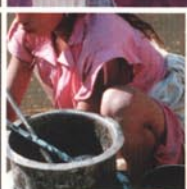
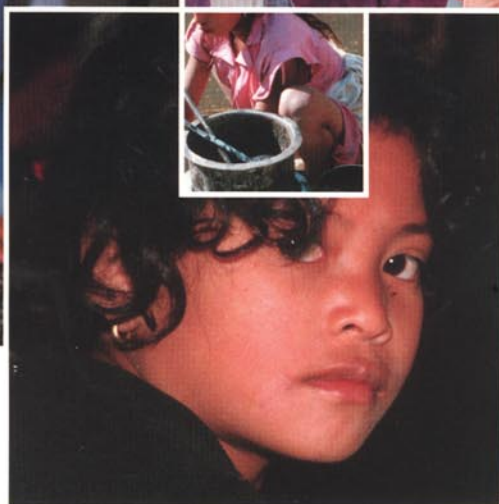
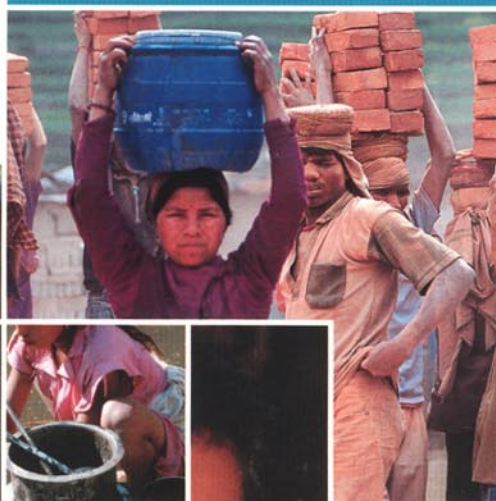


Sexual Harassment at the Workplace in Nepal





Sexual Harassment at the **Workplace** in **Nepal**

Series **2**

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Sexual Harassment in the Workplace in Nepal

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list of acronyms

BPFA	-	Beijing Platform for Action
B.S.	-	Bikram Samvat (Nepali Calender)
CBS	-	Central Bureau of Statistics
CEDAW	-	Convention on the Elimination of All Forms of Discrimination Against Women
CWIN	-	Child Workers in Nepal
DAO	-	District Administrative Officer
FWLD	-	Forum for Women, Law and Development
FNCCI	-	Federation of Nepalese Chambers, Commerce and Industries
GEFONT	-	General Federation of Nepalese Trade Unions
HMG-N	-	His Majesty's Government of Nepal
HR	-	Human Resources
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
IWRAW	-	International Women's Rights Action Watch
MLJ	-	Ministry of Law and Justice
MP	-	Member of Parliament
MWCSW	-	Ministry of Women, Children and Social Welfare
NBA	-	Nepal Bar Association
NBC	-	Nepal Bar Council
NGO	-	Non-Governmental Organization
NPA	-	National Plan of Action
NPC	-	National Planning Commission
VAW	-	Violence Against Women

preface

Sexual harassment is an attack on a person's privacy and dignity. It is a manifestation of power relations. Women are more likely to suffer because they lack power, are in vulnerable and insecure positions, lack self-confidence and have been socialised to suffer in silence. In this indicative study conducted in Kathmandu, Pokhara, Dharan, Biratnagar, Birganj and Hetauda, it is evident that over half of the interviewed women had themselves experienced sexual harassment at the workplace. Yet, this subject had not been discussed openly in Nepal until a few years ago. The prevalent mental attitude in the society has been, "Men are men. Women have to just tolerate this behaviour. It is their fate".

As this study reflects, sexual harassment affects the victims in forms of emotional stress, humiliation, anxiety, depression, anger, powerlessness, fatigue and physical illnesses. The victim may lose her/his job or job-related experiences such as training, or feel that the only solution is to resign. The sufferings of the victim can have a direct effect on the enterprises as sexual harassment practices can create tension in the workplace, inefficiency in team work and collaboration, lowered work performance, absenteeism and decreased productivity. Moreover, if sexual harassment incidents are overlooked, the enterprises can earn a tarnished public image and face financial risks in case the victim goes forward to make the situation public and opt for court actions.

Sexual harassment at the workplace not only affects the individual in question but also the organization. Efforts have to be made in eliminating this persisting problem. The present study is intended to initiate and mobilize opinions in this regard, showing how societal perceptions, attitudinal changes and appropriate rules and regulations framed within a specific law can contribute to address the incidence of sexual harassment at the workplace.

This study was prepared under the technical supervision of Ms. Jyoti Tuladhar, Senior Gender Specialist at the ILO-Sub-regional Office, based in New Delhi, who also edited the report in the present format.

Advocate Sapana P. Malla and her research team consisting of Ms. Salina Joshi, P. Gautam, S. Shrestha, B. Magar and A. Uprety have expended a great deal of effort in undertaking this challenging task and preparing the report, particularly in view of the fact that the topic of sexual harassment is not an easy one to approach. They deserve special commendation for this effort.

Sincere thanks are addressed to ILO colleagues for their valuable inputs as well as representatives of the ILO constituents, government, employers' and workers' organizations, the civil society organizations, and above all, to the women and men workers who contributed their time and effort in participating at discussions and interviews and presenting their valuable views and thoughts on the subject.

p r e f a c e

It is our sincere hope that this publication will motivate and provide the appropriate basis for eliminating sexual harassment at the workplace in Nepal and ensuring the workers, both women and men, a safe and secure environment in which to work with dignity and confidence.

Kathmandu, August 2003

Leyla Tegmo-Reddy
Director
ILO Office in Nepal

Sexual harassment is a problem that needs to be assessed in the broader context of the positions of women and men in the society and in the labour market. The factors which impact on the problem are social and cultural perceptions of women and men and their sexuality, the low status of women in the hierarchy of the organization, low levels of wages and job insecurity. In fact, it is the visibility of women in the labour market and in public life, the recognition of women's rights as basic human rights and the advancement of political movement for women's rights and equality collectively that has brought the issue of sexual harassment to the forefront of international debates and discussions. The message is clear - violation of the dignity and respect due to an individual – in most cases, a poor, uneducated, young woman in a lower position at work, is not to be tolerated or overlooked any longer.

At the international level, sexual harassment is not a subject of any binding international convention. The Universal Declaration of Human Rights for the first time in 1948 banned discrimination of any kind, including that based on sex, which was further supported by two international conventions adopted in 1966. The Convention on the Elimination of All Forms of Discrimination Against Women in 1979 accepted a broad definition of discrimination specifically against women and required the ratifying states to take appropriate measures to eliminate discrimination against women in the field of employment.

However, it was only in 1992, the General Recommendation No. 19 provided clarification on sexual harassment and stated that equality in employment can be seriously impaired when women are subjected to gender specific violence. In paragraph 18, it clarifies that sexual harassment includes physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions that can be humiliating and may constitute a health and safety problems. It is discriminatory when a woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment.

The ILO meanwhile has adopted a vanguard position and earned the distinction of being the only international body to have adopted an instrument that contains protection against sexual harassment. The 1958 Discrimination (Employment and Occupation) Convention (No. 111) first provided a broad definition of the term discrimination to cover any distinction, exclusion or preference made on sex that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The 1985 International Labour Conference recognised sexual harassment at the workplace as detrimental to working conditions, employment and promotion prospect of employees. The 1989 ILO Meeting of Experts on special Protective Measures for Women and Equality of Opportunity and Treatment categorised personal security of workers notably sexual harassment as a safety and health problem. Similarly the 1992 Tripartite Symposium on Equal Opportunity and Treatment for Men and Women in Employment in Industrialised Countries also discussed the sexual harassment issue.

The ILO perceives sexual harassment as a social and economic problem that is likely to

foreword

affect the workers and the employers equally. Therefore, sexual harassment is a labour and management issue. Occurrences of sexual harassment incidents are a serious violation of basic human rights of the workers to be free from violence and sex-based discrimination and health and safety risks. Since all enterprises are governed by laws to ensure good conditions of work for all workers, sexual harassment at workplace is a contravention of law.

It is also an ILO conception that an end to sexual harassment can be initiated from within workplaces. Acknowledgement of sexual harassment as a problem will lead to awareness raising among workers, employers and monitoring bodies like government that can materialise an explicit sexual harassment policies. The policy formulation process should start with identifying the legal situation and with full involvement and accord from all stakeholders the policy should be clearly defined with encoded zero tolerance message.

This exploratory study for Nepal forms part of a regional overview for the Asia Pacific Regional Action against Sexual Harassment at work. Eleven case studies such as this have been undertaken in different countries in the Asia Pacific Region – part of a regional campaign to draw attention to this critical issue.

The study clearly reveals that the root cause for any sexual harassment incident is the misuse of power that categorically takes place in form of exchange of a favour (*quid pro quo*) or hostile working environment. Rampant sexual harassment against women at workplaces is encouraged by women's subordinate position in the society. In response to a query on how sexual harassment is viewed by women workers, interviews indicate the overriding feelings as follows: this problem of sexual harassment causes embarrassment to the victim and brings about social stigma. It is best to ignore it as long as possible. The management is not sympathetic to this issue. It is best to leave the job than complain against the harasser and seek justice. It may be risky and dangerous to confront the harasser for fear of reprisals and revengeful actions.

In order to eliminate sexual harassment from the workplace, therefore, preventive measures, curative measures and rehabilitative mechanism in favour of the victims need to be activated. Effective implementation of laws, regulations and company code of conduct for workers should be ensured to check that sexual harassers do not go immune and victims' rights are respected. In the present progressive, forward-looking ethos in Nepal, it is hoped that the socio-political environment will encourage formulation of appropriate strategies/legislation to address the problem of sexual harassment.

Sexual harassment incidents are always damaging not only to the victim, but to the enterprise and the society as well. The complainant suffers in forms of emotional stress, physical illness, loss of work motivation, absences at work, missing out on training and promotions, resignation or dismissal or further humiliation. On the other hand, the enterprise also suffers a high magnitude of economic and productivity losses caused by absenteeism of employees, workplace tension, loss of valued employees, turnover of staff, inefficient team work and collaboration, image damage and fines in case the incidents are proved in courts.

Existence of sexual harassment also has larger consequences—society pays a high price in forms of thwarts of the achievement of equality, condoning of sexual violence, hindrance to productivity and broad based development.

Hence, it is also in the interest of business growth and efficiency that sexual harassment needs to be prevented. At the enterprise level, sexual harassment policy and procedures need to be framed, including four major components:

- (a) Policy statement with clear definition of sexual harassment and specification of responsibilities of management and employees.**
- (b) A clear-cut complaint procedure that allows both formal and informal complaining, but both procedures should be guided to maintain confidentiality, protection against retaliation and guarantee of policy enforcement.**
- (c) Communication and training strategy also need to be outlined to familiarise the employees with the policy and publicise the policy through internal means.**
- (d) Support services to provide counselling, emotional support and legal assistance to complainants.**

The present study has also analyzed and examined the need for specific legal provisions for sexual harassment in Nepal and has put forward important recommendations for action by all stakeholders in this regard. The study has discerned a general consensus among the respondents that a holistic, multi-disciplinary and integrated approach should be developed to address the problem of sexual harassment in Nepal.

We hoped that this study will pave the way for more detailed research on the subject and a serious exploration into designing the best mechanisms possible for ensuring that the dignity, self esteem, confidence and efficiency of vulnerable workers are preserved at the workplace. Sexual harassment is a menace that no woman or man should have to tolerate and it is in both the social and economic interests of the society that such behaviours be actively eradicated.

Jyoti Tuladhar
Senior Technical Specialist
Gender and Women Workers' Issues
ILO- Sub-Regional Office (ILO-SRO)
New Delhi

executive summary

A taboo until recently, the issue of sexual harassment at the workplace is gaining gradual recognition as a problem of discrimination against women as **workers at the workplace**. It is an issue that interfaces with two concerns: violence against women and rights of women in the workplace. Efforts at legal reform for combating violence against women have concentrated on the more extreme cases such as that of rape, while advocacy campaigns for women workers' rights have concentrated on issues such as equal rights for equal pay, rather than on sexual harassment at the workplace.

With the data indicating a steady growth in the participation of women in Nepal's labor market, it may be assumed that the problem of sexual harassment at workplace on the rise. The problem receives little social recognition and legal redress because patriarchal values, traditions, norms, and even laws discriminate against women. Furthermore, the relations between men and women are governed by norms and values that are essentially formulated by patriarchy. The long history of unequal power relations has given rise to many traditions that lead women to tolerate discrimination and exploitation. In fact, violence of all kinds including sexual harassment can be traced to this history of inequality.

This study on sexual harassment in Nepal is one of the very few studies conducted in Nepal so far. Conducting a study on a subject considered taboo was challenging, as at times it was difficult to conduct interviews. Nonetheless, there were interviewees who appreciated the study on a subject like this, and showed great enthusiasm in responding to our queries.

This study deals with perception, nature, prevalence and effects of the problem of sexual harassment. It has four specific objectives:

- To understand how different groups of people in different workplaces perceive sexual harassment, how they deal with it and what they think can be done to combat the problem;
- To determine the extent and effects of sexual harassment through primary research in select sectors;
- To understand the existing legal position and existing legal mechanisms regarding sexual harassment;
- To provide recommendations for what can be done to combat sexual harassment and what mechanisms and procedures are needed to address the issue.

The study has also examined legal and other mechanisms available or not available for addressing this problem and has put forward recommendations from all concerned agencies to address the issue of sexual harassment at the workplace. The findings of the study would contribute in developing a framework, which would be needed to frame laws and policies on sexual harassment. This research has not only tried to collect information but has also taken

executive summary

this, as an opportunity to pass a message that sexual harassment is a serious issue and a crime.

The population groups studied in this research consist of employers/managers, employees/workers, trade unions and policy makers/civil society representatives. Due to limited time and resources, the following 167 samples were purposively selected for the study:

30 policy makers and civil society members (13 women and 17 men) representing Members of Parliament, trade unions, concerned ministries such as the Ministries of Labor, Ministry of Law and Justice, Ministry of Women, Children and Social Welfare, the Labor Department, the Labor Office, the Law Reform Commission, the National Human Rights Commission, the Public Attorney's Office, the police, national and international non-governmental organizations, media professionals, lawyers, human rights activists, women activists, and the Women's Studies Program of Tribhuvan University. 80 employees/workers (66 women and 14 men); 44 employers/managers (6 women and 38 men) were selected from carpet and garment industries, airlines, schools, college campuses, hotels and restaurants; FNCCI; and 13 trade union members (5 women and 8 men). The field sites studied are Kathmandu, Pokhara, Dharan, Biratnagar, Birgunj and Hetauda.

The respondents perceived sexual harassment at the workplace, as a gender issue, an uninvited embarrassing, humiliating behavior and workplace violence. Common features of sexual harassment found during the study are verbal, gestural, physical and pornographic or written.

In this study 53.84 percent of women employee/workers have reported that they themselves experienced sexual harassment in the work place, whereas 57.14 percent male and 23.08 percent women employee/workers were of the view that they were aware of sexual harassment at the workplace. The study shows that 88 percent of policy makers/civil society and 72.72 percent of respondent employers/management believe that sexual harassment is commonly practiced at mass workers' ¹ level. Likewise, 80 percent of policy makers/civil society members and 72.72 percent of employers responded that sexual harassment is also practiced at the helpers' level².

From among respondents belonging to policy makers/civil society, 72 percent said that the garment industry is the sector more prone to sexual harassment and 68 percent said that it is the carpet industry that is more prone to it. However, a significant percent of respondents also claimed that private firm, government, domestic work sphere, hotel and restaurant are other areas highly prone to sexual harassment.

The effects of sexual harassment on the victim and the employers' organizations are manifold, which include social, cultural and economical spheres. It also affects the health of the victims and causes physical and psychological disturbances. The effects on the organization include loss of productivity and profitability, tarnished profile of the organization, disturbed working environment, displacement and non-availability of skilled human

1 Mass workers' level: For the purpose of this study- workers who work in-group, e.g.: carpet workers, garment workers, factory workers etc.

2 Helper workers' level: For the purpose of this study- workers who basically provide assisting work, e.g.: sweepers, cleaners, domestic helpers etc.

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resources, and increase in costs due to recruitment, training and/or legal defense.

The research, though exploratory in nature, clearly indicates the seriousness of the situation pertaining to sexual harassment in Nepal. It has also made recommendations for a more comprehensive and nationwide study on the issue. Initiatives are being taken by some trade unions and media to make workers/employers aware on the issue of sexual harassment. However, they are not adequate. Hyatt Regency Hotel Pvt. Limited has created a benchmark by including sexual harassment at workplace as one of the grounds for departmental actions.

There are various laws in Nepal, which deal with sexual exploitation. However, there exists no specific law to deal with sexual harassment *per se*. The respondents of the study have expressed the view that employers/management should be made accountable for sexual harassment in their organization. They believe that it is the ultimate responsibility of the management/employer to provide a secure working atmosphere. The respondents also felt it necessary to make the harasser liable in both civil and criminal actions.

Some of the general recommendations made are as follows:

- Provision for sexual harassment as an offence
- Incorporate sexual harassment in the employee/workers' regulation in the enterprises
- Clear definition of sexual harassment
- Appropriate complaint handling procedures
- Ensure employer's accountability
- Provide compensation for the victim
- Amend discriminatory laws
- Enactment of new laws for Informal Sectors
- Managers/Employers' misconduct to be included in labour legislation

The respondents pointed out those trade unions, employee/workers' organizations and each individual need to take concrete measures to address the problem of sexual harassment. Workplaces should have an inspiring atmosphere that would encourage a person to be constructive and productive. A number of recommendations, drawn from the interviews and from the insights of the research team, are specifically aimed towards various institutions that can bring about a solution to this grave problem.

The civil society institutions should lobby with the government and the parliament to enact

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appropriate laws and to consolidate the efforts of different sectors to deal with this issue. Media is the strongest influence and therefore needs to play a role to recognize sexual harassment as a gender-based crime and a violation of workers' right. The government should take effective measures including strong penal sanctions, civil remedies and compensatory provisions to protect women against sexual harassment at the workplace.

An implementation of the General Recommendation No 19 of CEDAW as a guideline to protect women against violence including sexual harassment in the work place should be promoted. Sexual harassment at workplace is gender based discrimination and violence against women. It is a violation of the human rights of women. Therefore, the State should try to protect the human rights of women and promote gender equality ensuring accountability under various human rights instrument ratified by Nepal.

The State should encourage the compilation of statistics and research on the extent, causes and effects of sexual harassment, and on the effectiveness of measures to prevent sexual harassment. The Labour Office should play an effective role to monitor the employment conditions of workers. Gender sensitive training to judicial, quasi-judicial bodies (Labor Department, Labor Office etc) and law enforcement officers and other public officials are essential to provide justice to the victims of sexual harassment.

A specific ILO Convention should be developed to deal with the issue of sexual harassment. International cooperation should be promoted for awareness programmes, research, law formulation and for providing care and support to the victims. Sexual harassment is a human rights issue, a labor issue and a health and safety issue and therefore, needs serious attention and action from all sectors in the country.

The study found a general consensus among the respondents on the view that a holistic, multi-disciplinary and integrated approach should be developed to address the problem of sexual harassment.

INTRODUCTION

1.1 Background

Sexual harassment at the workplace, a subject that has previously been considered a taboo, is gaining gradual recognition as a problem of discrimination against women as **workers at the workplace**. It is an issue that interfaces with two concerns: violence against women and rights of women in the workplace. Efforts at legal reform for combating violence against women have concentrated on the more extreme cases such as that of rape, while advocacy campaigns for women workers' rights have concentrated on issues such as equal rights for equal pay, rather than on sexual harassment at the workplace.

