

Brief on Strengthening Action against Violence and Harassment in the World of Work in Nepal¹

1. Introduction

Sexual harassment, which constitutes gender-based violence and harassment, is a hazard encountered in public and the world of work. It is not about friendly and mutual behaviour but it is an unwanted, unwelcome and unacceptable act based on the abuse of power. It deprives people of their dignity, jeopardizes the well-being of those targeted, results in unacceptable working conditions and poses occupational safety and health risks, hence it is both a human rights and worker's rights issue. The negative consequences on individuals, enterprises and society at large are well-identified. While both women and men can be targeted, women as well as those from marginalized communities are disproportionately affected due to unequal gender-based power relations and multiple and intersecting forms of discrimination.

Since its inception in 1919, recognizing that universal and lasting peace can be established only if it is based upon social justice, the International Labour Organization (ILO) has been working to ensure that everyone has decent work, which refers to productive work carried in conditions of freedom, dignity at work, equality, and protection. Sexual harassment is clearly incompatible with decent work and it needs to be eliminated to ensure that everybody can enjoy a world of work that is safe and respectful. While sexual harassment was recognized as discrimination based on sex and the issue to be addressed as part of the ILO Convention on Discrimination (Employment and Occupation), 1958 (No. 111), there was no comprehensive international standard addressing violence and harassment in the world of work. Reaffirming that everybody has the right to pursue their material well-being and spiritual development in conditions of freedom and dignity, of economy security and equal opportunity, the ILO in 2019 adopted new international standards concerning the elimination of violence and harassment in the world of work. The Convention on Violence and Harassment, 2019 (No. 190) recognizes the right of everyone to a world of work free from violence and harassment which includes gender-based violence and harassment, and calls Members to adopt an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work.

2. Progress in addressing violence and harassment in the world of work in Nepal

Over the years, there have been increased calls to address violence and harassment, especially sexual harassment against women. As a result, many countries have strengthened their efforts to prevent and address sexual harassment in the world of work.

In Nepal, notable improvements have been made over the past few decades. While the talk of sexual harassment continues to be a taboo, there are several legal, policy and institutional measures to address sexual harassment (Box 1).

Box 1: Overview of legal and policy framework on violence harassment in the world of work in Nepal

- The Constitution provides right to a dignified life (art. 16), prohibition of discrimination on ground of sex, equality before the law (art. 18), right to work and choose occupation (art. 33), protection of women against any physical, sexual, psychological or any other acts of violence and exploitation (art.38).
- The Electronic Transaction Act, 2063 (2008), Section 47 prohibits teasing, harassing, insulting or similar indecent activities against women by means of the use of computers, the internet, and other means of electronic communication.
- The Supreme Court of Nepal in the public interest litigation furnished a directive order in 2008 to the Government of Nepal to devise legal measure to address sexual harassment of women workers in dance bar, dance restaurant, massage parlour (collectively the entertainment sector). The Supreme Court issued procedural guideline to protect women in the entertainment sector from sexual abuse and exploitation.
- The National Plan for "Year against gender-based violence" in 2009 recognized sexual harassment at workplace as a problem.
- The Domestic Violence (Offense and Punishment) Act, 2066 (2009) defines domestic violence as any form of physical, mental, sexual or economic harm perpetrated by person to person within "domestic relationship". A dependent domestic helper living in the same family is covered under "domestic relationship".
- The Ministry of Industry, Commerce and Supplies adopted a Code of Conduct against Gender-Based Violence at Workplace in Industrial Enterprises in 2010.
- The Foreign Employment Policy 2068 (2011) recognizes the problem of sexual harassment faced by female workers in course of foreign employment and states the need to address concern of female workers on labour market and ensure their rights in overall migration cycle.
- The Sexual Harassment at Workplace (Elimination) Act, 2071 (2014) was promulgated.
- The Criminal (Code) Act, 2074 (2017) prohibits certain acts that constitute sexual harassment.
- The Labour Act, 2074 (2017) prohibits sexual harassment.

