools and work places.
- e) That schools and work places should have a clear Article in their regulation which deals with sexual harassment.
- f) A compensation for the damage done to the victims of sexual harassment and also a punishment for the harasser. It might be a fine and or imprisonment which will be set in accordance with the living standard of the people.
- g) A fair period of limitation because most of the time cases of sexual harassment make the women feel uncomfortable. Therefore, they need time to think whether they are going to court with the case or not.

In enacting this law to avoid claims made for a purpose of blackmail and revenge; the law should include that further investigation be made on the alleged harasser's behaviour.

Because the understanding of a person about sexual harassment is affected by one's culture and other past experiences, it is recommended that the law should include a process in which the victim could explain what has made her say that there is sexual harassment. In doing so the court could come up with a conclusion whether there is sexual harassment.

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