The Beijing Platform for Action emphasizes that violence against women includes physical, sexual and psychological violence occurring within the general community. Rape, sexual abuse, sexual harassment and intimidation at work are all forms of violence within this definition. In every society, to a greater or lesser degree, women and girls are subjected to various forms of physical, sexual and psychological abuse that cut across lines of income, class and culture. Violence against women has proved to be an effective weapon in the hands of men to exploit women and establish men's supremacy. In many cases, violence against women occurs in the work place but is often tolerated.

Violence is an obstacle to achieving the objectives of equality, development and peace. It nullifies women's enjoyment of their human rights and fundamental freedoms. Failure to protect and promote these rights and freedoms is a matter of great concern to all states and should be addressed effectively.

Sexual harassment in the United States, for example, is considered to be a type of employment discrimination and is thus prohibited by Federal Law.¹ It includes sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature.

There are many views on sexual harassment. The most widely used definition of sexual harassment is that by Michael Rubenstein² who has defined it as 'unwanted sexual conduct, which is offensive to the recipient'. Furthermore, the European Commission's Code of Practice adds, "It is for each individual to determine what behaviour is acceptable to them and what they regard as offensive. It is the unwanted nature of the conduct which distinguishes sexual harassment from friendly behaviour, which is welcome and mutual"³.

Although these legal definitions are gender neutral, in practice men usually are the perpetrators and women are the victims of these activities. Sexual harassment is a serious problem in the workplace where men and women work together.

1 Title VII of 1964 Civil Right Act and commonly by state statutes: e.g., Mass. GLC 1513 Black's Law Dictionary, sixth edition Centennial edition (1891-1991) by Henry Campbell Black 6th edition.

2 Michael Rubenstein: cited in Business Age, "Not a Normal Behavior," Vol. 2 No 9 August 2000, pg.37

3 Business Age, "Not a Normal Behaviour." Vol. 2 No 9 August 2000, pg. 37

The most common forms of sexual harassment at the workplace are:

Physical Harassment: including kissing, patting, pinching or touching in a sexual manner.

Verbal Harassment: such as unwelcome comments about a person's appearance, private life or body.

Harassment by Gesture: sexually suggestive gestures such as winking, nodding, gesturing with hands, legs, fingers or private parts.

Written or Graphic Harassment: such as sending pornographic pictures.

Emotional Harassment: behavior that is discriminatory towards or excludes a person on the ground of his or her sex.

Sexual harassment has been divided into two broad categories:

Quid Pro Quo

Quid pro quo literally means "this for that". It includes seeking sexual favors or advances in return for higher pay, work benefits, promotion, retention, etc. This type of sexual harassment affects the dignity and quality of work of the person at risk. Rejecting a proposal by the harasser can result in dismissal, demotion, tarnished work record and difficult work conditions.

Hostile work environment

A "hostile work environment" is one in which behavior towards a worker makes it unbearable for him/her to be there.

People hear stories about sexual harassment and dismiss them as harmless or something that does not constitute a real problem. But to those who experience it, sexual harassment can be traumatic. Sexual harassment may appear amusing until it happens to oneself or to one's own daughter, sister, and wife.

Sexual harassment should not be confused with workplace flirtation, which is generally based on mutual consent and attraction. Behaviour becomes harassing when it is coercive or accompanied by threats, promises or abuse.

Sexual harassment covers a wide range of misconduct. An employee who has been led to believe that she must sleep with her boss to keep her job has been sexually harassed, as has one whose co-worker regularly narrates offensive, sex-related jokes and plaster their walls with pictures of nude women. An employee who is pinched or fondled against her will by a coworker has been sexually harassed, as has one whose colleagues leer at her, block her path or act as if they are going to grab her. An employee who is constantly belittled and referred to by sexist or demeaning names has been sexually harassed too, as has one who is subjected to repeated lewd or pornographic remarks. Sexual harassment occurs when a supervisor acts as if the women working under him owe him sexual favors, and does not think she should be doing what he considers "Man's work."

Most cases of sexual harassment are never reported, because the harassed women feel too degraded, too uncertain of their rights and options or too fearful of retaliation to do anything.

However, thousands of harassment claims have been filed through government agencies and company complaint procedures and there is no evidence that any of them were fake or framed for revenge or out of spite.

One common misconception about sexual harassment is that the laws prohibiting it would restrict normal socializing between men and women at work. The truth is that sexual harassment consists of unwelcome conduct of a sexual nature. Most men's fear that sexual harassment laws will prevent them from complimenting a woman or asking her out for a date is simply misplaced⁴.

While many countries prohibit sexual harassment, there is very little practical guidance for people in the workplace, whether they are managers, receptionists, co-workers or students, to enable them to tackle the problem. This is due, in part, to a general lack of understanding.

What is Sexual Harassment ?	What is not ...
<i>Sexual harassment is uninvited behavior of a sexual nature that is offensive, embarrassing, intimidating or humiliating and may affect a worker's job performance, health, career and livelihood.</i>	<i>Sexual harassment is not consensual sexual behavior between two people who are attracted to each other. Harassment has nothing to do with mutual attraction or friendship.</i>

Forming more than half of the population in Nepal, women constitute a potential workforce that needs to be developed and strengthened. Women's participation in the labor market not only sustains the economic status of the family, it can also serve as a crucial means of strengthening the economy of the nation and playing a major role in nation building. Recent data shows that 38 percent of the population of Nepal lives below the poverty line and women are the poorest of the poor. In Nepal, the low status of women's physical⁵ and mental health (i.e. depression, nervous breakdown, frustration) is alarming. Sexual harassment further affects women's health.

With the data indicating steady growth in women's participation in Nepal's labour market, it is likely that the problem of sexual harassment at the workplace is on the rise.⁶ The problem receives little social recognition and legal redressal because patriarchal values, traditions, norms, and even laws discriminate against women. Furthermore, the relations between men and women are governed by norms and values that are essentially formulated by patriarchy. The long history of unequal power relations has given rise to many traditions that lead women to tolerate discrimination and exploitation. In fact, violence of all kinds including sexual harassment can be traced to this history of inequality.

While awareness of the right to equality is increasing, the de facto situation is that women face discrimination in every sector, including the workplace. Dominant patriarchal attitudes discourage men from controlling their sexual desire, permitting them to force unwanted,

4 'Sexual Harassment on the Job', By Attorneys Williams Petrocelli and Barbara Kate Repa, March 1992.

5 Nepal is one of those countries where life expectancy of women is lower than that of men. Nepal also has the highest maternal mortality rate.

6 See annex 4 and section on literature review for additional information on women's participation in labour force.

uninvited behaviour on women. The harasser does not view harassment as a crime, as a human rights violation or as conduct that is unacceptable at the workplace. Moreover, statements like “sexual harassment should not be taken seriously as it is actually a behavior of men to show appreciation for women,” is often heard.

Sexual harassment is believed to be widespread in workplaces in the formal and informal sectors, although little hard data is available. Concern over sexual harassment is relatively recent in Nepal, but increasingly it is being recognized as a violation of human rights that seriously undermines equality of opportunity and differential treatment of women and men.

Women often accept employment unaware of the kind of working environment they are getting into, only later to face harassment of a sexual nature. There is a need to support and encourage women to overcome their inhibitions to come out of the limited sphere of their homes, but instead, the intimidating and humiliating environment of the workplace discourages them as fellow workers indulge in sexual harassment.

There is evidence that middle class employees tend to suffer more from effects of sexual harassment. Unlike women who work as labourers, these women understand and can identify behaviors that constitute sexual harassment. However, they are not able to complain openly nor can they bear the situation. They choose to stay quiet to protect their own and their family's reputation. Women labourers, on the other hand, tend to handle the problem openly as they are more forthright and seem less worried about their family's reputation. There were many instances where these women had punished the harasser themselves. They believe that the harasser should be punished there and then to discourage them from repeating the act.

Gender based segregation persists in Nepal, sometimes in an extremely degrading form. Law plays a role in the positive transformation of society. Precise and relevantly fashioned law can be of tremendous help in building a just society. But the legal system that is supposed to be a driving force for positive changes in the society is immensely influenced by the defective value system of gender discrimination. Hence there is no law in Nepal to deal with the issue of sexual harassment in the work place.

Nepal has agreed to abide by the obligation of the international instruments to respect and protect the dignity of human beings irrespective of sex. Article 1 of CEDAW calls for the elimination of all forms of discrimination against women, making governments accountable for violence occurring in both private and/or public places, whether by state or non-state institutions, organizations and enterprises. CEDAW's General Recommendation No 19 specifically calls upon State Parties to take all appropriate measures including strong penal sanctions, civil remedies and compensatory provisions to protect women against sexual harassment at the workplace. ILO Convention No 111, ratified by Nepal in September 1974, also calls for elimination of gender discrimination. The Constitution of the Kingdom of Nepal guarantees the right to equality and right against exploitation and the international human rights law that Nepal has ratified prevails over domestic law if there is a conflict.

Despite these national and international commitments to gender equality and protection against all forms of violence against women, the problem of sexual harassment is prevalent throughout the country. Perception, extent and effects of sexual harassment, as well as the relevant laws and policies have not yet been adequately studied. Hence, an urgent need is felt to conduct a study to identify future strategies for developing a legal and policy framework to address the issue of sexual harassment at the workplace.

1.2 Scope and Purpose of the Study

This study has four specific objectives:

- To understand how different groups of people in different workplaces perceive sexual harassment, how they deal with it and what they think can be done to combat the problem;
- To determine the extent and effects of sexual harassment through primary research in select sectors;
- To understand the existing legal position and existing legal mechanisms regarding sexual harassment;
- To provide recommendations for what can be done to combat sexual harassment and what mechanisms and procedures are needed to address the issue.

1.3 Research Methodology

The research sample, field sites, tools of data collection, data processing and analysis, and limitations of the study are as follows:

1.3.1 Respondent Samples

The population groups studied in this research consist of employers/managers, employees/workers, trade unions and policy makers/civil society representatives. Due to limited time and resources, the following 167 samples were purposively selected for the study:

30 policy makers and civil society members (13 women and 17 men) representing Members of Parliament, trade unions, concerned ministries such as the Ministries of Labor, Ministry of Law and Justice, Ministry of Women, Children and Social Welfare, the Labor Department, the Labor Office, the Law Reform Commission, the National Human Rights Commission, the Public Attorney's Office, the police, national and international non-governmental organizations, media professionals, lawyers, human rights activists, women activists, and the Women's Studies Program of Tribhuvan University;

80 employees/workers (66 women and 14 men) from carpet and garment industries, airlines, schools, college campuses, hotels and restaurants;

44 employers/managers (6 women and 38 men) from carpet, hotel, garment, airlines, industries, carpet and garment associations, FNCCI; and

13 trade union members (5 women and 8 men).

1.3.2 Field Sites Studied

Kathmandu, Pokhara, Dharan, Biratnagar, Birgunj and Hetauda.

1.3.3 Tools of Data Collection

Primary data was collected through structured interviews, focus group discussions and case studies.

Structured Interviews: Structured interviews were conducted with 167-sample respondents from Kathmandu, Pokhara, Dharan, Biratnagar, Birgunj and Hetauda, to collect information on perception, nature, extent and possible future legal mechanisms.

Focus Group Discussions (FGDs): Three FGDs were conducted in Kathmandu, Dharan and Pokhara with employees from the carpet and garment industries, hotels and factories. The issues discussed included perception, nature, extent and effects of sexual harassment in the work place.

Case Studies: Seven case studies were undertaken to illustrate the nature of sexual harassment, reporting of and responses to sexual harassment from the employers/management as well as fellow workers and the effect of complaints. Seven cases were selected from 10 available cases relevant to the study, as suggested by some respondents.

Secondary data on which the study is based includes:

- Review of National Laws, policies and secondary sources;
- Review of laws, policies and international conventions related to sexual harassment in the work place;
- Review and analysis of initiatives taken by selected employers/management, NGOs, trade unions and media against sexual harassment at the workplace. The respondents brought these initiatives to the attention of researchers and referred to them during the time of fieldwork.

1.3.4 Limitations of the Study

The report is based on a small sample size of 167 respondents, as indicated above, from the Kathmandu Valley, Pokhara, Biratnagar, Dharan, Birgunj and Hetauda. The findings of the study are, therefore, more indicative than definitive about the situation of sexual harassment in Nepal. To protect the confidentiality of the respondents, their names are not listed.

Although primacy was given to qualitative data, some quantitative data have been presented in percentages. Data are presented in various forms, including pie charts, bar charts and tables. Qualitative analysis is based on a representative cross-section, including management, staff, and workers of both sexes.

PERCEPTION OF SEXUAL HARASSMENT IN NEPAL

2.1 Three General Perspectives

To talk of sexual harassment is still a taboo in Nepali society. People most often find it uncomfortable to discuss a subject like this. Most of the time, serious offences alone are regarded as sexual harassment, such as forcing someone to have sexual intercourse or touching the body with sexual intention. Sexual harassment may start with a glare or even a handshake. An absence of sharp demarcation of behaviors that constitute sexual harassment further creates a state of confusion.

BOX 2.1 THREE PERSPECTIVES ON SEXUAL HARASSMENT

1. Feminist perspective

- Reflects a power relationship, men over women
- Constitutes economic coercion
- Threatens women's economic livelihood
- Reflects the status of women in society
- Asserts a woman's sex role over her work role
- Parallels rape

2. Legal perspective

- Reflects unequal power relationship that is exploitative
- Involves both implicit and explicit terms of employment
- Used as a basis for employment decisions
- Produces consequences from submission to or refusal of advances
- Promotes an intimidating, hostile, or offensive work environment

3a. Managerial perspective: Older view

- Reflects personal proclivities
- Consists of misperception or misunderstandings of a person's intentions
- Result of "a love affair gone sour"
- May be considered normal behavior at work
- Can hurt the reputation of the accused

3b. Managerial perspective: Newer view

- Improper use of power to extort sexual gratification
- Treats women as sex objects, asserts sex role over work role
- Coercive, exploitative, improper, unprofessional
- Aberrant behavior

Source: Ottensmeyer, E.J. and McCarthy, G.D., Ethics in the Workplace, New York: McGraw-Hill, 1996, p.194

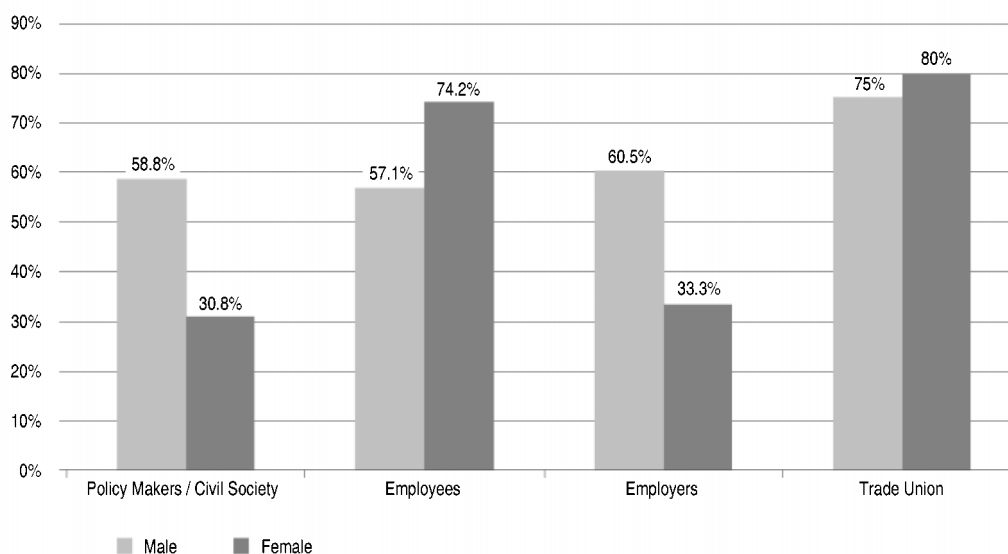
2.2 How is sexual harassment perceived in Nepal?

2.2.1 Gender Issue

There were differences in perception between men and women as most of the men said that sexual harassment is an issue of power relations. Men in higher positions impose their superiority on women who are generally in lower positions and are vulnerable to sexual harassment. Women, on the other hand unanimously felt that sexual harassment is a gender issue and men, whether in high positions or low, practice behaviors that are influenced by the patriarchal values of the society. Men treat women as a commodity existing solely for their entertainment.

This chapter presents the findings of a small indicative survey (as explained in the methodology section 1.3 in Chapter 1) to ascertain perceptions on sexual harassment based on multiple responses.

TABLE 2.1 SEXUAL HARASSMENT IS PERCEIVED AS GENDER ISSUE (MULTIPLE RESPONSES)



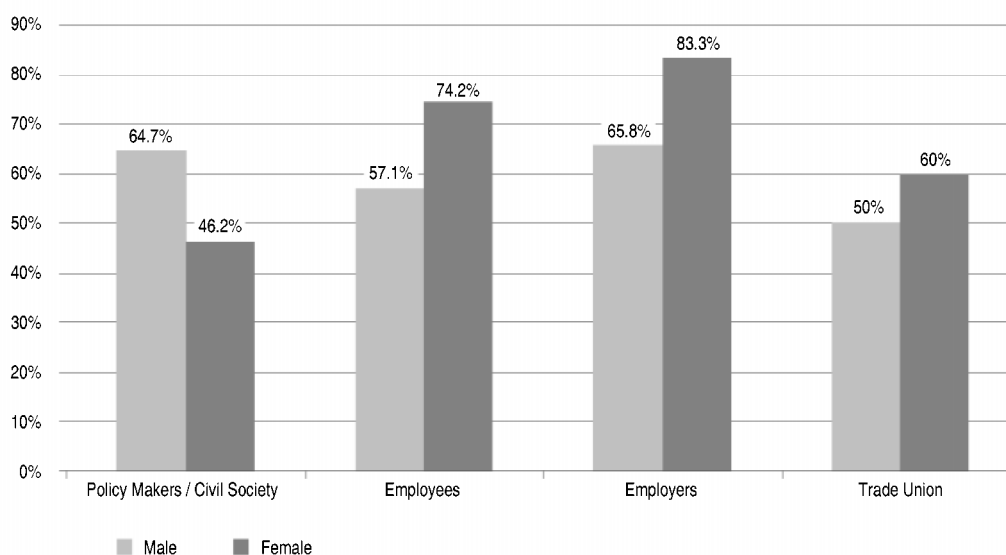
Among the informants interviewed, 58.8 percent of males and 30.8 percent of the female policy makers, lawyers and civil societies perceived sexual harassment as a gender issue. Similarly, 57.1 percent of male and 74.2 percent of female employee/workers and 60.5 percent of male and 33.3 percent of female employers/management, as well as 75 percent of male and 80 percent of female trade unionists also considered sexual harassment to be a gender issue. It was reported that sexual harassment reflects men's perception of women as objects for sexual pleasure. It was pointed out that men regard women as the inferior sex and this bias is reflected in their behavior, since tendency of men to dominate women is common.

The overall response from the interviewees indicated that sexual harassment occurs mainly due to the patriarchal norms in society, discriminating between men and women, perceiving the former as superior and the latter as inferior. This inequality leads men to dominate women not only at home but also in the workplace. It is usually an expression of power relations between the two sexes.

2.2.2 Uninvited, embarrassing and humiliating conduct

Among the respondents, 64.7 percent of male and 46.2 percent of female policy makers, lawyers and members of civil societies said that sexual harassment is uninvited, embarrassing and humiliating. This was confirmed further by 57.1 percent of male and 74.2 percent of female employee/workers and 65.8 percent of male and 83.3 percent of female employers/management. Among the trade unions 50 percent of male and 60 percent of female shared this view and considered sexual harassment intolerable.