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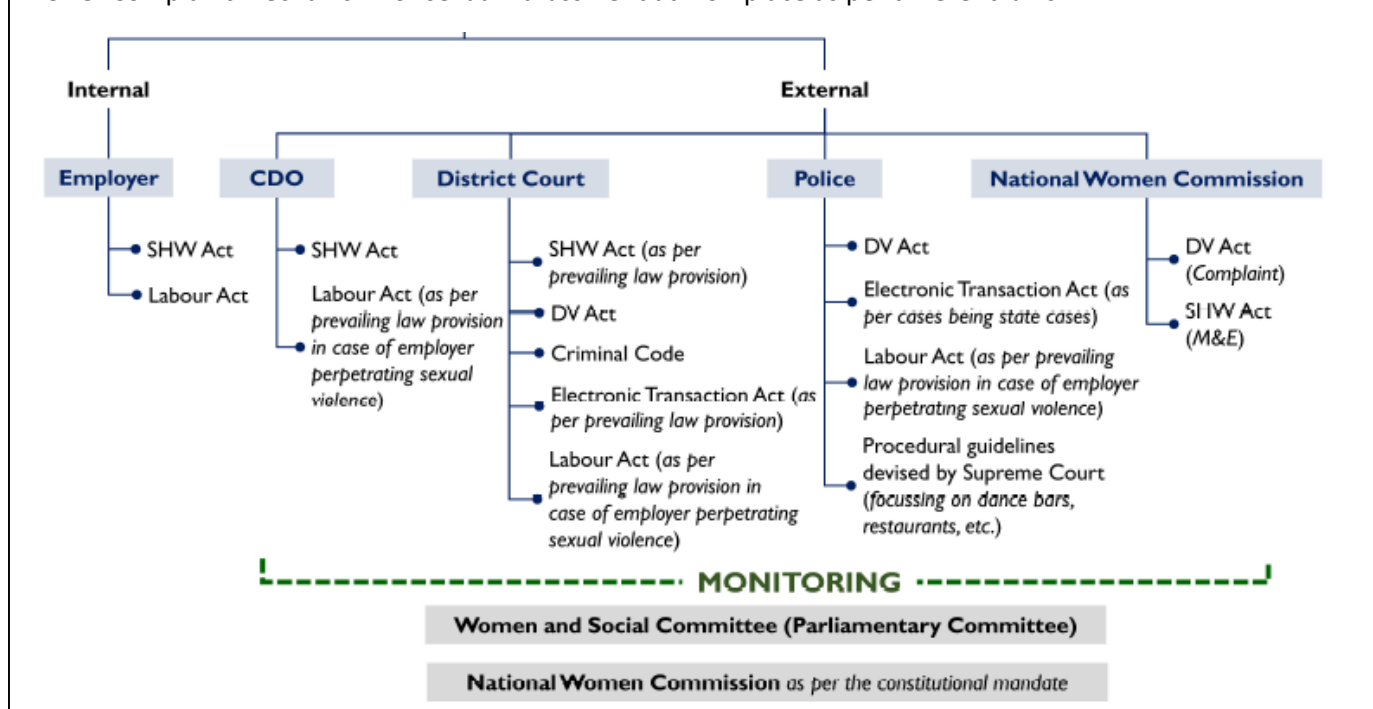
The Sexual Harassment at Workplace (Elimination) Act, 2071 (2014) (SH Act) addresses sexual harassment at workplace. It provides that no one should be subjected to sexual harassment in workplace, and provides definitions, scope, and measures for enforcement and remedies (Box 2).