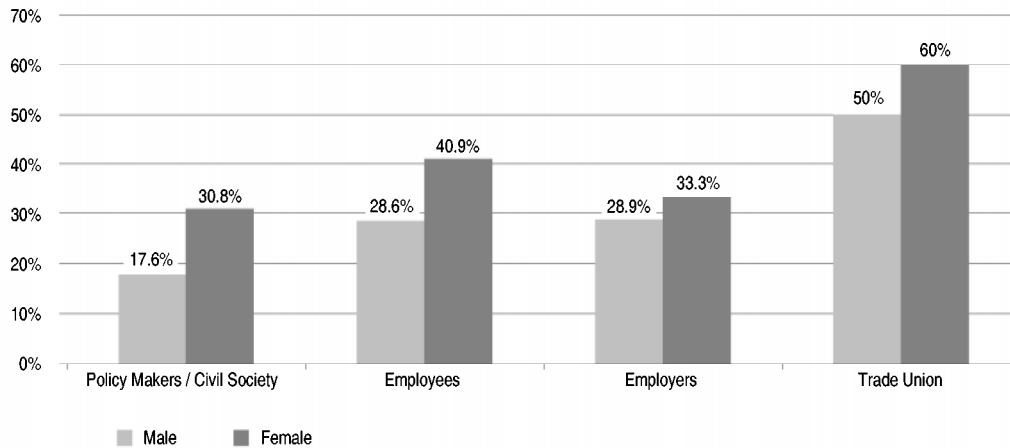
TABLE 2.2 SEXUAL HARASSMENT IS PERCEIVED AS UNINVITED/EMBARASSMENT
(MULTIPLE RESPONSES)



2.2.3 Workplace violence

Sexual harassment is perceived as a violation of the right to work in a safe and secure environment as workers are threatened with sexual harassment and find workplaces intimidating. It is also perceived as explicit or implicit coercive sexual behavior intended to control, influence or affect the career or job of another.

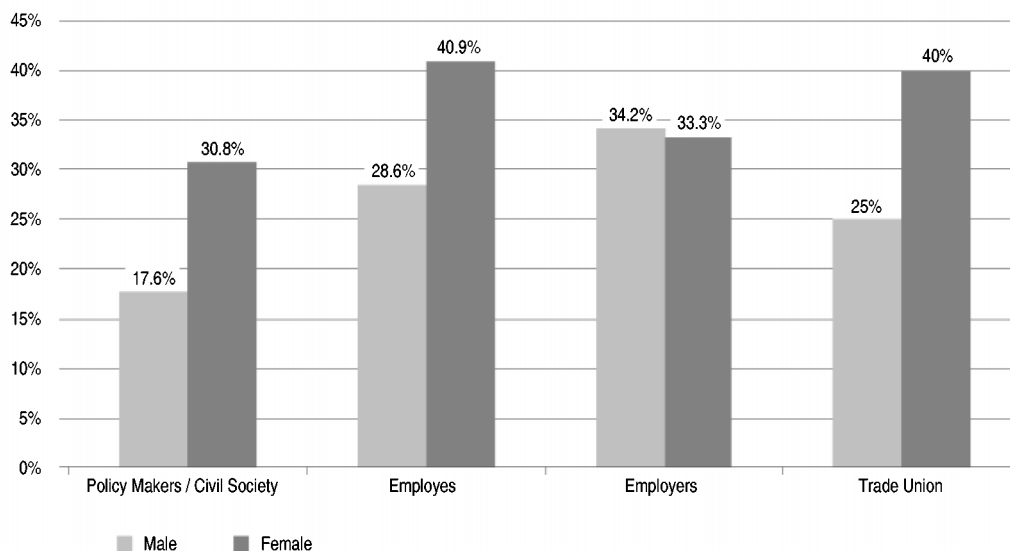
Among the policy makers, lawyers and members of civil society, 17.6 percent of male and 30.8 percent of female respondents said that sexual harassment constitutes workplace violence. Among the employee/workers, 28.6 percent of male and 40.9 percent of female interviewees also viewed sexual harassment as workplace violence. From employers, 28.9 percent male and 33.3 percent of female; and from trade unions, 50 percent of male and 60 percent of female reported that sexual harassment is a form of violence at the workplace.

TABLE 2.3 SEXUAL HARASSMENT IS PERCEIVED AS WORKPLACE VIOLENCE (MULTIPLE RESPONSES)

2.2.4 Rape and sexual intercourse

For 17.6 percent of male and 30.8 percent of female policy makers, lawyers and civil society members, sexual harassment means sexual intercourse. Similarly, 28.6 percent of male and 40.9 percent of female employee/workers; and 34.2 percentage of male and 33.3 percent of female employers/management; and 25 percent of male and 40 percent of female trade unionists responded that sexual harassment means having physical relationship with the victim after persuading her and promising promotion or better salary. Sexual harassment is also perceived as rape. These kinds of sexual harassment were given as examples of abuses to which women are subjected at the workplace.

Some men respondents were of the opinion that sexual harassment is simple harmless flirting that brightens the atmosphere in the workplace and that sexual harassment should not be taken seriously, as it is actually an expression of men's appreciation for women.

TABLE 2.4 SEXUAL HARASSMENT IS PERCEIVED AS RAPE/INTERCOURSE (MULTIPLE RESPONSES)

2.2.5 Mental disease

Among the policymakers, 8.3 percent of female respondents believe that sexual harassment occurs because the harasser is suffering from some kind of a mental disease. Male policymakers, however, did not share this view. Men and women from employee/workers and employers/management did not respond to this question.

BOX 2.2 OPINIONS OF RESPONDENTS ON WHAT CONSTITUTES SEXUAL HARASSMENT

- Sexual harassment is having intercourse with a woman after assuring her a better position or better salary.
- Sexual harassment inflicts physical and mental torture on women.
- It is unacceptable bad behaviour towards women by men
- Uninvited sexual conduct that is embarrassing, humiliating and intolerable.
- Sexual harassment is forced sexual behaviour by men on women.
- Men's perception that women are made for their pleasure.
- Sexual harassment starts with "harmless" flirting and ends with rape
- Explicit or implicit coercive sexual behaviors to control, influence or affect the career or job of another.
- To be raped is sexual harassment
- Not taking women seriously, dictating to women on the basis of men's superior authority.
- Not seeing women as equals and hence men putting women in their places.
- Insecurity of men originated by the threat of facing competitive women whom they try to suppress by behaviors like sexual harassment.
- It is usually an expression of power made by someone in authority.
- It is a way of treating a woman as an object rather than a worker.
- Sexual harassment reflects men's perception that women are sexual objects.

2.3 Literature review

There have been very few studies on sexual harassment in Nepal. This shows how little attention sexual harassment has received, though the problem exists and is seen to be increasing. A review of literature and studies in Nepal shows that the incidents of sexual harassment are not very high. Our conjecture is that this is mainly due to lack of information, lack of knowledge and low rate of reporting of sexual harassment that creates an impression that it is rare. However, it is felt that prevalence of sexual harassment is very high in Nepal. Victims of sexual harassment are reluctant to report their cases because they fear loss of their jobs and rejection by friends and the family. They may also fear being further humiliated and stigmatized.

2.3.1 Research Studies

SAATHI (NGO), in their research on **Sexual harassment in public places** asked: "Do you think sexual harassment has become a problem in Kathmandu Valley?" To this 80 percent of the respondents said "Yes", 8 percent said "No" and 3 percent of the respondents were "Not Sure".

In the same research on the question, “Is sexual harassment in public places increasing in Kathmandu?”, 92 percent of respondents answered in the affirmative and 8 percent said “No”.⁷

GEFONT, in their survey on **Sexual abuse and harassment from 1990 to 2000** found that in the year 1990, 18 percent of women working in organizations were raped, 16 percent were victims of sexual abuse, 26 percent were teased and another 26 percent and 32 percent of women workers were touched on their bodies and verbally abused, respectively.

This research indicated that sexual harassment decreased in 2000 in comparison to 1990. The decrease by percentage is 59 percent for sexual abuse, 24 percent for teasing and 23 percent and 16 percent for touching of the body and verbal abuse respectively.

This indicates that following the restoration of multiparty democracy in 1990, there have been positive changes in the country as the level of awareness has increased. It may be due to the presence of trade unions, which has discouraged harassers. Though there has been a decrease in rape, other forms of harassment such as teasing, touching and use of offensive language are still persistent in Nepal reflecting the patriarchal norms of society that encourage men to impose their offensive behavior on women.⁸

Pro-Public conducted a study on **Gender and Judges**. Among the 26 women lawyers interviewed, 53.8 percent of them said they feel that judges address them differently than their male colleagues. Similarly, 73 percent stated they have faced physical or verbal harassment as women advocates. Likewise, 69 percent of the women lawyers questioned said that they have been subjected to remarks or jokes in courts, firms and in chambers that are demeaning to them personally as well as to women in general.

Most of the women lawyers who had experienced verbal and physical sexual harassment explained that they have been physically harassed in senior lawyers' chambers, where they have to go as interns. Senior lawyers touch or hold their hands while pretending to teach them. Judges speak in a derogatory manner to women litigants before them and being women, they too feel humiliated and harassed. Women lawyers are also subjected to jokes or remarks that they find demeaning. One of the lawyers quoted her male colleague who said things such as the following:

- Your handwriting is so beautiful, so is your hand.
- Your clothes say everything about you.
- Your face looks so familiar, you really resemble my wife.⁹

2.3.2 Media Coverage

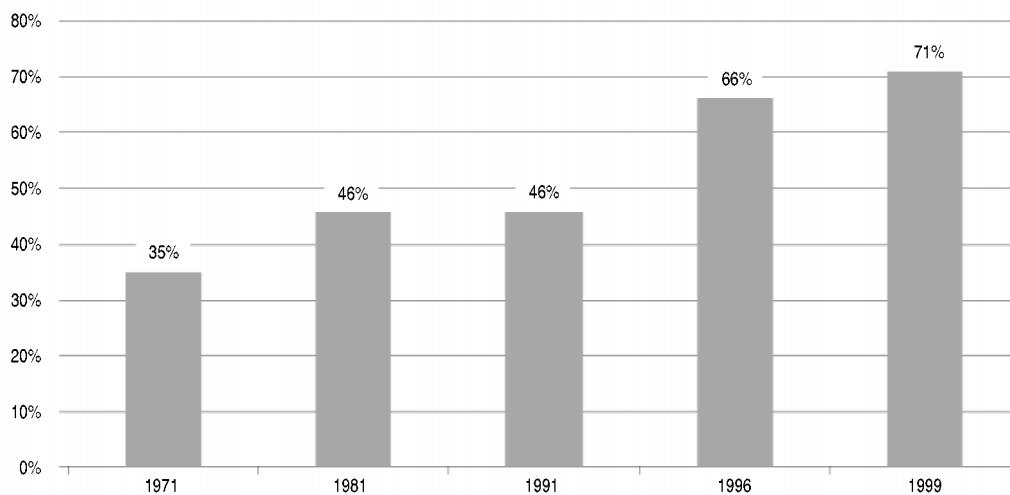
An article titled **Breaking the Taboo** in Business Age magazine, August 2000 showed the increasing participation of women in labor market and predicted that women's increasing participation would bring in more incidents of sexual harassment.

No to sexual harassment at Workplace, an article in Sunday Post, July 2000, a weekly supplement of The Kathmandu Post, states that though in Nepal there have been no major studies, rights activists claim that more women are falling victims to sexual harassment at the workplace ranging from mere crude remarks to forced sexual relations. Yet the majority of victims keep silent and the harassers go unpunished for their deeds. This article also points out that sexual harassment does not stop at the offices in the urban areas. Many women

7 SAATHI, 'Sexual Harassment in Public Places in the Kathmandu Valley', 1994

8 Gefont, Trade Union Right, 2000

9 A study on Gender and judges, Pro Public, August 2000

TABLE 2.5 FEMALE LABOUR FORCE PARTICIPATION RATE

Source: Population Census (1991), Nepal Living Standard (1996), Nepal Labor Force Survey (1999), Business Age, August 2000

working as labourers in carpet factories and other similar industries have not only been receiving unwelcome comments, but are forced to have sex with their supervisors and in some cases even with the factory owners.¹⁰

Ram Kumar Kamat, a reporter of *The Rising Nepal* reasserts in his article titled **Victim has no option but to endure it**, December 2000, that since the majority of the employee/workers are male, a female employee/worker fears complaining, thinking that others may question her character and her chastity. She, therefore, remains silent instead of pointing a finger at the perpetrator. The report highlights the relationship between sexual harassment and night shift and difficult places of work. In fact, many males are reluctant to allow their wives, sisters and daughters to work in far-flung areas and particularly at odd hours, for fear of sexual harassment.¹¹

In an interview, Advocate Sapana Malla stated that the problem of sexual harassment does not seem grave in Nepal because the incidents are not reported. Social norms, which tend to view such incidents in a negative light, coupled with the fear of losing one's reputation, discourages registering of complaints. But it cannot be denied that such harassment is taking place at workplaces.

In a similar article, Arzu Deuba, a Management Consultant & Social Worker, reaffirmed that studies and surveys have clearly shown that people do not report these incidents of sexual harassment due to apprehension of retaliation and sheer fright.¹²

10 Binaj Gurubacharya, Sunday Post 'No to Sexual Harassment', July 16, 2000

11 The Rising Nepal, Ram Kumar Kamat, Sexual Harassment: Victim has no option but to endure it, December 20, 2000

12 Madan Lamsal, Business Age, 'Breaking the Taboo', Vol. 2, No. 9, August 2000

NATURE AND EXTENT OF SEXUAL HARASSMENT

3.1 Nature and Forms of Sexual Harassment

Though it is difficult to state with certainty how frequent and widespread sexual harassment is in different kinds of work sectors on the basis of the limited data in the present study, the following incidents reported give us an idea of the types and forms of sexual harassment that exist and how they are treated.

The most common form of sexual harassment reportedly in Nepal is verbal, as attested by a majority of respondents. This includes commenting about one's face, body, dress, makeup etc. There are also unidentified harassers, such as customers or clients who call at the office and try to begin a conversation with, "Don't you recognize me? You were so sweet to me at the office, why don't we become more friendly?"

A boss asking a specific employee/worker to stay late is also common, and he would talk about everything but work. A respondent said that a friend of hers had to leave her job after she was constantly asked to stay late in the office. Her boss would insist that the two of them should stay late and do something interesting.

An employee shared an incident in which a male co-worker used to make passes at her friend who did not like the man and ignored him. This man in revenge told everyone that the girl is a sexual pervert and that she inserts an eggplant in her private parts. So some people at work would make fun of the girl. Even a security guard started teasing her often, referring to the same story. The girl tolerated it for sometime. Once when she was walking around the premises of the workplace with her friends, the guard again passed the same comments. The girls were so angry that all of them together hit the guard. They did not report the incident to the management, as these sorts of incidents would not be looked into seriously and would most probably fall onto deaf ears.

Some respondents spoke of incidents in which sexual harassment resulted in severe forms of violence as victims tried to commit suicide because they were unable to handle the trauma. There were instances where victims either left their jobs voluntarily or were fired. In some cases, victims were threatened when they complained about the harasser. Victims were known to have been called at home in the middle of the night or were threatened with harm to the victim or the family members. The respondents said that after being threatened, they were afraid to take the risk of complaining.

A co-worker in a factory grabbed a woman's hand, when the lights went off. The woman screamed and the man ran away.

A male worker had cut his hand in a small accident. He immediately went to a woman that he used to make passes at often and put the blood dripping from his hand onto the middle parting of her hair, signifying marriage with her.¹³

13 In Hindu religion, red powder is applied by the groom to the bride as a ritual of getting married.

3.1.1 Verbal

The survey showed verbal harassment to be the most common form of sexual harassment in Nepal. Verbal harassment included such comments as:

- “Your dress is really sexy,” or “You look sexy in this dress.”
- “Your dress should be little shorter than this to suit you more.”
- “Your face is like a model’s, ... be an actress, you will be happy.”
- “Your hands are so beautiful, don’t waste them working in such a place”,

3.1.2 Gestural

Women respondents are commonly aware of men making vulgar signs with their fingers and hands.

3.1.3 Physical

Some common forms of physical forms of sexual harassment are as follows:

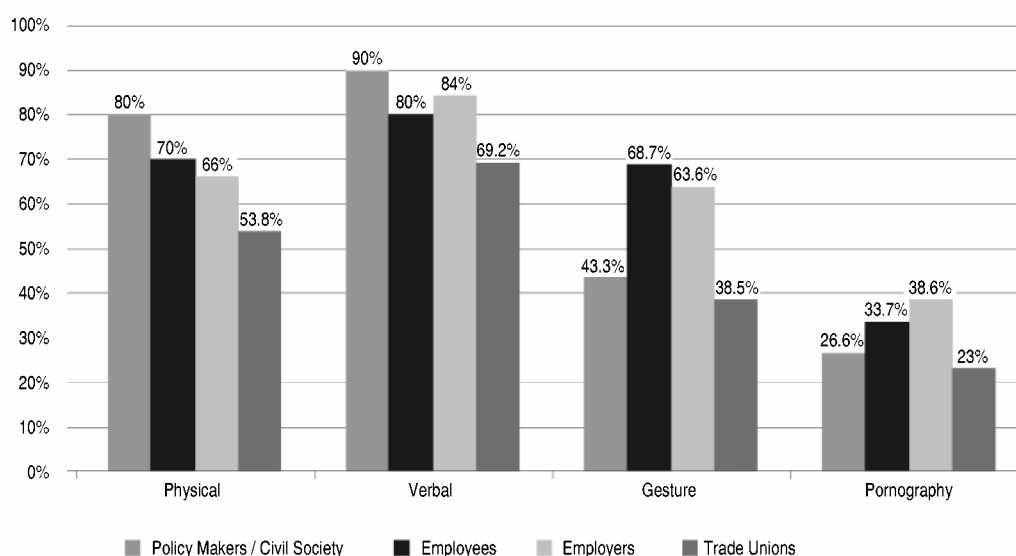
- Touching on the breast or body with an elbow or arm, pretending it to be by accident.
- Men looking at women’s breasts.
- Back slapping, caressing.
- Not letting go of the hand after a handshake.
- Unnecessary hugging.
- Stroking hair, winking.

3.1.4 Pornography or Written form

Some common types reported are:

- Leaving a sketch of a naked body on desks.
- Drawing naked bodies on the toilet walls.
- Writing sexual jokes.

TABLE 3.1 NATURE OF SEXUAL HARASSMENT (MULTIPLE RESPONSES)



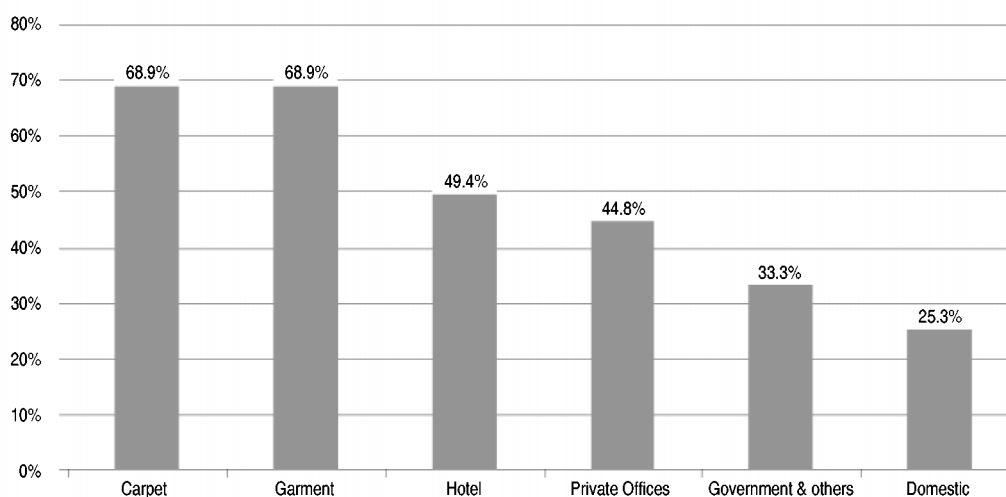
Overall, 80 percent of policy makers/civil society members, 70 percent of employees/workers, 66 percent of employers/managers, and 53.8 percent of trade unions said that physical sexual harassment is common. Likewise, 90 percent policy makers/civil society members, 84 percent of employers/management, 80 percent of employee/workers and 69.2 percent of trade unions said that most sexual harassment is verbal. The respondents also mentioned sexual gestures and pornography. Respondents remarked that it is often hard to pinpoint a specific action that is offensive in cases of subtle sexual harassment.

3.2 Extent of Sexual Harassment

3.2.1 Sectors with high prevalence of sexual harassment

Among the total respondents, 68.9 percent held the view that sexual harassment is likely to be high in the carpet and garment industries; 49.4 percent indicated the hotel industry; 44.8 percent pointed to the private offices and 33.3 percent the government offices; while 25.3 percent felt that it was highest in the domestic work sector. Though sexual harassment is prevalent in all workplaces, from the UN offices, INGOs, NGOs to private firms, the degree of its prevalence is said to be higher in the carpet industry, the garment industry, hotels, restaurants, airlines and schools.

TABLE 3.2 EXTENT OF SEXUAL HARASSMENT AT DIFFERENT SECTORS



In **carpet and garment sectors**, verbal sexual harassment is common, and with some exceptions, is normally accepted. In carpet factories, the work requires male and female workers to work in close physical proximity, as one handloom requires two or three workers to sit closely and work together. This encourages physical abuse like pinching on the buttock, embracing, holding hand, caressing etc. Moreover, the carpet and garment industries, due to the nature of their work, demand work-time till late hours of night. This further aggravates the problem.

During the study, it came to light that in the garment sector, the management encourages male and female employees to work together so that they can enjoy talking to each other and hence work overtime, with positive outcomes on productivity. This tendency has encouraged sexual harassment at the workplace.

The prevalence of sexual harassment is equally high in the **airline industry** since it requires night halts in different stations. Airhostesses are often harassed in such situations. At night, the male crewmembers knock on women's doors asking to be invited in and women are often threatened if they do not open the door. Male crewmembers often grab pens from the chest pockets of the airhostesses, touching their breasts in the process.

An airhostess shared her experience that clients would often unnecessarily call her and ask personal questions such as "Are you married?" or "If you are not busy why not spend some time together?" Air travelers also ask for specific airhostesses and demand, "Send the pretty one". This often leads to disputes and gossip among friends, and colleagues would also make fun of such airhostesses.

A respondent shared an incident in which her friend, who is an airhostess on a night halt, unwillingly had to accompany the captain for dinner and drinks late into the night. After they finished their food she went to her room. Around midnight, she heard a banging on her door. When she opened the door, it was the drunken co-pilot, who tried to enter her room. She managed to push him back and saw that the Captain was standing at some distance standing and looking amused at the whole situation. She managed to close the door but could not sleep the whole night. She was scared and worried with what had happened, as the Captain himself who should be helping her was not bothered. She added that her friend was also worried that the Captain and the co-pilot would take revenge against her.

The **hotel industry** is another sector where the prevalence of sexual harassment is high. In hotels, those who work in health clubs are more vulnerable to physical harassment, as women are required to massage male clients. While massaging, they are kissed or subjected to filthy jokes or comments. Likewise, their male colleagues and guests harass room-maids, housekeepers and waitresses in the hotels.

Since the work environment includes health clubs, massage centers, swimming pools, restaurants, beauty parlors and room services, the possibility of sexual harassment is very high. Often the bathroom walls and lockers are sketched with nude bodies in suggestive positions by their co-workers. Writings stating "I've had sexual intercourse with a particular person" are also seen on the toilet walls.

A manager in a housekeeping department stated that they take firm actions when they find any kind of behavior that would create an intimidating environment. She said that a couple of times they found that the toilet walls and lockers were sketched with nude bodies and offensive language. The management later issued a notice saying that if such sketches or writings were seen again, there would be a strict handwriting check. After that, no such incident took place.

In a similar incident in another hotel, someone posted on the notice board a drawing of a naked woman with her breasts accentuated with a message, "*Isn't she beautiful?*" The manager then wrote a note saying that if only the artist would bring in his mother he would decide, "*If she is beautiful or not*".

Another respondent spoke of a regular customer in a hotel who would wear a transparent '*dhoti*' without wearing underwear and show his private parts to the cleaners who would come to clean his room. Most of the cleaners faced this problem but no one complained, as the man did nothing to them personally. However, they were scared and reluctant to go to his room. Although the manager of that hotel came to be aware of this problem, he did not take any action because for the hotel, the customer's satisfaction is the priority and the man in question was one of the regular customers in the hotel.

In another instance, an employee resigned from a hotel after her supervisor subjected her to harassment. The manager tried to persuade her to withdraw her resignation but she stood by

her decision. She said that she could not continue to work in a place where she was not respected as a worker and had to put up with humiliation and hurt.

Sexual harassment in **dance restaurants** is more physical. Clients harass dancers, as they grab and hug them and also use abusive language, if rejected. Dancers are also stalked and harassed on their way home.

Schools constitute another sector where sexual harassment is highly prevalent. Verbal sexual harassment is common in schools. As one respondent said, *“Male teachers enjoy putting down women teachers by using abusive languages”*. Male teachers would often offer unmarried teachers a lift home, and even if they declined the offer, they would be followed. In such incidents, revenge would be taken against a woman by spreading false rumors and commenting negatively against her to the principal.

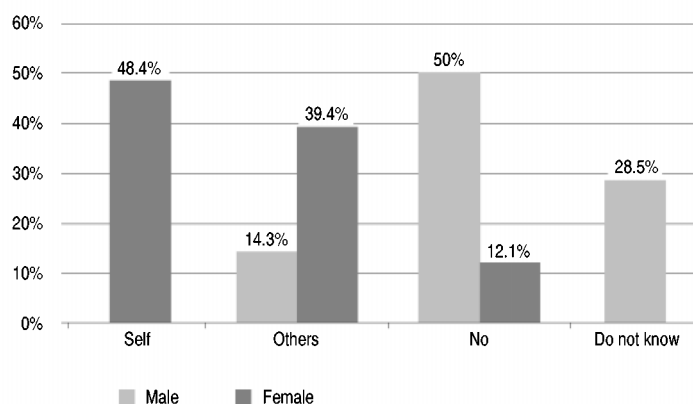
Hospitals and private clinics are also other work areas where sexual harassment takes place. Doctors ask sexual favors from the nurses. Cases have been reported of doctors harassing the patients. Gynecologists make comments during women’s labour pains, such as *“Logne sanga sutna laaj lagena ahile ruera karaunchhe,”* (You are not ashamed while sleeping with your husband and now you shout and disturb us.)

A nurse in a hospital reported that after finishing an operation the doctor waited in his seat. He then brought his hand to the woman's thigh. The nurse on duty saw this but she pretended that nothing happened. The doctor was someone she respected.

Sexual harassment is seen to be more prevalent in workplaces and occupations that involve people working alone or at night. In Nepalese socio-cultural environment, women who bring forward any problems related to sexual harassment are labeled as “loose characters” and brutally criticized. Therefore, victims are left feeling that they would have been better off keeping the problem to themselves rather than asking for justice. Anju Chhetri, Editor of Ashmita, a women’s monthly magazine, reported that when they tried to raise this issue in their magazine, they had to give up their effort as no one dared to respond to their questionnaire.¹⁴

However the issue is brought into light by some NGOs including SAATHI and FWLD who are working towards creating awareness and an environment where victims can come forward with their complaints and address problems of sexual harassment.

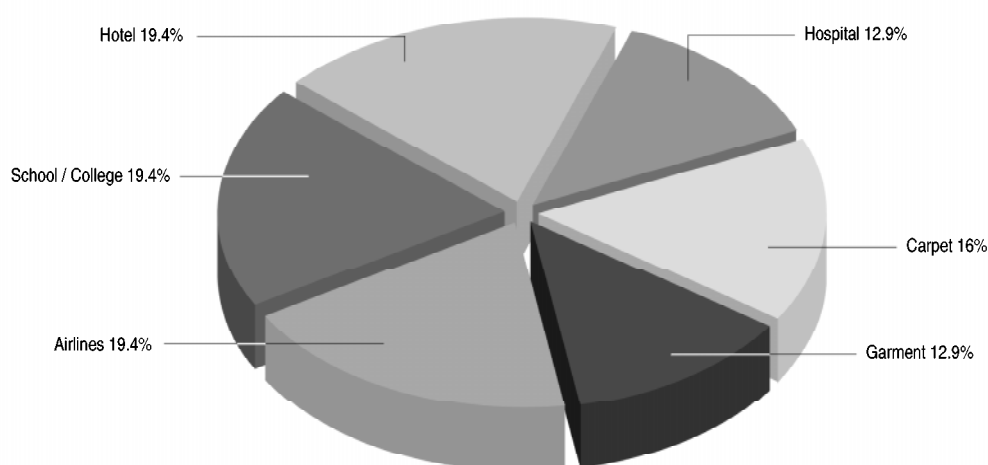
TABLE 3.3 REALIZATION OF SEXUAL HARASSEMENT BY EMPLOYEES



14 Business age, Repsona Publications (P) Ltd., “Breaking the taboo,” August 2000

The survey also showed that 48.4 percent of female employee/workers themselves had experienced sexual harassment at the workplace. Not a single man from this group had faced sexual harassment. Among the respondents, 14.3 percent male and 39.4 percent of female employee/workers said that they are aware of sexual harassment in the work place, while 50 percent of male and 12.1 percentage of female employee/workers said that they have not experienced or seen sexual harassment at the workplace and 28.5 percentage of male employee/workers said they are not aware of sexual harassment at all (See Table 3.2). The study found that among the female employee/workers who had themselves experienced sexual harassment at the workplace 19.4 percent were from the airline industry, 12.9 percent from the hospitals, 19.4 percent from the hotels, 19.4% from schools, 12.9 percent from garments and 16 percent from the carpet industry, as shown in Chart 3.4 below.

FIGURE 3.4 SECTOR OF EMPLOYEES WHO HERSELF REALIZE SEXUAL HARASSMENT



3.2.2 Professional levels with high prevalence of sexual harassment

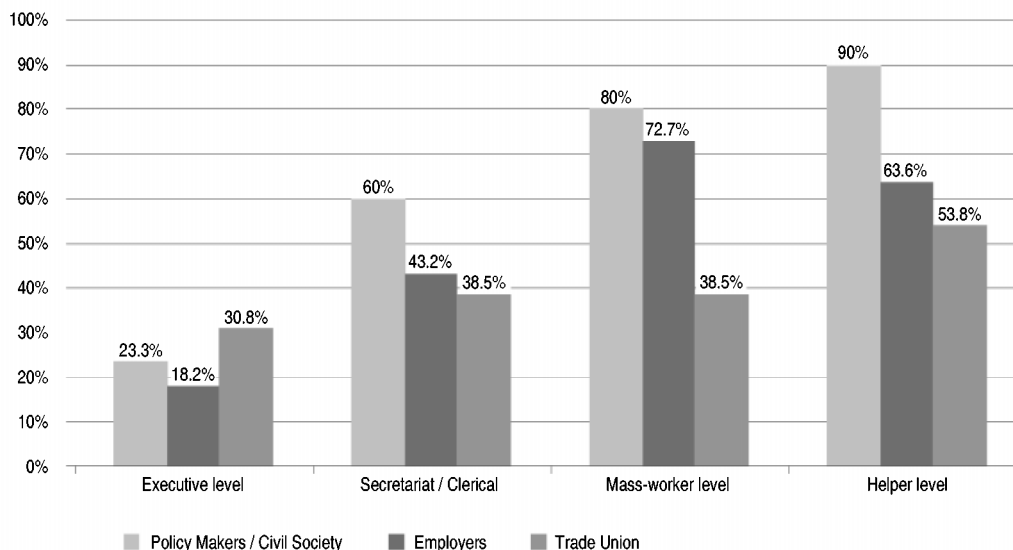
With regard to the question of work levels with higher prevalence of sexual harassment, the study shows that 80 percent of policy makers/civil society members, 72.7 percent of employers/management and 38.5 percent trade unions said that sexual harassment is commonly indulged in at mass workers level¹⁵. Likewise, 90 percent of policy makers/civil society, 63.6 percent of employers and 53.8 percent trade unions reported that sexual harassment is quite high at the helpers level¹⁶.

When asked about the professional levels of people who are more prone to sexual harassment, the majority of the respondents said that the people who are working in lower positions such as receptionists, secretaries, helpers, cleaners and domestic workers are more likely to be harassed.

¹⁵ Mass worker level: For the purpose of this study, workers who work in a group, e.g.: carpet workers, garment workers, factory workers etc.

¹⁶ Helper worker level: For the purpose of this study, workers who basically provide assistance service type work, e.g.: sweepers, cleaners, domestic helpers etc.

TABLE 3.5 EXTENT OF SEXUAL HARASSMENT AT DIFFERENT LEVELS (MULTIPLE RESPONSES)



In brief, the survey shows that sexual harassment is persistent in Nepal, as women face harassment in public places, private life and in workplaces. There is however little information available about the prevalence of sexual harassment. Therefore, it is very difficult to fathom the depth, the nature and incidence of workplace harassment in Nepal.

Sexual harassment is not even addressed in Nepal, since there are no laws that define it specifically. Sexual harassment is not recognized as a pressing issue. Most of the time, sexual harassment is subtle and the victim may get confused as to whether it is real or just imagined. In addition, women are blamed for inviting sexual harassment by the manner in which they dress or apply their makeup. The victim shies away from disclosing the information for fear of humiliation. In more serious forms of sexual harassment, the victim may report but never receive justice, as there is no proper law to address sexual harassment. Perhaps this is the reason why some studies have come to the conclusion that the problem of sexual harassment is not that grave in Nepal.

BOX 3.1 CASE STUDY NO.1: SEXUAL HARASSMENT OF A DOMESTIC WORKER

Nirmala, a young village girl of 13, came to Kathmandu to work. Just like every girl of that age, she dreamed of wearing good clothes and eating good food. She set out to look for a job. She found work in a house helping with domestic chores. She agreed happily to the little money that her employer promised to pay as her salary.

Nirmala soon grew attached to the family. However, she did not like her master, who was 60 years old. The master, though old enough to be her grandfather, did not treat her as a child and he would often grab and force her to dark corners and touch her chest.

This behavior of the master created fear in Nirmala. One day when no one else was at home, the landlord took this as an opportunity and sexually harassed Nirmala by holding her tight in the arms and not letting her go. Fortunately, she managed to escape and later complained about this to the mistress. The mistress, after listening to Nirmala, did not try to find out the truth but on the contrary, screamed at her. Nirmala was badly beaten by both husband and wife. The wife then poured boiling hot oil over Nirmala's hand to punish her for falsely accusing her husband.

After this, they threw Nirmala out of the house without paying her salary. Nirmala left the house without any money, not even to pay for the bus fare back to her village.

Source: Interview with a Victim.

BOX 3.2 CASE STUDY NO.2: TRAGIC STORY OF A DALIT WOMAN

Bina began working in Pokhara after being appointed as a district program officer in an NGO, for a probationary period of three months. Mahesh, a senior officer who was already working in Pokhara, was given the responsibility of showing Bina her work and introducing her to the community people with whom she would be working.

Mahesh seemed to be a nice person in the beginning, though Bina did not like him gossiping about women employees and calling them "loose characters" etc. The office premise was a two-storey house and the computer was in Mahesh's room. Bina subtly suggested that the computer should be in the office room, as it would be inconvenient for her to come to his room to use the computer and that she would be disturbing him. Mahesh responded that the other staff members had not objected to this set up, so she also should not complain and that he would not move the computer.

Bina, a young woman, 25 years old, from a Dalit* society, was apprehensive about how the community would receive her. So, as they reached their workplace, Bina wanted to start work immediately and also meet some people from the community. Mahesh, however, was more in a mood to relax and spend some time with Bina and he refused to cooperate with her.

Bina and Mahesh were scheduled to attend a local consultative meeting in a village. Bina wanted to take the bus up to the village but Mahesh insisted that they go on a bike. After the meeting, on their way back, Mahesh drove at great speed and they had an accident. Fortunately, both of them were only slightly bruised. A little while later, when they were passing through an isolated forest area, Mahesh suddenly said that the bike had some problem. Bina became suspicious at Mahesh's behavior. Bina acted rude and said she would walk up to the office. At this, Mahesh said the bike seemed all right and again both of them drove back to the office. Bina was sure that Mahesh's motive was to have a sexual relationship with her and hence she tried to keep her distance from him. This annoyed Mahesh, who in response started complaining about her to the headquarters as a Maoist activist who had come there on a mission. Bina even heard him talking to the cook and other people that, being a Dalit, Bina has dared to challenge him. He would see to it that she would soon be "leaving" her job.

The headquarters believed that Mahesh terminated Bina on the grounds of inefficiency and failure to meet expectations.

Note : Pseudonyms used.

*Dalit: Dalits are one of the oppressed communities of Nepal as they come under the Sudra caste category, which forms the lowest class in Hindu class hierarchy as untouchables.

3.3 Causes of Sexual Harassment

There are various reasons why sexual harassment takes place. This research has identified one important cause: **Lack of recognition of sexual harassment as an issue.** There is a tremendous lack of awareness about sexual harassment as a problem or as a crime. People face this problem every day of their lives but do not know what can be done about it. Sexual harassment is not something that is generally discussed or talked about. As a result, women do not complain about it and keep such problems to themselves, which further encourages harassers to commit these actions. Moreover, there is a lack of legislation and any specific law or policy to address sexual harassment in Nepal.

Economic inequalities constitute another cause of sexual harassment, as there is a general perception that with the poor, one can get away with anything. Poor people lack access to power and support. It is, therefore, assumed safe to harass people who are poor and powerless.

Education empowers women, and it not only raising awareness of their rights but also enabling them to protest, report or simply reject behaviors that violates their rights. Unfortunately **uneducated women**, with a few exceptions are naïve and do not know about their rights. Studies reveal high incidence of sexual harassment in sectors such as carpet and garment. Since the girls working there are virtually uneducated and are not aware of their

rights, they do not complain to the authorities. Their silence makes them an easy prey in the eyes of the harasser.

It was also felt that women's low status is a factor that gives rise to sexual harassment. Women with good education in good positions do not have to face the same degree of sexual harassment, as does someone with less education in a lower position. However, there are also some cases in which women serving in relatively high positions are sexually harassed. A respondent shared with us an experience of his friend who is a woman and working as an under secretary. This woman often says that in her position, she faces sexual harassment from men and shudders to imagine what the situation might be for women who are working in lower status jobs. Women workers in factories also stated during the survey that the fact that they come from a poor background, with no education and with no support system encourages men to take advantage of them.

Earlier, it was assumed that the higher prevalence of sexual harassment in the carpet and garment sectors is due to higher numbers of women working in those sectors. However, the workers in these sectors denied this specific reason and pointed out that it is due to the nature of work, which invites both women and men to work closely, that is, working on a single handloom, at odd hours of night and exchanging jokes and songs while working.

Carpet and garment industries need to meet the deadlines of the shipment and thus the nature of business demands overtime work and work at night. Some factories have also provided accommodation facilities for men and women in the same premises. On the one hand, this environment encourages closeness among the workers, but on the other hand, people take it as an opportunity to ask for sexual favors from their co-workers.