Box 2: Key contents of the Sexual Harassment Act, 2071 (2014)	
Who are protected?	Employees and customers at workplace
What is a workplace?	Entity, institutions, firms or place to be used in the course of work and includes: <ul style="list-style-type: none"> • Government entity • Entities owned (fully or partly) by government • Corporate bodies or institutions established in accordance with the prevailing laws • Any firm, institution or corporate body registered or licensed to carry out any business, trade or provide services in the course of conducting business
What acts are considered to constitute sexual harassment?	<ol style="list-style-type: none"> a) Making physical contact or attempted to make physical contact with sexual motive b) Using or displaying words, pictures, magazines, audio, visuals, other information technology, instruments, objects or pornographic materials or sexual activities c) Expressing sexual motives by way of written, verbal, or gesture means d) Demanding or proposing for sexual favours e) Teasing or harassing with sexual motive.
What are the responsibilities of the manager for prevention and control of sexual harassment in the workplace?	<p>Manager refers to the person having the authority to make final decision with regard to administrative and business activities of any workplace, or the authority exercising delegated power for that purpose and includes branch or unit head of any branch or unit of workplace elsewhere. The manager has the following duties:</p> <ol style="list-style-type: none"> a) Incorporate necessary provisions relating to the prevention of sexual harassment into the laws relating to terms and conditions of the employees b) Alert employees and customers about the prevention of sexual harassment c) Adopt necessary corrective measures to prevent repetition of sexual harassment d) Provide psychotherapy service to the victim as per the requirement e) Keep complaint box in the workplace. f) Give clear information to the victim relating to time limit to file complaint against the act of sexual harassment, its procedure and complaint hearing authority. <p>If the manager receives a complaint, the manager needs to complete the complaint hearing process within 15 days.</p> <p>While carrying out investigation, if the manger finds that the accused person is found to have been committed to the act of sexual harassment to the complainer employee or customer, the manager may carry out any or all of the following actions:</p> <ul style="list-style-type: none"> • Carry out reconciliation in case of mutual consent between the aggrieved party and the offender • Require the offender to furnish an apology to the victim • Warn the offender for non-repetition for such offense • Arrange for a reasonable compensation from the offender to the victim • Take departmental action against the offender as per the law relating to terms of service
What can victims do to seek remedy?	<p>Internal complaint mechanism</p> <ul style="list-style-type: none"> • File a complaint either in written or oral form before the manager within fifteen days. <p>External complaint mechanism</p> <ul style="list-style-type: none"> • File a complaint to the Chief District Officer within 90 days of occurrence of the incident.
What protection does it provide to victims?	The Act provides protection to the victims of sexual harassment at workplace against firing from job, departmental action, transfer, impacting on promotion or any other actions stemming from the lodged complaint. In case of such incident, the victim can lodge a complaint against the employer at the Chief District Officer.
What is the punishment under the Act?	<ul style="list-style-type: none"> • Up to 6 months of imprisonment or fines up to NPR50,000 or both to the offender • Fines up to NPR25,000 to employer in case of non-compliance with the obligation set out by the Act • Fines up to NPR10,000 rupees for the false complaint maker • The recidivist is imposed with double the punishment for every time

According to Section 19, the SH Act does not prohibit to seek any legal remedy as per the prevailing law of the country. This indicates that an individual can take the case directly to the respective District Court against the offender of sexual violence as per No .224 of the Criminal Code (2017), or file a first information report (FIR) to the police as per Section 47 of

the Electronic Transaction Act if sexual harassment is committed by use of electronic communication. Based on the existing laws and policies, there are a number of avenues to seek remedies in Nepal (Box 3).

Box 3: Complaint mechanism for sexual harassment at workplace as per different laws



3. Challenges

Despite significant improvements in laws and policies, sexual harassment remains a serious issue in Nepal. It is critical to assess progress, identify challenges and step up efforts to further strengthen action against violence and harassment which includes gender-based violence and harassment in the world of work. Some of the challenges identified through the review of laws and policies and consultations with key stakeholders are as follows:

- 1) Limited implementation of the SH Act and other related laws: The SH Act entrusts the Government of Nepal with the obligation to prevent and eliminate sexual harassment at workplace and to formulate required rules and code of conduct to support the implementation law. However, rules and code of conduct are yet to be formulated. The Government is also yet to assign a ministry responsible for the implementation of the SH Act. While the Labour Act also prohibits sexual harassment, mechanisms to ensure the implementation of the provision are not clear.
- 2) Limited scope of the SH Act: The SH Act provides protection to employees and customers. This means that the majority of workers in Nepal who are in the informal economy (e.g. agricultural workers, home-based workers, domestic workers, unregistered construction workers) fall outside of the legal protection. The current definition of a workplace may also be limited, leaving various world of work situations and locations outside of the legal protection.
- 3) Low awareness of the SH Act as well as limited understanding on what constitutes violence and harassment in the world of work among general public as well as among relevant stakeholders: There is generally low awareness on the SH Act and limited understanding on unacceptable behaviours amounting to violence and harassment including gender-based violence and harassment in the world of work.
- 4) Prevailing stigma associated with sexual harassment: The talk of sexual harassment largely remains a sensitive topic in Nepal. For the fear of further stigmatization and other negative consequences such as the loss of jobs, victims suffer in silence without taking steps to seek remedy. Unacceptable behaviours are left unaddressed, hindering progress towards the creation of a safe working space for all.
- 5) Limited data on violence and harassment including gender-based violence and harassment in the world of work: Since victims generally remain silent and do not file a complaint, the limited number of filed cases on sexual harassment gives a wrong impression that sexual harassment is not a problem, although the reality is otherwise. Compared to the past, there are more research available on violence and harassment, especially on gender-based violence. However, information is often sporadic and does not provide comprehensive information on the situations of violence and harassment in the world of work.

4. Recommendations

It is important for all stakeholders in Nepal to build on the progress made so far and take further steps to work towards the elimination of violence and harassment in the world of work. Possible areas of action for consideration are as follows:

For Government

- Strengthen the implementation of the SH Act. Specifically:
 - Formulate and implement a Code of Conduct as per Section 21 of the Act.
 - Develop and implement a guideline and training for relevant stakeholders to support the implementation of the SH Act.
 - Designate a specific ministry or government institution responsible for the implementation of the SH Act.
 - The implementation of the SH Act should be regularly monitored and evaluated and the information from monitoring and evaluation should be utilized to make further improvements.
- In close consultation with employers' and workers' organizations and relevant stakeholders, revise national laws and policies to ensure protection against all forms of violence and harassment, including gender based violence and harassment, for all workers and other persons in the world of work in line with C190.
 - The SH Act protects only employees and customers and leaves the majority of the workforce who are in the informal economy out of the purview of the law. According to the Labour Act 2017, all workers are recognized as workers to access workers' rights irrespective of whether they are in formal or informal sector. The scope and its applicability may be expanded to protect all workers in line with the Labour Act and C190. Similarly, the definitions may be broadened to ensure better protection (e.g. definition of violence and harassment, definition of world of work, etc).
 - Develop and introduce preventative measures for violence and harassment in the world of work, including occupational safety and health regulations.
 - Mainstream violence and harassment issues in other technical areas (e.g. migration, occupational safety and health, enterprise development, equality and anti-discrimination law, criminal law etc).
- Enhance collaboration with relevant ministries to promote gender equality, prevent and address violence and harassment including gender-based violence and harassment in the world of work.
- Clarify roles and responsibilities and collaborate with relevant ministries to strengthen the implementation of the existing laws and policies (e.g. Ministry of Women, Ministry of Labour, Ministry of Law, etc).

For Employers' Organizations

- Develop and implement a Code of Conduct on violence and harassment including gender-based violence and harassment.
- Develop and implement programmes and internal mechanisms to identify risks, prevent and address violence and harassment, also by taking into account sectoral specificities.

For Workers' Organizations

- Develop and implement policy to promote gender equality and tackle discrimination in their internal governance structure, and address violence and harassment including gender-based violence and harassment in the world of work.
- Develop internal mechanisms to support victims of violence and harassment, witnesses and whistle-blowers in the world of work to seek justice.

Civil Society Organizations

- Provide guidance and training on violence and harassment in the world of work.
- Design and implement campaigns to raise awareness on violence and harassment.

For All Stakeholders

- Raise awareness on the existing laws, C190 as well as general concepts on equality and non-discrimination, violence and harassment including gender-based violence and harassment in the world of work. Collaborate with media as appropriate.
- Given that the Nepalese society is characterized by socio-economic exclusion and marginalization in the form of gender, caste, class, and other forms, address intersecting and multiple forms of discrimination when promoting gender equality.
- Carry out training to strengthen the capacity of relevant stakeholders to better prevent and address violence and harassment including gender-based violence and harassment in the world of work.
- Carry out survey or research to understand manifestation of violence and harassment in the world of work to understand risks and progress towards the elimination of violence and harassment.