The study on Gender and Judges indicated that 69 percent of judges thought that provocative dresses or fashionable clothes could be an invitation to sexual assault. When a focus group convened for this study was informed of this fact, a participant retorted that men do not harm a girl wearing simple clothes, a Saree or a Kurta? Men say such things to overshadow their own weaknesses.*

*Saree or Kurta: Traditional dresses in Nepal

BOX 3.3 CASE STUDY NO.3: KANCHI LOST HER JOB WHEN SHE OPPOSED SEXUAL HARASSMENT

Kanchi was sexually exploited for a long time by a management staff member, who promised her marriage. After becoming pregnant, she was compelled to go for an abortion at the advice of the manager. As she felt cheated after going through the abortion, she refused to have any relationship with the manager. He again started sexually harassing her. When she opposed his behavior, he even threatened her that he would terminate her services. Since she had already gone through a lot of mental trauma, she completely opposed his behavior and complained to the owner. When the manager heard her complain against him, he immediately, without even giving Kanchi time to give an explanation, terminated her job. The employer had never given her an appointment letter. Since there was no Union in the organization, she could not complain. Even though she complained to the Labor Office, she could not get any help and was scared that she would be penalized for abortion if she raises the issue further. Due to the fear of social stigma, she chose to stay quiet. She is not married yet, as she is scared of what her future husband would do if he came to know about her past.

Note: Pseudonyms used.
Source: Respondent.

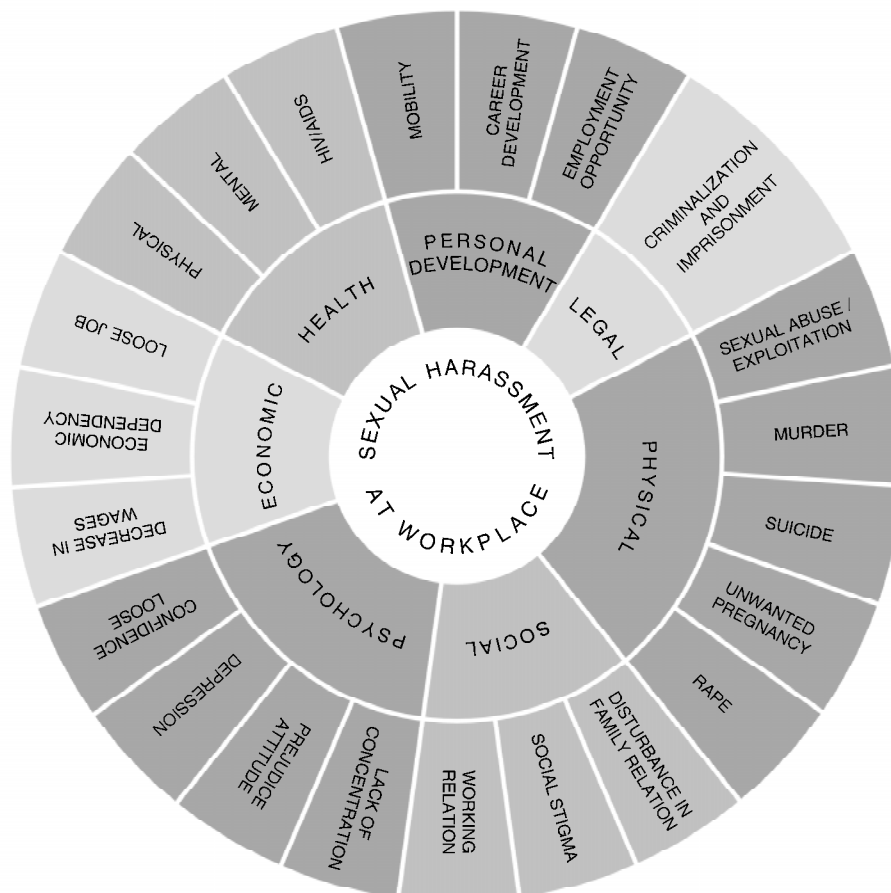
EFFECTS OF SEXUAL HARASSMENT AT THE WORKPLACE

4.1 Effects on the Victim

The effects of sexual harassment at the workplace are not only manifold but also far-reaching. These effects may be divided into two broad categories i.e. the effects on the victims and the effects on the organization and/or employer.

There are direct and indirect effects of sexual harassment on the victim. In this study, a number of areas that are affected have been identified and analyzed (**See figure 4.1 below**).

FIGURE 4.1 EFFECTS ON ADVANCEMENT OF WOMEN



4.1.1 Health

Sexual harassment adversely affects women's health - both physical and mental. Physically, the victim may suffer assault, battery and wounds, resulting in pain and suffering. The victim may be infected with HIV/AIDS and other sexually transmitted diseases if the harassment results in rape. If the victim is pregnant, she may have miscarriage.

Mentally, the victim of sexual harassment may suffer tension, anger, fear and frustration, and these effects may manifest in various physical and mental ailments such as headaches, nervous breakdown and mental disorder. If unable to talk about the problem, the victim may be stressed, losing sleep and appetite. Fainting spells and other illness may follow.

4.1.2 Economic Status

Economic status is an important factor of women's development because when they have an economic base, they can exercise more autonomy and have more choices and opportunities. Sexual harassment also affects the economic status of the victims, most of whom are women. These effects are as follows:

Decrease in Earning: As the victims of sexual harassment suffer mental disturbances, they cannot concentrate on their work. They may simultaneously lose their motivation and dedication to their work. This would lead to inefficiency resulting in decrease in earning— less work with lower wages, in particular for workers on a daily basis at piece meal rates.

Loss of Job: The victim of sexual harassment may lose her job as a consequences of rejecting or resisting sexual advances or by reporting against the harasser. This problem becomes more acute if the harasser is in a key position or enjoys powerful status. The victim could also lose her job for lack of motivation, or indifference to work due to mental disturbance.

Economic Dependency: Due to decrease in earning, loss of job and absence of other support mechanisms, the victim of sexual harassment may have to resort to economic

BOX 4.1

CASE STUDY NO.4: ABSENCE OF LAWS COMPELLED SHARMILA TO QUIT HER JOB

Sharmila, a girl of 20, was excited and thrilled when she got a job in a renowned hotel in Kathmandu. Being efficient, hardworking and sincere, she impressed the management in a short time. After she had been working for a year in this job, a new manager was appointed as her supervisor. The new supervisor soon became friendly with Sharmila and later began asking sexual favors from her.

Sharmila did not like this and asked the supervisor to stop, but the supervisor kept on harassing her, sometimes by looking at her body, sometimes calling her to his room and trying to touch her. This behavior created a very uncomfortable atmosphere to work; So, Sharmila decided to leave the job. The Manager of the hotel was surprised to find Sharmila's resignation letter and therefore demanded an explanation. As she found it difficult to handle the trauma she was going through, she did not want to mention anything and wanted to quit the job quietly. However after a great deal of sympathy from the personnel manager, Sharmila said that she was leaving the hotel because her supervisor sexually harassed her.

The management promised Sharmila that such actions would not be repeated and that she should continue. However Sharmila stuck by her decision not to withdraw her resignation as she came to know that there is no law that can criminalize the manager for sexual harassment.

After a few weeks, she called the personnel manager with whom she was friendly and said that she is happy and excited, as she has been able to get another job in the civil services. However, after a few months she again called the personnel manager and informed him that even in the government offices she has been facing a similar harassment. There is no difference in the working environment in private sectors or government sectors.

Note : Pseudonyms used. Source : Interviewee

dependency on others. This dependency on others places them in further vulnerable and precarious situations leading to other forms of exploitation.

4.1.3 Social Effects

Social Stigma

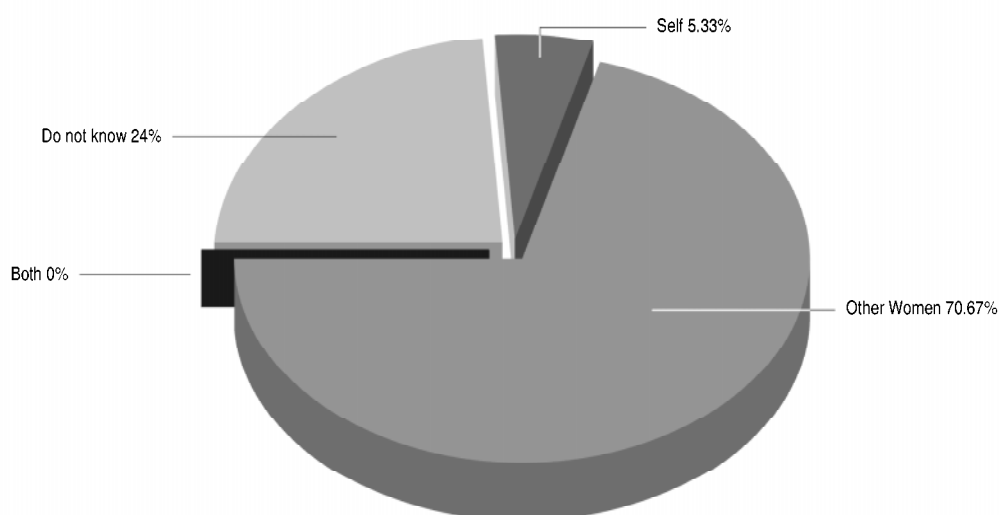
Society still considers women as the weaker sex whose proper place is within the four walls of a house, and who are economically dependent on men. Women who come out of traditional and stereotyped roles and dare to be engaged in employment may have to face negative social attitudes. In such situations, if a woman is sexually harassed she herself and not the harasser faces social stigma of being accused of “loose character”.

Disturbances in Family Relationships

A general social attitude is that a woman has to preserve her chastity for her husband but not vice versa. Once victimized of sexual harassment, the character and chastity of the woman are questioned. This may result in disturbance in family relationships such as neglect, hatred, domestic violence, ultimately ending up in divorce.

A study conducted by FWLD¹⁷ shows that in a conservative society like our where the women’s physical integrity is of highest value, society and law enforcement agencies torture victims of trafficking or sexual abuse. There is hardly any instance where men have married women victims. These women have to carry the burden of the so called crime throughout their lives and the society, instead of helping them overcome the crisis, keeps reminding them about the “crime” they had committed. Hence, innocent women are victimized and this ends relationships with their families. Among the sample respondents of the study, 70.67 percent said that discriminatory legal provisions related to sexual abuse¹⁸ (See Chart 2 below) affected other women they knew, while 5.33 percent reported that they themselves had been affected.

FIGURE 4.2 DIFFICULTIES ON MARRIAGE OR MATRIMONIAL RELATIONSHIPS



17 Discriminatory laws in Nepal and their Impact on Women, FWLD, August 2000, p. 42

18 Existing laws of Nepal do not have adequate provisions related to crime against sexual abuse and there are many lacunas in Human Trafficking Control Act, Rape laws and laws related to incest and intention to crime.

Working Relationship

Sexual harassment also affects the existing patterns of working relationships amongst workers and employee/workers. There would be no team spirit and mutual cooperation amongst workers and this problem is more acute if the harasser and victim both are either workers or employee/workers.

4.1.4 Psychological Effects

The psychological effects of sexual harassment are very serious, not only on the victims but also on the society. The psychological effects could show up as lack of concentration at work, depression and loss of self-esteem and confidence, which in turn negatively affect on the personal development of the victim.

Moreover, after suffering sexual harassment, a prejudicial attitude may develop in the victim not only against the harasser but also against other persons. This results in lack of team spirit, distrustful working environment, social hatred and disharmony.

BOX 4.2 CASE STUDY NO.5: LOSS OF CONFIDENCE AND CASE OF DEFAMATION

From the first day of her marriage, Lila Ghimire was physically abused by her husband Madav Ghimire. Lila, a naïve young girl brought up with the values that “a husband is her god” tolerated her husband’s beating and accepted it as her destiny and what God had wished for her.

Time passed and Lila gave birth to two girls. She still suffered abuse by her husband. In fact, it became more severe. One day she was shocked when her husband introduced a woman as his new wife.

Tired of her husband’s every day cruelty, she decided to leave his home. But Lila, with two daughters, had nowhere to go as her old mother herself was at the mercy of her other sister and she had no hope of getting help from them. She did not even have any money to feed her daughters or herself.

Her neighbours advised her to ask for her share of property which she was entitled to after marriage. Lila who had learned a lesson the hard way in life was determined to fight for her share of property that she wanted to use for her daughter’s education.

Lila asked for professional help from a Legal Aid office, which sent her to a lawyer for free consultancy.

The lawyer showed great sympathy for her and promised her full assistance. After sometime, he sent others at the office out for a tea break. He then came to sit next to Lila on the couch. Lila, unaware of the lawyer’s motive, further explained how important it is for her to get the property for she wants to send her daughters to school and help them be capable of supporting themselves.

Assuring Lila that he will help her and that she would not have to worry, he came closer to Lila and suddenly inserted his hand inside Lila’s *kurti*. Lila, shocked and startled, sprang to her feet and hurried out of the room. The lawyer called out to her and said that if she was going to mind such small things, it will be difficult for her to achieve what she wants. Amusingly, he further added that in the course of the case, he would have to take her from one place to another on his motorbike, and she would have to sit very close to him on the bike. He also said that she should learn to tolerate these things if she expects help.

Lila was frightened, disappointed and humiliated, and could just manage to say that she would never come to him asking for help again, if that was what she had to give in return. Since she needed her file back from the lawyer, she complained against the lawyer. On the basis of that complaint letter, the lawyer has filed a case of defamation asking for compensation against the victim.

This incident has severely affected Lila’s confidence and she now finds it hard to trust people or ask for help.

Note: Pseudonyms used.

Source: Interview with the victim, January 25, 2001.

4.1.5 Personal Development

Sexual harassment could have direct effects on the personal development of the victims. These effects could take permanent forms if the victims are women. The following are some major types of effects visibly evident on the personal development of the victims:

Mobility

Once victimized by sexual harassment, the victims may feel difficulties in their mobility and activities. They may dislike to do certain jobs or to go to certain places. If the victimization is publicized, their family may restrict them from going out of the house.

Trafficking

When women and girls accept sexual harassment as norms they are further manipulated by the harassers to come with them sometimes in the pretext of marriage or job which often leads to trafficking of women and girls for sexual and labour exploitation outside the country.

Career Development

The victims may have to face difficulties in every step of career development once victimized by sexual harassment. This also functions in two ways: one, following the harassment the victim would not be enthusiastic and attentive towards job duties and impediments in career development would follow; and secondly, the victim's career development may be blocked as a consequence of actions taken in reprisal.

Losing employment opportunity

In most cases, the victims of sexual harassment have two options available - either to endure the incidents of sexual harassment or to quit the job. Resistance and reporting against those practices may result not only in losing employment opportunities, but may also be life threatening.

4.1.6 Physical Effects

Sexual Abuse and Exploitation

Sexual abuse and exploitation is the first immediate effect caused by sexual harassment. Since desire for sexual gratification continues, sexual abuse could last for over a long period of time, particularly if the harasser enjoys a higher position and more power. After compelling the victim to do whatever the harasser wants, sexual offences such as rape or incest may also result.

Murder

Sexual harassment might lead even to murder of the victim for several reasons. For example, actions to be taken in reprisal against the victim for reporting the case may lead to murder of the victim. Similarly, after sexual exploitation and rape, the harasser might kill the victim in order to conceal the evidence.

Suicide

One of the violent outcomes of sexual harassment is suicide committed by the victims when they are unable to handle the trauma caused by sexual harassment and social stigma

attached to it. The loss of employment or the disturbances in family relationship followed by reporting of sexual harassment may also lead to isolation, frustration and suicide.

Unwanted Pregnancy

One of the most common effects of sexual exploitation or rape may be unwanted pregnancy, which not only creates reproductive health problems but also generates social hatred and stigma. Since abortion is criminalized in Nepal and in most of the cases only women are implicated in legal actions, consequences of unwanted pregnancy may be either to expect an unwanted child or to face severe legal actions for abortion.

BOX 4.3 CASE STUDY NO.6: HOW SEXUAL HARASSMENT LED TO IMPRISONMENT OF THE VICTIM

Radha, a girl from Kavre Palanchowk, came to Kathmandu looking for work. She stayed with her brother and sister-in-law in Kathmandu and worked in the Handloom Carpet Industry.

Radha, a girl of fifteen, became an object of pleasure for her male colleagues to look at, to flirt with and touch her. She objected to it subtly but the harassment continued. Radha who is uneducated, poor and with no support system is compelled to face all this quietly. This encouraged the perpetrator since they now knew that she was helpless and her brother and sister-in-law did not care about her. Radha tried to report this behaviour to the management but she was told that she should not mind such simple flirting.

Slowly this process of teasing increased and one of her male colleagues succeeded in persuading her to have intercourse with him. Radha conceived as a result of that. She gave birth to a girl child at her brother's house without letting anybody know about it. As Radha, still a child, was scared to face her brother or tell her male partner about it. the pain during the delivery was so unbearable to Radha that she fainted. When she regained consciousness after an hour and a half, she found the newborn dead.

Radha was in a dilemma as to what she should do next. She found the dead body filthy to touch and hence on the verge of mental and physical incapacity, wrapped the body in a cloth and threw it in a drainpipe.

Soon this became known to all around her and the employer himself went to the police and reported that Radha had killed her own baby by pressing its throat and threw it in a drain pipe.

In the court, Radha defended herself by saying that she did not kill her baby, and it was a stillbirth. However, she was proved guilty and was imprisoned for 12 years, as she was a child under the definition and Nepali law.

The simple flirtation led to a disaster in Radha's life and put her behind bars for twelve years.

Note: Pseudonyms used. (Now the girl has been released by the decision of the Appellate Court, as many groups, civil society members and media helped to raise this issue). Source: Development Law Associates, Kathmandu.

4.2 Effects of sexual harassment on the organization

The organization in which sexual harassment is practiced unabated has to suffer many direct or indirect effects, which are analyzed as follows:

4.2.1 Loss of Productivity and Profitability

An appropriate working environment is a must to enhance productivity and profitability of an organization. Following any incident of sexual harassment, there is a loss of spirit of mutual trust, confidence and cooperation amongst workers. This hampers the productivity and

FIGURE 4.3 OVERALL IMPACT ON THE ECONOMIC DEVELOPMENT OF THE NATION



minimizes profitability. The survey showed that 36.36 percent of the employers believe that, as unemployment is very high in Nepal, an issue such as sexual harassment does not really effect the organization and its productivity and profitability (See Figure 4.3 above).

However, 63.64 percent of the employers said that employees who are trained and if discontinued due to sexual harassment, could result in loss of productivity; whereas 67.86 percent of the total respondents affirmed that incidents of sexual harassment do cause damage to the good name of the organization.

4.2.2 Profile of the Organization Damaged

Following an incident of sexual harassment and its publicity, the organization loses its credibility and goodwill and its profile may be downgraded. It also raises questions about the attitudes of the managerial level personnel though they may not be involved in it. Once the profile is in question, the organization suffers humiliation and its activities may be negatively affected.

BOX 4.4 CASE STUDY NO.7: EFFECT ON THE PROFILE OF AN ORGANIZATION

Sima was working in a private company. At the beginning, she was happy working in this company as her desire to work and earn money had been fulfilled. Moreover she was supporting herself and her parents who were now retired.

Working as a secretary, she soon began facing harassment of a sexual nature not only from the seniors at the office but also from some visitors as well. Sima tried to ignore the situation, since she felt that paying attention to such harassment would invite problems and that she may have to leave the job that was also paying her very well. She therefore concentrated only on her work and did her best to ignore any harassment.

Once, Sima was asked by a senior officer to stay late to finish some pending work. She agreed and the officer while working told Sima that she would be promoted if she entertained him after the office. Sima could not handle the situation and got very frightened. She told her parents about this incident. They complained furiously about this to the management. The management refused to listen to the complaint and pretended that no such things take place in their organization. Sima's parents talked about this matter to the people in the office and together they demanded for the punishment of the harasser. They made a lot of noise in the office that not only affected the work environment and productivity but workers lost their faith on the management's ability to solve such problems.

Sima was not taken back in the company, as she demanded appropriate punishment for the harasser. Sima, her family and friends now have been telling this story to all the people they know. The organization has not only lost a hardworking employee but it has also earned a bad reputation in the market.

Note: Pseudonyms used. Source: Interviewee

4.2.3 Industrial Relations Disturbed

When an employer practices sexual harassment, the atmosphere of industrial relationship is disturbed and as the trade unions or the employee/workers' organizations take up the issue more seriously, the working atmosphere is negatively affected.

4.2.4 Lose Skilled Human Resources

Incidents of sexual harassment could bring about displacement and non-availability of workers. If the displaced workers are skilled or if skilled workers are not available, the organization suffers a huge loss. The skilled human resource that would otherwise be involved in key position of productive sectors remains inactive or passive because of enormity of the problems of sexual harassment.

4.2.5 Lack of Competitiveness amongst Workers

With the decrease in dedication and seriousness amongst employee/workers and ownership towards job responsibilities, the workers also lack competitive atmosphere amongst themselves. This in turn results in low productivity and profitability.

4.2.6 Increase in Costs

Increment in the costs for legal defense, extra recruitment process and training are also the effects of sexual harassment if it results in termination of job of the victim or of the harasser. The more the incidents of the harassment, higher would be the costs to be borne for these matters.

MECHANISMS FOR ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE

5.1 Legal Mechanisms

5.1.1 Analysis of International Human Rights Instruments/Declarations

Nepal is a party to 16 international human rights instruments including International Covenant on Economics, Social and Cultural Rights, 1966, International Covenant on Civil and Political Rights, 1966, Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and Convention on the Elimination of all forms of Discrimination Against Women, (CEDAW) 1979. Having ratified these Conventions, the Government of Nepal has made commitments to guarantee right to equality to both men and women in all spheres of their lives including right against sexual harassment.

Any international treaty to which Nepal is a party and which is ratified by the Parliament is enforceable in Nepal, superseding even a municipal law provision inconsistent with the provision of such instruments.¹⁹ Hence, being a party to the international instruments, Nepal is also obliged to eliminate all forms of discrimination and to ensure protection of human rights of women modifying social and cultural patterns in order to eliminate prejudicial practices. Enforcements of such obligations are necessary because their non-enforcement violates a host of women's rights including freedom of movement, right to equality, right to employment, right to family, right to development, right to education, right to life, right to self decision, right against exploitation, right to dignity etc.

The General Recommendation No.19 (eleventh session, 1992) of CEDAW Committee has clearly stipulated that gender-based violence is a form of discrimination that seriously inhabits women's ability to enjoy rights and freedoms on the basis of equality with men.

The definition of discrimination includes gender-based violence that is directed against women because of their sex or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- The right to life

¹⁹ Section 9 of the Nepal Treaty Act 1991

- The right not to be subjected to torture, cruelty, inhuman or degrading treatment or punishment
- The right to equal protection according to humanitarian norms in time of international or internal armed conflict
- The right to liberty and security of person
- The right to equal protection under the law
- The right to the highest standard attainable of physical and mental health

The General recommendation No.19 also recommends to the governments to take effective measures including strong penal sanctions, civil remedies and compensatory provisions to protect women against sexual harassment at the workplace.

The General recommendation No.19 has also encouraged the State Parties to include in their Periodical Report of CEDAW information on violence against women which also includes sexual harassment, and measures to protect women from sexual harassment and other forms of violence of coercion in the workplace.

Even though we do not have a specific convention of ILO to deal with this issue, this subject has been treated in ILO Convention No.111 “Convention Concerning Discrimination in Respect of Employment and Occupation” in the context of sex discrimination.²⁰ However, this provision alone is not sufficient to address the issue of sexual harassment.

The Beijing Platform for Action highlights violence against women as a physical, sexual, psychological violence occurring within general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institute etc, giving primary responsibility to the government to protect women from such violence.

5.1.2 National Policies

The Ninth Plan of Nepal has identified gender equality and women's empowerment as a major policy and has also encouraged the government to eliminate all forms of discrimination against women and to work in close collaboration with civil societies.²¹ The Nepal government had also committed in Beijing to ensure full implementation of human rights.²² The National Plan of Action to implement Beijing Declaration in the country has also strongly stated the need to review existing laws in accordance with international human rights instruments and norms.²³ The government also committed in Beijing Plus Five review process in New York to eliminate all discriminatory laws and take strong action against gender-based violence.

The CEDAW Committee in its Concluding Comments to Initial Report to CEDAW has said that the government should take sufficient action to reflect CEDAW in the domestic laws and policies. However, the government has not taken any action to reflect such concerns in reality. Even the Domestic Violence Bill, the drafting of which was initiated by MWCSW in 1997, has not yet been finalized.

5.1.3 Constitution of the Kingdom of Nepal

The Nepalese Constitution, which came into force after the people's movement in 1990, has upheld the basic human rights of the individual by guaranteeing most of them their

20 Nepal has ratified this Convention in September, 1974

21 Ninth Plan (1997-2002), National Planning Commission, Kathmandu , Nepal, July 1998 pp. 669-673

22 The United Nation Fourth World Conferences on Women(Beijing) 1995, Country Report Nepal, p. 31

23 National Plan of Action for Gender Equality and Women Empowerment, MWCSW, 1997

fundamental rights. The Preamble to the Constitution states its aims to achieve social and economic justice guaranteeing basic human rights to all the citizens and establishment of an independent and competent system of justice with a view to transforming the concept of rule of law into a living reality.²⁴

The Constitution guarantees *inter alia* the right to equality, right against exploitation and right to privacy. The Constitution has guaranteed the right to equality²⁵ to all its citizens and it upholds the basic principle of a democratic society. It upholds the basic principle of equality, i.e. equality before law and equal protection of law²⁶, the principle of non-discrimination in the application of general laws on the basis of religion, race, sex, caste, tribe or ideological conviction²⁷ and states that citizens shall not be discriminated amongst one another on the basis of religion, race, sex, caste, tribe or ideological conviction²⁸.

The Constitution also allows developing of any special provisions in the law for the protection and advancement of the interests of women.²⁹

5.2 Analysis of Nepalese Laws on sexual harassment

Nepal lacks a specific law on dealing with sexual harassment. Being a new concept emanating from gender discrimination and misplaced notions with regard to roles of sexes as per the social value system, there is no specific government policy. Therefore, this analysis of laws and policies is based on the piecemeal provisions not directly linked to the specific issues of sexual harassment, but which are related to these issues in some way.

The Country Code (*Muluki Ain*) deals with some specific sexual offences such as rape, incest and intention to sexual intercourse. These provisions require a short review.

5.2.1 Law against intention to sexual intercourse

Chapter No. 1, on intention to sexual intercourse of the Country Code prohibits touching any organ from head to foot of a woman above the age of 11 years, except one's own wife, with the intention to have sexual intercourse and prescribes a punishment with a fine up to five hundred rupees or an imprisonment of up to one year.³⁰

There are several flaws in this legal provision. First of all, there may be difficulty in distinguishing this offence from the offence of attempt to rape.³¹ The circumstances may be similar in the commission of both offences but victim and the quantum of punishment differs significantly. Secondly, this legal provision is not applicable if the victim is below the age of 11 years. Though engagement of a minor in a factory is prohibited in formal sectors and the age of the victim is not significant from this perspective, there is a large number of child workers both in formal and informal sectors³², and this provision has undermined the practices of sexual harassment to be perpetrated against innocent children who require more care and protective measures.

Thirdly, this provision carries very minimal punishment³³ because of which the prosecution for rape or attempt to rape is manipulated and conviction is made only under this provision.

24 Preamble to the Constitution of the Kingdom of Nepal, 1990

25 *Ibid.*, Article 11

26 *Ibid.*, Article 11(1)

27 *Ibid.*, Article 11(2)

28 *Ibid.*, Article 11(3)

29 *Ibid.*, Proviso of the Article 11(3) 30 No. 1 of chapter on intention to sexual intercourse of the Country Code.

31 Gyayendra Br. Shrestha, *Muluki Ain : Eak Tippiani* (in Nepali) Pairari Prakashan, 1993, p. 481

32 According to the data from CWIN, an NGO working with the issues of child workers and their rehabilitation, there are more than one million child workers working in Nepal. See *Child Sexual Exploitation - Investigation Guidelines*, CWIN/UNICEF 2000, P. 22

33 A fine up to five hundred rupees and imprisonment up to one year.

Further Action to Implement the Beijing Declaration and Platform for Action has also identified the need to eliminate legislative gaps that limit the rights of women that leave them without effective recourse against gender-based discrimination.³⁴

Fourthly, the offence created by this provision is not one belonging to crime against the state and the victim herself has to bring the case but it does not provide any support mechanism to the victim.

Fifthly, this provision is of a general nature and it does not cover all issues and problems of sexual harassment and intention to sexual harassment is a must to use this clause.

Sixthly, even the minimal punishment prescribed under this provision is so discretionary in nature that ultimately the judge may negate it in practice.

Finally, this clause does not contain any provision for compensation to the victim. Therefore, there is an urgent need to substantially overhaul this particular law.

5.2.2 Law against rape and attempt to rape

The law relating to rape may not be relevant all the time to deal with the problem of sexual harassment because there may be several forms of sexual harassment not culminating in rape or other sexual offences i.e. incest or adultery.

The offence of rape contains a very narrow definition in the law of Nepal.³⁵ It has often been criticized for not including sexual exploitations of different types such as oral sex and marital rape³⁶ within the definition of rape. The offence of attempt to rape³⁷ may be more relevant with regard to the issue of sexual harassment but there may be difficulty of proving it beyond any reasonable doubt. The law relating to rape is less helpful to address the issue of sexual harassment also because this law is more accused-friendly and not victim-centric.

5.2.3 Law relating to libel and defamation and verbal harassment

The Public Offences and Punishment Act, 1970 has criminalized a series of acts to be committed in public places as public offences which include, inter alia, the acts of violating peace by obscene speech, remarks, signals or by showing pornographic materials at public places. It also includes the acts of assault or battery to women or of outraging their modesty at public places. These offences carry the higher punishment of imprisonment of up to two years and a fine of up to ten thousand rupees. The Act also provides for payment of compensation to the victim at par with the amount of fine. However, the problem is that this Act is applicable only with regard to the incidents of sexual harassment at public places and it is not applicable with regard to a workplace, which is not strictly a 'public place'. Therefore, the relevancy of this particular Act depends on the definition of workplace and if the journey to and from the workplace is treated as workplace, then only this Act will be of helpful to some extent.

In the context of the lack of specific legislation on sexual harassment, the Libel and Defamation Act also requires an urgent review so that the victim may bring civil case for compensation and criminal case for punishment against the harasser at the same time.

34 Twenty third Special Session, United nation, General Assembly.

35 No. 1 of the chapter on rape reads, 1. "A sexual intercourse with any girl, widow or married women, if below the age of 16, in any manner whether with or without consent, and above the age of 16 without her free will and consent in any manner with physical force, coercion or undue influence is deemed to be rape."

36 See Discriminatory laws in Nepal and their impact on women, FWLD 2000, p. 22

37 No. 5 of the chapter on rape reads: 5. "If an attempt of rape has been made but no rape is committed, such person shall be subjected to half of the punishment provided for rape."

The law relating to libel and defamation is relevant to deal with the issue of sexual harassment so far as the act of harassment is of verbal or symbolic in nature and so far as it does not include physical harm to the body of the victim. In Nepal this law is contained in the Defamation and Libel Act, 1989. Though this Act has defined only insult³⁸ and has not defined the act of sexual harassment as such, still it is relevant in cases where sexual harassment has outraged the modesty, prestige and dignity of the woman or has caused adverse publicity against her character.

This Act has also dealt with some aspects of sexual harassment such as making gestures³⁹ but the issue has been taken leniently and it prescribes minimal punishment.⁴⁰ Though the punishment for libel or publication of libelous matter is higher, it would be difficult again for the victim to bring her case or harassment within the purview of this Act because of non-inclusion of the issue in its definition. It will also be difficult for the victim to prove her case because the cases under this Act have to be brought up by the victim herself and not by the government.

It is dangerous for the victim to resort to this law also because if her case is not established, she herself may be punished.⁴¹

5.2.4 Laws based on protectionist approach

The existing patterns of laws and policies governing matters of employment are based on the formal model of equality⁴². Restrictive measures rather than measures that create enabling environment are preferred in laws and policies. For example, the Foreign Employment Act, 1985 restricts women from going abroad for employment without the approval of His Majesty's Government and consent of the guardians⁴³. A simple reason given in favor of such a provision is that it protects women from possible sexual harassment and exploitation during the employment abroad.

Similarly, the Labour Act provides that only under certain circumstances, a female may work from 6 a.m. to 6 p.m.⁴⁴ Such a provision not only restricts women from various employment opportunities, but also creates psychological disadvantage by suggesting that they are weak and should have reasons to feel unsafe⁴⁵. During the study, employers said that they do not give night duty for women. This may also be an obstacle to women who want to do something else during daytime and work at night. The law's approach should be creating a secure atmosphere for women to work during any working hours with corrective approach creating enabling environment rather than restricting them from work in certain specific working hours.

38 Section 3 of the Act reads: Insult. "Anyone, with the intention of causing damage to the reputation of another person or knowing that his actions are likely to cause damage to the reputation or with reasons for believing such actions, accuses the person by writing, word of mouth or signs or symbols by communicating a meaning or publishing such matters, he is considered to have defamed a person."

39 Section 8 of the Act, reads: Obscene acts against women. "If anyone, with the intention of causing insult to a woman, and in a manner that she can hear or see it, says something or utters words or makes gestures or displays any object or material or encroaches on her confidentiality, he is liable to a fine ranging from RS. 100 to RS. 500 and an imprisonment of up to six months."

40 Ibid.

41 Section 10 of the Act reads: Punishment for false accusation with the intention of causing damage. "If a person knowing that there is no justifiable or legal basis for lodging a case of defamation or slander under this Act against another person, lodges the case against him with the intention of causing harm to him or causes others to indulge in such act, such a person shall be liable to fine of from RS 500 to RS 5, 000 if it is a case of libel and from RS 100 to 1, 000 if it is a case of slander. The judicial authority shall also order the plaintiff or the person indulging in such acts to reimburse all the expenses incurred in the litigation to the defendant."

42 This model of equality promotes either rights of women from the sameness approach or recognizes difference using protectionist approach.

43 Section 12 of the Foreign Employment Act, 2042: Notwithstanding anything contained elsewhere in this Act, the Licensee shall not have the authority to provide foreign employment to the minors and women.

Provided that foreign employment may be provided to women by obtaining the permission of His Majesty's Government and guardians.

The Forum for Women, Law and Development has challenged the constitutionality of this provision for its violation of the rights to work, movement and equality guaranteed by the Constitution and the case is *sub-judice* in the Supreme Court.

44 However exemption on working hours has been made in the Tourism Industry and with the approval of Labour Union and in such case Employer are obliged to provide special protection under which many organizations provide transportation facilities.

45 Discriminatory Laws in Nepal and their Impact on Women, FWLD, 2000, p. 24

5.2.5 Complaint handling mechanism for sexual harassment at workplace

Since there is no specific law on sexual harassment, there are no formal specific procedural guidelines developed for redressal of sexual harassment complaints.

If the victim opts for bringing the case under anti-defamation law or the law against intention to have sexual intercourse, she herself has to adduce all evidences and prove the case⁴⁶.

A case under the Intention to Intercourse has to be filed within 35 days from the date of occurrence at the District Court.⁴⁷ A case of Defamation can be filed within six months from the date of commission of the conduct.⁴⁸

There are various laws governing matters related to the workplace i.e. Labour Act, Civil Service Act, Police Act, Military Act, Medical Council Act, Legal Practitioners Acts and many other Acts and Regulations framed thereunder. However, all these laws do not have provisions prohibiting sexual harassment at the workplace. The existing professional Code of Conduct also has not mentioned sexual harassment as misconduct.

It is reported that there are growing incidents of sexual harassment of clients by doctors and lawyers. However, in the absence of specific provisions, the perpetrators are going scot-free. There is no tort law⁴⁹ in Nepal, and that also restricts provisions for the tortious liability. The Consumer Protection Act, 1996 provides complaining measures against the degrading of the goods and services but does not include any provision against the practice of sexual harassment of clients by the service-providers. Therefore, it is urgently important to review these laws especially the provisions relating to standardization of professional conduct from these perspectives.

It was found during the study that there is a high prevalence of sexual harassment of domestic workers but only very few of these incidents are reported because of lack of victim-support component in complaint handling procedures in addition to several other disabling circumstances i.e. ignorance, poverty, illiteracy etc. and absence of their own trade unions. However, as yet, there is no law governing the matters of domestic workers who comprise a substantial portion of the country's labour market. The existing Labour Act is applicable only in formal (organized) sector. The law to be framed in this respect should specifically deal with matters of sexual abuses and harassment. Particularly, such specific provisions should include effective complaint handling procedures, effective victim support component i.e. legal aid, temporary maintenance, security, medical and psychological support, and compensation.

Until such law is framed, the existing labor laws should be amended; inserting the provisions against sexual harassment and such provisions should be made equally mandatory even in the informal sector.

During the study we found that not even a single case on Sexual Harassment at work place has been filed at the Labor Office and Labor Court, even if the Labour Inspectors have heard of many cases of sexual harassment and rape especially in carpet and garment industries.

46 In one sexual harassment case of domestic worker, which ultimately converted to rape, and brutal murder of a domestic working girl, it is complained at National Human Rights Commission that the police even denied to file first information report against one particular accused who was widely suspected to have committed the offence. The police also warned the informer, the father of the victim, not to make any further complaint.

47 No. 6 of Chapter of Intention to Intercourse of Country Code 1963

48 Section 11 of Defamation and Libel Act 2016

49 The law relating to private or civil wrong or injury, including action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages, Black's Law Dictionary, sixth edition, (1891-1991), p. 1489

The Human Rights Commission Act, 1997 has created the National Human Rights Commission, which is entrusted with the basic duties of protection and promotion of human rights of the people.⁵⁰ This Act has mandated the Commission to take any appropriate measure for protection of human rights of women that also incorporates gender discrimination.⁵¹ The Commission is also empowered to investigate into the cases, which are under consideration of courts of law, with the approval of the concerned court.⁵²

As the issue of sexual harassment at the workplace is also a violation of human rights, it would be relevant in redressing complaints of sexual harassment by the Commission. Currently, one case of sexual harassment is learnt to be under consideration by the Commission. However, it would be difficult for the Commission to redress the complaints in the absence of a formal definition of sexual harassment, and we have yet to see how the Commission will respond to the issue.

5.3 Informal Mechanisms

Initiatives taken by Trade Unions

A number of complaints have already been lodged with the trade unions and through negotiations with the management they have been able to get some compensation for the victim. Since the issue is taken up in a rather informal way by even the trade unions, the management has not taken it seriously enough.

Even though it has been widely realized by the trade unions that there is a need to have awareness programs as well as specific laws on this issue, not much initiative has been taken in this regard. Trade union members feel that the women caucus should be formed at the enterprise level so that women will be empowered. Women workers, however, feel that the issue should be taken as a priority issue in the labor movement and awareness programmes should be launched. Trade unions should also raise the issue during the collective bargaining process.

It was reported during the survey that trade unions are still not taking the issue of sexual harassment seriously. The management also feels that trade unions are more concerned about financial demands during the collective bargaining process. Demands are focused on the facilities and benefits of the employee/workers ignoring the issues of exploitation against women workers.

5.4 Respondents' views on mechanisms to be Introduced

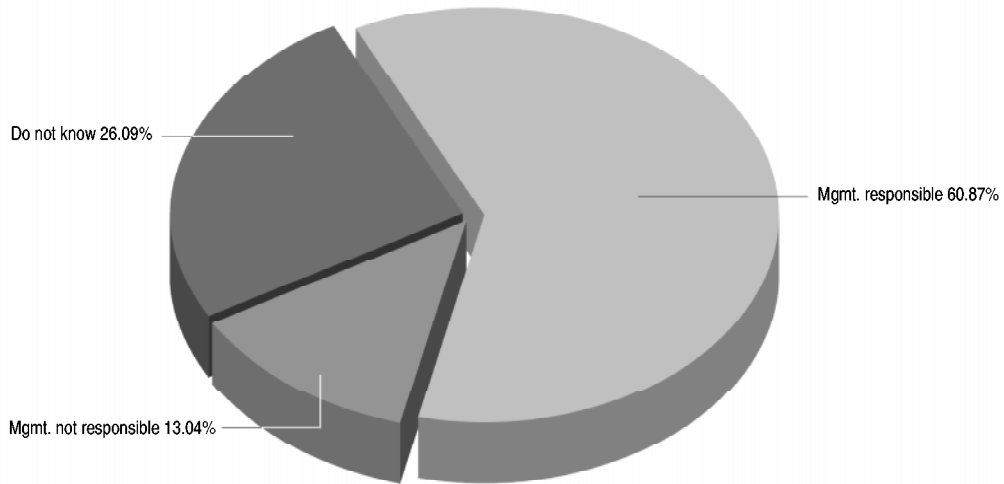
On the issue of **responsibility for sexual harassment**, 60.87 percent among the policy makers/civil society members said that the management should be held responsible for sexual harassment in the work place, while 26.09 percent said that the management should not be responsible and 13.04 said that they do not know who should be responsible (**See Figure 5.1 overleaf**).

50 Section 9(1) of the Act : It shall be the main duty of the commission to protect and promote human rights.

51 See, Section 9(2) of the Act.

52 See Section 9(2) (d) of the Act.

FIGURE 5.1 RESPONSIBILITY OF MANAGEMENT ON SEXUAL HARASSMENT



Regarding the **nature of law that need to be framed to address sexual harassment**, 39.13 percent of respondents from among the policymakers/civil society respondents believe that there should be criminal law to handle this issue, 30.43 percent responded that there should be both civil and criminal law and 21.74 percent said that there should be civil law to deal with sexual harassment whereas 8.7 percent said that they do not know.

FIGURE 5.2 NATURE OF LAW FOR SEXUAL HARASSMENT

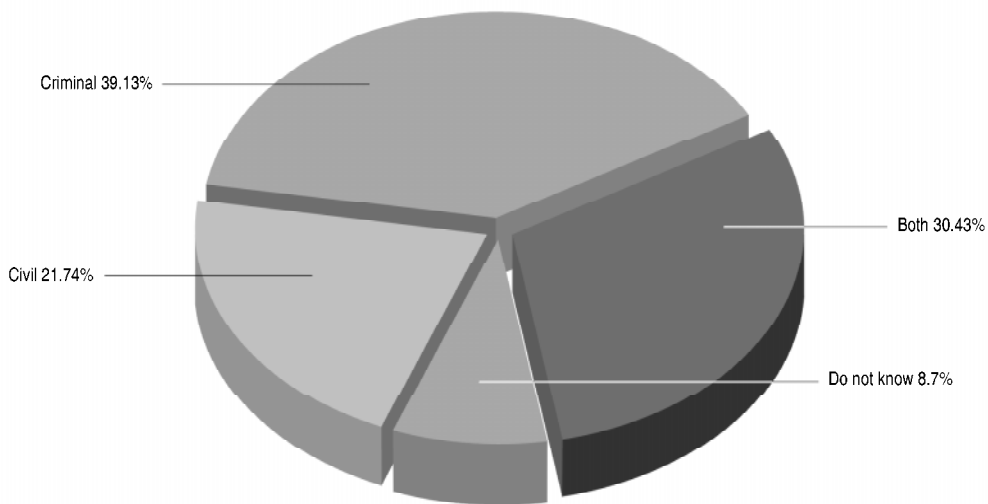
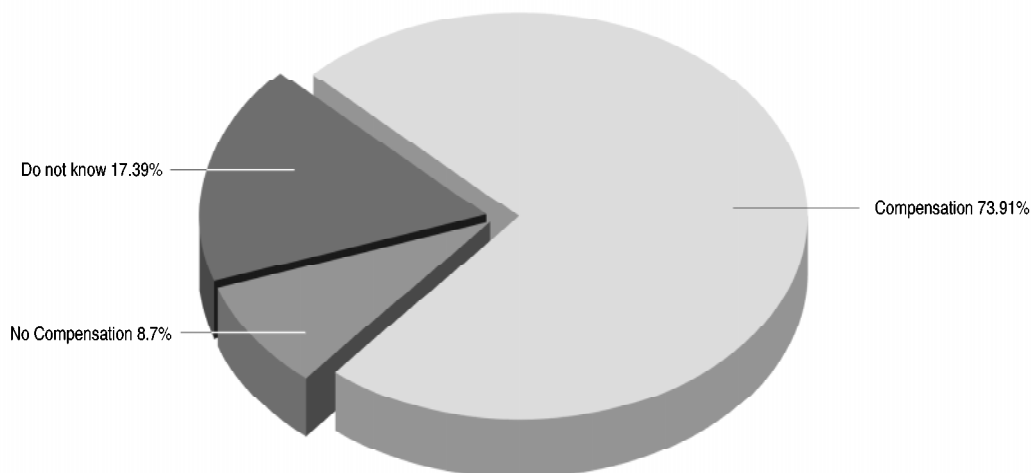


FIGURE 5.3 COMPENSATION TO VICTIMS OF SEXUAL HARASSMENT



Among the policy makers/civil society members, 73.91 percent expressed the view that **compensation** should be given to the victims in case of sexual harassment, 17.39 percent said that compensation is not necessary, whereas 8 percent were not sure about this issue.

5.5 Initiatives against Sexual Harassment - Some Best Practices

5.5.1 Hyatt Regency Service Regulations: Sexual harassment clause incorporated as misconduct

For the first time, even in the absence of law, Hyatt regency Pvt. Ltd. has incorporated the provision of misconduct in their employee/workers service regulation.

BOX 5.1 HYATT HOUSE RULE CODE OF CONDUCT - A BENCHMARK

The Hyatt Regency, a newly established hotel in Kathmandu, is the establishment in Nepal framing Code of Conduct having included the clause against sexual harassment by any staff of hotels operation i.e. managers, employees and workers. It has defined sexual harassment as unwelcome sexually determined behavior, whether directly or by implications as:

- Physical contact and advances,
- A demand or request for sexual favors,
- Sexually colored remarks and
- Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

The Rule also provides that where such conduct amounts to a specific offence under criminal law, or any other law, the management will initiate appropriate action in accordance with the law. The Hyatt initiative in this regard is exemplary and other establishments should also follow it.

In case of any complaint, an explanation will be asked and if clarification is not satisfactory, punishment is given as per the employees' regulation.

5.5.2 Awareness-raising campaigns and workshops

Recently, trade unions such as GEFONT have taken initiatives to create awareness among workers for both men and women equally by conducting training and awareness raising campaigns on sexual harassment. They have also published booklets and leaflets to disseminate information on sexual harassment. Women leadership development training⁵³ has a session, which incorporates the concept, types, protection and prevention measures for sexual harassment at the work place.

5.5.3 Training for Lawyers

Recognizing the high prevalence of this problem in the country, Forum for Women, Law and Development (FWLD) in collaboration with the IWRAW Asia Pacific organized a five-day training workshop on “Advocacy and Human Rights for Practicing Lawyers of Nepal” in Kathmandu from September 30 to October 4, 2000. This was the first time that a special training focused specifically on sexual harassment at the workplace had been conducted. In this training the lawyers were made aware of the issue and its various impacts on women as well as various human rights instruments and declarations were discussed to use as arguments to counter sexual harassment.

5.5.4 Media Highlights

On July 16, 2000 after a special article “No to sexual harassment at work place” by Binaj Guruwacharya, in The Kathmandu Post, the issue was much discussed, recently followed by a Business Age article on “Sexual Harassment: Breaking the Taboo” by Madan Lamshal. Again on December 20, 2000, Ram Kumar Kamat wrote an article on sexual harassment informing the readers that the victim has no option but to endure. It also highlighted the issue and called for a legal framework as well as calling upon the trade unions to take up the issue seriously.

⁵³ One national and ten zonal level trainings have been already organized by GEFONT.

RECOMMENDATIONS

6.1 General Recommendations

Having analyzed the existing international laws, national laws and the gaps therein and considering the respondents' views on mechanisms needed to address sexual harassment as well as looking into some initiatives already taken in Nepal, the following general recommendations can be made.

6.1.1 Provision for sexual harassment as an offence

A provision making sexual harassment an offence needs to be included in the Labour Law, Civil Services Act, Army Act, Police Act, Nepal Health Service Act, Nepal Bar Council Act, District Court Rules, Appeal Court Rules, Supreme Court Rules, Consumer Protection Act, and Working Journalists Act.

6.1.2 Incorporate sexual harassment in the employee/workers' regulation in the enterprises

The management should incorporate sexual harassment as misconduct and enforce such regulation effectively incorporating it as a ground for departmental action.

6.1.3 Definition of sexual harassment

Sexual harassment should include all types of unwelcome, sexually determined behavior, whether directly or by implications, such as the following:

- Physical contact and advances,
- A demand or request for sexual favors,
- Sexually coloured remarks and
- Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

6.1.4 Complaint handling procedures

Complaint handling procedures should be simple and effective so that the victim will be encouraged to report and use the access to justice.

Inquiry procedures

The employer should make the inquiry procedures confidential in order to listen to the

complaint and act on it without embarrassing the victim further. The departmental action inquiry team in the case of sexual harassment should have at least one woman, a gender sensitive person and one psychologist.

Proof of harassment

As expressed by the majority of the respondents, the victim's statement should be taken as basic evidence of sexual harassment.

6.1.5 Employer's accountability

The employer should encourage reporting of the cases of sexual harassment and guarantee no reprisal action against reporting. The employer should also ensure that staff members are informed of all the options for resolving such complaints.

The employer should recognize sexual harassment as a serious issue and treat every complaint seriously, sensitively, fairly and promptly. Where such conduct amounts to a specific offence under criminal law, or any other law, the management should initiate appropriate action in accordance with the law.

Mental and physical health checkup facilities should be provided for the victim including legal assistance. Counseling facilities also need to be provided for victims to address psychological trauma.

The employer should also make sure that there is no additional harassment and humiliation against the person who complains and the witnesses. Reporting against such incidents should not work against her.

6.1.6 Compensation for the victim

A clause should be inserted for compensation to be made assessing the damage caused to the victims physically, mentally and socially.

6.1.7 Corrective measures to be introduced

Existing labor laws have tried to restrict employment opportunities for women in the name of protection by restricting working hours in many kinds of enterprises. Hence, corrective measure should be taken introducing the substantive model of equality under the policy and law for gender equality and overall development of women.

6.1.8 Amend discriminatory laws

As the recent study conducted by FWLD identified, Nepal still has at least 118 legal provisions and 67 schedules in 54 different laws including the Constitution, that have discriminatory provisions⁵⁴. Hence there is a need to amend discriminatory laws in line with CEDAW and other human rights instruments ratified by His Majesty's Government of Nepal so that women's low status will be improved.

6.1.9 Enactment of new laws for Informal Sectors

There are large numbers of workers involved in informal sectors as well as enterprises that are exempted from labour legislation. Therefore, it is strongly recommended that laws should be enacted for these sectors, which must include sexual harassment as a serious offence.

⁵⁴ Discriminatory Laws in Nepal and their Impact on Women, FWLD, August 2000

For this, the Labor Act should incorporate a provision, that in case of sexual harassment, the Labor Act should have jurisdictions in the informal sectors as well.

6.1.10 Managers/Employers' misconduct to be included in labour legislation

The misconduct provision in labour legislation exempts a manager's misconduct at the enterprise level. Hence, Section 55 of Labour Act should specifically include sexual harassment by manager/employer as a grievous misconduct. While framing the law, sexual harassment by customers, clients, and passengers as well as sexual harassment to the customers, clients and passengers by the service providers should also be considered. There should be a law to punish both types of harassers and also compensate the victims.

6.2 Specific Recommendations for Employers, Workers, Trade unions, NGOs, Media, National Government and International Institutions

The study found a general consensus among the respondents on the view that a holistic, multi-disciplinary and integrated approach should be developed to address the problem of sexual harassment. A number of recommendations, drawn from the interviews and from the insights of the research team, are specifically aimed towards various institutions that can bring about a solution to this grave problem..

6.2.1 Indicators for identification of early signals of sexual harassment

Though the majority of employers/management among the respondents believed that it is very difficult to identify indicators or signals of sexual harassment at the work place, the following indicators were suggested:

On the victim's side:

- Depression
- Low efficiency
- Aloofness
- Absenteeism
- Leaving the job

On the harasser's side

- Past history of the harasser (accused)
- Personality traits

6.2.2 Measures to be taken by Employer/Management

6.2.2.1 Awareness Raising

- Prevention of offences by providing training and disseminating information which would

help create awareness and also educate the workers regarding sexual harassment and its effects.

- Development of educational methods such as training program to sensitize about sexual harassment at workplace.
- Taking responsibility to make each person in the organization understand human rights, women's rights, workers' rights and hence the right to work in a safer and secure environment.

6.2.2.2 Enabling environment

- A safe working environment has to be created by the management especially for the employees working in the night shift and special protection should be provided to the women workers in the night shift, implementing the prevailing labor legislation.
- Provide appropriate working conditions in respect of work, leisure, health and hygiene which include separate rest rooms, toilets, accommodations, child care facilities, breast feeding breaks and facilities to be provided for women workers, further ensuring that there is no hostile environment towards women at work place.

6.2.2.3 Monitoring and Supervision

- Monitor and supervise the workers to see if such offence is taking place or could potentially take place.

6.2.3 Precautionary measures to be taken by women workers

- Education on worker's rights, human rights
- Enhance confidence
- Keep the doors open while working
- Try to work in a group
- Women should immediately resist sexual harassment and report to the management. If such behavior comes from the management staff or if the management does not take the issue seriously, complain to the Union.
- Even if a small incident of sexual harassment occurs in the enterprise, such incidents need to be taken up seriously so that in future no one would dare to repeat such activities.
- Immediate physical and psychological checkup
- Should not look upon "being sexually harassed" as a social stigma

Respondents in the interviews also stressed that women should take self-defense training to handle such situations.

6.2.4 Recommendations to Trade Unions

6.2.4.1 Awareness creation

- Nationwide training and awareness raising campaigns to raise awareness among workers and others regarding equal working rights and offences of sexual harassment and its effects and also undertake advocacy for recognition of sexual harassment as an offence.

6.2.4.2 Increase women's participation in trade unions

- Increase women's participation in the trade union activities, so that women's issue will be taken up by the trade unions seriously.

6.2.4.3 Create pressure and lobby

- Create pressure and lobby to frame laws for sexual harassment so that the harasser can be punished and the victim be compensated.

6.2.4.4 Empower women

- Empower women, help them form women's groups to share experiences, support each other to come together to fight against such sexual offences.

6.2.2.5 Encourage reporting of sexual harassment

- Encourage victims to report sexual harassment, providing them with necessary support system including legal assistance and medical checkups.
- Support a sexually harassed victim and encourage her to fight for her right, be a catalyst to solve the problem as early as possible with suitable compensation.

6.2.2.6 Representative Action

- File representative action on behalf of the victim who is afraid to go for individual action.

6.2.2.7 Monitoring and supervision

- Play a monitoring and supervisory role or that of a watchdog over the organizations. If such offences come to anybody's notice, a request should be made to conduct a proper investigation and help should be provided to do justice to the victim and punish the harasser. At the same time, the management should be provided with suggestions for the creation of a healthy atmosphere at the workplace.

6.2.2.8 Research

- Visit the working places such as carpet and garment industries and study the situations or work environment and advise management and government to improve its different aspects, if necessary.

6.2.5 Recommendation to NGOs

6.2.5.1 Awareness raising

- NGOs need to raise issues like sexual harassment at the national level and play a catalyst's role to create a network of trade unions, government, employers and employees.

6.2.5.2 Lobby to enact the law

- NGOs should lobby with the government and the parliament to enact the law on sexual harassment and lobby for a specific International Labour Convention to deal with the issue.

6.2.5.3 Encourage reporting of sexual harassment under CEDAW or Prepare Alternate Report

- NGOs should encourage the government to include in their Periodical Report of CEDAW, information on sexual harassment, and measures to protect women from sexual harassment and other forms of violence and coercion in the workplace., so that government would be accountable to protect women's rights.
- If the government does not take up this responsibility, the NGOs should prepare an alternative report highlighting the issue and lobby with the CEDAW Committee for appropriate action.

6.2.6 Recommendations to Media

- The media should stop using women as a commodity and use its strong influence in forming public opinion, by playing a role in disseminating information regarding offences of sexual harassment and its effects, and help recognize sexual harassment as a crime, a violation of workers' right to equality and right against exploitation.

6.2.7 Recommendations to Government

6.2.7.1 Enactment of laws

- The government should take effective measures including strong penal sanctions, civil remedies and compensatory provisions to protect women against sexual harassment at the workplace as specified under General Recommendations (Section 6.1 above)

6.2.7.2 Implementation of human rights instruments

- Implementation of General Recommendation No. 19 of CEDAW as a guideline to protect women against violence including sexual harassment in the work place. Sexual harassment at workplace is a gender based discrimination and violence against women; hence it is a violation of a human right for women. Therefore, the State should try to protect human rights of women and gender equality taking accountability under various human rights instruments ratified by Nepal.

6.2.7.3 Partnership with civil societies

- The government should work in close collaboration with NGOs, Trade Unions, Employers' Organizations and the media in order to prevent sexual harassment.
- Consultations should be held with activist groups, law-enforcing agencies, and other concerned groups such as lawyers, trade unions etc in order to revise and draft

appropriate legislation and ensure enforcement of laws.

6.2.7.4 Reporting under CEDAW

- State Parties should include in their Periodical Reports of CEDAW information on sexual harassment, and measures to protect women from sexual harassment and other forms of violence of coercion in the workplace.

6.2.7.5 Research

- States parties should encourage the compilation of statistics and extensive research on the extent, causes and effects of sexual harassment, and on the effectiveness of measures to prevent and deal with sexual harassment.

6.2.7.6 Support system

- Provide support system to the victims and their families.

6.2.7.7 Monitor

- Labour Offices should play an effective role to monitor the employment conditions of workers.

6.2.7.8 Gender sensitive training

- Gender sensitive training for judicial, quasi-judicial bodies (Labor Department, Labor Office etc) and law enforcement officers and other public officials is essential to provide justice to the victims of sexual harassment.
- Effective measures should be taken to overcome prejudicial attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices, which hinder women's equality.

6.2.7.9 Improvement of women's status

- Sexual harassment is a problem resulting from unequal power shares between men and women. Hence, law and practice should uplift status of women, by increasing women's education ratio; providing skill oriented training and increasing employment opportunities for women.

6.2.8 Recommendation to International Organizations

- A specific ILO Convention should be advocated and developed to deal with the issue of sexual harassment.
- The CEDAW Committee should ask reporting countries to provide instances of specific measures taken to deal with sexual harassment.
- International cooperation should be promoted for awareness programmes, to conduct research, formulate laws and provide care and support to the victims.

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Report on Focus Group Discussions (FGD)

1. Focus Group Discussion on Sexual Harassment in Kathmandu

FGD is one of the methodologies adopted to collect information on sexual harassment at the workplace. This discussion took place on 13 January 2000, at FWLD (Thapathali, Kathmandu, Nepal).

Women workers in Carpet and Garment factories were specifically targeted for this programme as the problem of sexual harassment is seen to be quite persistent in these sectors.

Getting first hand information based on the experiences of women who have actually worked in these sectors was the major objective of FGD. With an anticipation that having only women in the group would provide a chance to speak and discuss freely about problems of sexual harassment, no men from the workers' side or the organization were invited.

GEFONT helped to provide ten women workers for this programme from Carpet, Garment and Pasmina factories. These women workers participated with great enthusiasm and eagerness. Some of them in the group were open and discussed about the issue quite frankly whereas some needed little encouragement after which they shared their views without further reluctance. Their valuable inputs helped us to get into depth on issues related to sexual harassment, which prevail, in these sectors.

After sharing the objective of FGD with the participants, their perceptions on sexual harassment were discussed. Perceptions expressed by respondents are as follows:

Perceptions of Sexual Harassment

- Mental torture to women is sexual harassment
- Unnecessary and unwanted comment on body, hair, clothes
- Giving problem of sexual nature, which can cost one's job
- Behaviour of men to dominate women by using them as subjects of pleasure
- Men's perception to view women as a sexual object

When asked their opinions on whether or not sexual harassment prevails in workplaces – the participants overwhelmingly responded with 'yes'.

Nature and Extent

A woman worker said, "I have been working since 2045 and I've seen such behaviours of men at innumerable times. I've sensed men look at me with negative intention, lots of time. Sometimes they even asked me to come with them and tried to give me some money, but I always fought back and have been able to save myself". The other participants agreed with her, and equally felt that workplace is full of men like that.

A participant said that a man would often bring his hand to her chest pretending it happened accidentally. Once she screamed out loudly, which scared him away and he stopped doing that again.

Another participant said that there are few young girls in the factory where she is working. The In-charge and manager would come and say, "Lets send the old ladies home and we stay for the night shift and have fun". The girls unwillingly had to stay back as they were scared that they might lose their job if they say, " No".

It was obvious that existence of sexual harassment at workplace was felt and experienced by most of the participants. However there were few participants who did not face this problem, among them, one said that it has been nine years she has been working, there are fifty/sixty men working in her factory but she has not come across such problems so far, but she knew that such problems exist. A participant working in the same factory implying that only young girls are sexually harassed said, "We all are women above thirty years of age so there is no sexual harassment".

Among the respondents, few had worked as domestic helpers. One worker sadly shared an incident, that she has been working for ten/twelve years and she has faced this problem a lot, men will come and joke with her about her appearance. She also had worked in a house and one day at night the husband in the family came into her bed. She told him to go away or she would tell everybody. The man left quietly and after that she left that house and worked in a factory.

Respondents said sexual harassment may seem like a small problem but it gives them lot of tension, as they are scared to come to work. After coming to work they find it hard to concentrate. They half heartedly perform their duty as their thought would be engaged on - what if the man comes, how am I going to protect myself etc.

Informal Mechanism to solve the problem

A participant said that she is working as an In-charge and one of her responsibilities is to send the girls to different departments according to the requirements. A man in the factory had a bad reputation and girls did not like him. One day he came in front of a girl, touching his private parts and said, "Today something has happened to my thing," The girl was startled and frightened, came running to the In-charge and complained. The In-charge in rage went and grabbed the collar of the man's shirt and dragged him to the toilet and asked him to show his thing. The man got really frightened and asked to be forgiven. She warned him not to repeat the mistake again and to keep himself away from the girls.

The In-charge said that if she is not there, the girls feel insecure and scared. Girls depend on her for their personal security and feel empowered in her presence. She added another incident that workers at the factory are given lifts home in the company's vehicle after nightshift. One such day, a driver who dropped a girl home, pretending to help the girl climb up the wall to get inside the house (the gate was closed), pressed her chest. When the In-charge knew about this, she complained to the management asking him to take action against the driver. The management in turn blamed the girl, saying that they themselves invite such behaviours. Now she drops the girls first and then goes home last.

Surely there are not many women who would play a role of a guardian for the girls. There are plenty of women out there working at their own risks, poor, helpless and harassed.

A participant quite rightly said that being poor and hence without money does not mean without character. "We may be poor but we have values and morals intact in us but at times

we have to neglect our principles and unwillingly tolerate such humiliations because we are compelled to hang on to our jobs, as it is the only means of livelihood”.

Reason for persistence

Discussion on why this problem persists: It was very much felt as being due to power relations between men and women. Women working in this field are unaware, uneducated and helpless, because of this they are unable to deal with the problem, hence men take advantage of them. Girls who are soft, gentle and docile suffer sexual harassment more than a girl who is strong and confident.

No reporting environment

Furthermore, the management at the factories does not like receiving complaints. If someone complains about such problem, the management would react by asking the complainer to leave the job. Workers therefore do not complain.

No support mechanism

Another participant on this subject said that women are tortured by their husbands. Moreover, men would re-marry and the other woman makes their life difficult. In such conditions, women leave their house to escape from all this and get sometime off without beating and swearing. Therefore even if she faces sexual harassment, she does not complain for the fear of losing job.

Also not knowing what is to be done against the problem creates a confused state and women further accept sexual harassment without complaining.

- Women are submissive, passive and do not take a firm stand before men.
- Even if women complain, men are seldom punished; moreover, women will be ridiculed and made fun of.
- A friend of mine hit a man with her shoes and she was fired without trying to find out why she did that.
- If management strictly enforces rules which treat equally both men and women, sexual harassment may not take place.
- “*Madhise*” specially are lecherous, they wink or make suggestive gestures.
- On the comment that men generally make that clothes women wear invites sexual harassment, a participant responded by asking if men have never harmed a girl wearing simple clothes, a *Saree or a Kurta*? Men say such things to cover up their own mistakes.
- Laws should be strongly enforced in these matters.

Reasons for not reporting

- Women do not report of sexual harassment due to the fear of being further humiliated, or that their complaint would not be taken seriously.
- Women are threatened of being fired. They may also not get work elsewhere.
- Reporting is difficult as it is difficult to find supporting proof in case of sexual harassment.
- Fear of revengeful actions discourages women from reporting.

Measures that should be taken by women to stop sexual harassment

- Women need to appear self-confident, reject such offences, educate themselves about their rights, and also educate their children.

Measures Trade Unions should take up:

- Equal opportunity and equal remuneration
- Make women aware of their labour rights
- Create a safe working environment

2. Focus Group Discussion on Sexual Harassment in Pokhara

The second focus group discussion was held on 9 October 2001 in Pokhara. Women workers from different hotels participated in the discussion. GEFONT in Pokhara assisted in inviting the women workers to this meeting.

Objective:

FGD was conducted as part of the research on sexual harassment to understand the perception, extent and nature of the problem and also seek to understand the issues in depth and gather opinions and recommendations on the mechanisms that exist or should exist to address such problems.

Perception on sexual harassment:

After some initial hesitation, the women participants made the following observations:

- Sexual harassment means passing bad comments and giving problems to women.
- It is the physical relationship between two people.
- Rape is sexual harassment.
- It is an act that men commit to dominate women.
- Passing lewd comments, touching and making gestures.

Nature and extent:

A woman said that the most common forms of sexual harassment are verbal and gestural. Some participants felt that physical harassment is also common. They did not think that pornography is widespread.

On being questioned whether they think sexual harassment is persistent, most of the participants said that they had not faced sexual harassment themselves. Some of them said that they know of people working in hotels who have encountered sexual harassment. A few of the women had faced sexual comments that made them uncomfortable and upset. Yet they did not give it much attention, because that would cause more problems since the management would view employees who make complaints as troublesome. It was also said that many victims would be embarrassed to talk about it. Furthermore, big hotels provide facilities of dropping their employees home after night duties, as a precautionary measure. It was felt that sexual harassment is more common in smaller hotels and cabin restaurants.

Effects of sexual harassment:

Most of the participants reported that the most obvious effects are the psychological effects and strain on family relationship. Personal development will also be stunted and work efficiency is reduced. The effect on the organization was also discussed with the women. They said that the effect on the organization may not be as great as on the victim. However, the organization may earn a bad name and people would be afraid to work in such places, resulting in loss of potential skilled workers.

Reporting of the problem:

When asked if they had heard of any cases of sexual harassment being reported, the women said that they had not been witness to any reporting but had heard of such cases being reported. Women are more likely to ignore or downplay such problems, rather than report such cases. Sometimes this stops the harasser but most of the time silence also encourages the harasser. Fear of being stigmatized makes women change their jobs rather than report cases of sexual harassment. With regard to any revengeful actions taken against the victim, the women responded that they had read about such incidents in newspapers but had not witnessed any themselves.

Mechanisms to address the problem:

Women said that there are no formal mechanisms – written or even verbal. However, there are informal mechanisms that are adopted by the management for their safety, such as providing transportation after night shifts, women not sent for room services, and advised to keep doors open while cleaning the rooms to avoid harassment by guests. In massage salons, men and women employees provide services to men and women respectively.

A woman reported an incident in which she had faced harassment from a co-worker. She reported the incident to the supervisor; he was issued a warning and the harassment stopped but the woman was always afraid of reprisals.

When asked what the management should do to safeguard against such cases, the women workers suggested that everybody should be aware of the problems and what actions would be taken if such an offence takes place. All workers should be given a safe working environment by creating rules and regulations with appropriate safety measures.

Measures women should take:

- Women should be disciplined and should not act carefree because men would take advantage of such behaviour and think the women are of loose character.
- Women should not wear clothes that provoke men towards sexual harassment.
- Women should appear confident, bold and unafraid..
- Sexual harassment should be rejected at once by saying “No” or threatening to report to the authority.
- One woman said that no matter what precautions women take, men will continue harassing women sexually and will not be easily stopped.

Society’s attitudes towards the victim:

A few of the participants said that the society’s attitudes towards the victim depend on whether they are educated or aware of the problem. If so, they would be sympathetic, but if they are ignorant and insensitive, they tend to blame the victim. Other participants added that the Nepalese society has always been positive towards men and negative towards women. Hence the victim would be blamed by the society and called bad names.

Proof of sexual harassment:

The most important proof against sexual harassment should be the victim’s complaint, as it is very rare that women would make up stories about sexual harassment. Many participants said that unless the woman is severely victimized, she is likely to keep her problems to herself, since women fear social stigma. A complaint from the victim, the past records of both the harassed and the harasser should be considered as adequate proofs in these cases.

Measures that trade unions should take:

According to women participants, so far the trade unions have only worked on non-controversial issues such as service charges and not on social issues like sexual harassment. They believe that trade unions should also play a role in creating awareness. Some women said that GEFONT has brought awareness programmes, but not specifically for sexual harassment.

Awareness programme:

The women were not aware of any programmes on sexual harassment, but felt very strongly that preventive action is necessary and urgently required. They expressed that they feel confused on what they should do when faced with sexual harassment – either to avoid it or to control such behaviour. If people were made to realize that such behaviour could be punished and if hotels had formal mechanisms for reporting, these problems could be controlled. In addition, the workers would feel safe when the management takes up initiatives to resolve sexual harassment problems.

Conclusion:

At the end of the discussion, the women participants commented that research such as this is seriously needed and that rules and regulations should be formed to address sexual harassment at the workplace. These rules and regulations would make women feel safe to come out and work.

3. Focus Group Discussion on Sexual Harassment in Dharan

This FGD was held in Dharan, Sunsari District, Koshi Zone, on 3 November 2001 with women workers from various factories and industries. When the women were invited to participate in this FGD, they showed reluctance at the beginning and seemed scared to talk. They asked the research team to request permission from their employers, and later even after the permission were secured; they were scared and shy to come and talk. But on the day of the discussion, the women surprised the researchers by participating in large numbers and showing a lot of enthusiasm.

Objective:

FGD was conducted as part of the research on sexual harassment to understand the perception, extent and nature of the problem and also seek to understand the issues in depth and gather opinions and recommendations on the mechanisms that exist or should exist to address such problems.

Perception on sexual harassment:

Most of the women first found it difficult to understand the term “sexual harassment”. After a little discussion among themselves, they said that rape is sexual harassment. Few understood it as “sexually transmitted disease”. However, when given examples, they were able to understand and added few more examples of sexual behaviour such as glaring on the body parts, making vulgar gestures and passing comments with sexual overtones.

Nature and extent of sexual harassment:

When asked if incidents of sexual harassment take place in their factories, at first the women denied, but later when some examples were shared, a few women shared incidents that they had experienced in their factories. One woman related an incident in their factory with 300 workers where men often pass sexual comments to women, but are normally ignored. A particular man, however, was interested in married women much older than him. The woman's husband also worked in the same factory. The man continued harassing the woman. One day when she had gone to the toilet, he waited outside the toilet for her. The woman was aware of this and waited for a long time for him to go away. Finally, she had to come out of the toilet. When she did so, he grabbed her and as she struggled to free herself, a man saw them together and told everybody that they were having a good time. The management, without trying to find out what had actually transpired, fired both the harasser and the harassed. The woman is still unemployed. After this incident, the management has taken precautions and now has separate rooms for men and women to work.

Women normally work in packing and cleaning, away from the machines where men work. There is little interaction between men and women. Yet here are incidents of sexual harassment – lewd gestures and comments.

One woman said that she had even hit a man who made vulgar gestures at her. She believes that such men should be punished there and then to discourage them from indulging in sexual harassment.

A few women said that their work environment is safe for them since their husbands; brothers or relatives work with them. The management dislikes complaints and discourages reporting of such incidents. Though many women present in the FGD had not face the problem of sexual harassment themselves, they confirmed that they know people who have gone through such harassment.

Mechanisms to address the problem:

The women reported that they do not have rules and regulations in their factories, but if there are problems, they can always approach their "Malik" (boss). However, incidents of sexual harassment are not reported because women fear of being accused and blamed for the incidents themselves.

Some of the women were happy that a discussions such as this was now taking place. They would inform their men folk about this in the factories and alert them to the possibility of actions against such behaviour. If men commit such offences, women themselves could take direct action against them and punish them.

Reporting of the problem:

Women participants said that sexual harassment cases remain unreported because women fear for their family and would like to be protected from social stigma. They are often intimidated. Hence, it was felt that it would be very relieving if there would be confidential procedures to handle the reporting and redressing of sexual harassment incidents.

Role of Trade Unions:

Many factories did not have trade unions, as these were small institutions where unions were not felt to be needed. There were bigger factories where trade unions existed. Women are of

the opinion that unions are necessary everywhere for helping the workers to solve their problems and understand social issues like sexual harassment. However, political affiliations often influence trade unions and things are made worse than better between the workers and employers.

Measures women should take to prevent the problem:

Some women said that if women appear bold and daring, men would be afraid to do anything to these women. However, one woman stressed that men would be men and no matter how confident women would appear, men will not leave women alone.

Conclusion:

At the end, women wanted to know what benefits such research would bring to them. It was shared with them that this study would be an important document that would analyze this problem and suggest mechanisms that could be helpful in preventing sexual harassment incidents. Law and policy could be developed based on this information and service rules, house rules and other mechanisms could be framed to deal with the perpetrators of sexual harassment.

The women expressed that they were happy that such good work is being undertaken, so that in future men can be alerted not to commit such offences.

List of Interviewees

Policymakers and Civil Society

1. Hon'ble Urmila Aryal - Member of Parliament, CPN (UML)
2. Hon'ble Sushila Nepal - Member of Parliament, CPN (UML)
3. Hon'ble Kashi Paudel - Member of Parliament, NC
4. Ms. Binda Pandey - Head of department (Education), GEFONT
5. Mr. Wangdi Lama - President, ICONT, ML
6. Mr. Pushkar Acharya - General Secretary, Central Office, Trade Union, Congress
7. Mr. Dev Ratna Tamrakar - Under Secretary, Ministry of Labour
8. Ms. Maduri Rana - Section officer, Labour Department
9. Mr. Puskar Sapkota - Section Officer, Law Reform Commission
10. Mr. Krishna Prasad Bhattra - Labour Officer, Labour Office
11. Mr. Kailash Subedi - Under secretary, Ministry of Water Resources
12. Mr. Phadindra Gautam - Nepal Law Reform Commission
13. Ms. Lila Gartaula - Section officer, Ministry of Law
14. Mr. Jogendra Ghimire - Human Rights Commission
15. Dr. Aruna Uprety - CEDAW Monitoring committee, FWLD
16. Ms. Sharu Joshi Shrestha - Gender training specialist, Mainstreaming Gender Equity Program, UNDP
17. Mr. Ram kumar kamat - Associate Editor, Gorkhapatra
18. Mr. Devakinand Timilsina - Director, INSEC
19. Ms. Shanta Thapalia - President, LACC
20. Ms. Manju Adhikari - Student, Women Study Program, Padma Kanya Campus
21. Mr. Pramod Mehta - Police Superintendent, Police Headquarter
22. Mr. Kumar Chudal - Appellate Public Attorney Office
23. Mr. Bijay Prasad Mishra - Lawyer, Kalyan law firm
24. Ms. Rita Mainali - Lawyer, Dillibazaar
25. Ms. Yamuna Bhattra - Lawyer, Dillibazaar

Employers

1. Mr. Binod Shrestha - Senior Officer, Nepal Garment Association
2. Mr. Chhering Lama - Quality and Labour welfare, subcommittee member, Nepal Carpet Association
3. Mr. Laxman Shrestha - Chief, Surya Carpet
4. Mr. Udav Shrestha - Management, Hotel Malla
5. Mr. Rabindra Pradhan - Personnel Manager, Hotel Summit
6. Mr. Harisaran Maharjan - Manager, Snowline Carpet
7. Mr. Govind Uprety - Manager, Manjushree Garment
8. Mr. Prachanda Tuladhar - Manager, Khansung Carpet
9. Mr. Meghnath Neupane - Deputy General Secretary, FNCCI
10. Mr. M.C. Chaudhary - Manager, Interknit
11. Ms. Sarada Pokharel - Management, Hotel Malla

Trade Unions

1. Ms. Binda Pandey - Head of the department (Education) Gefont
2. Mr. Wangdi Lama - President ICONT, ML
3. Mr. Pushkar Acharya - General Secretary, Central Office Trade Union Congress
4. Mr. Bishnu Rimal - General Secretary GEFONT
5. Mr. Rajendra Bahadur Raut - President, DECONT

List of Details in Tables

Table 2.1 – 2.4 (a)

Perception on Sexual Harassment of Policy makers/Civil Society (Multiple Responses)

PERCEPTION	MALE (N = 11)	WOMEN (N = 12)
Gender Issue	27.27	75
Uninvited	45.45	41.66
Workplace Violence	27.27	0
Rape/Sexual Intercourse	30.76	8.33
Flirt	7.69	0
Mental Diseases	0	8.33

Table 2.1 –2.4 (b)

Perception on Sexual Harassment of Trade Union (Multiple Responses)

PERCEPTION	MALE (N=4)	WOMEN (N=1)
Gender Issues	75	100
Uninvited	75	100
Workplace Violence	50	0
Rape/Sexual Intercourse	25	0

Table 2.1 – 2.4 (c)**Perception on Sexual Harassment of Employees (Multiple Responses)**

PERCEPTION	MALE (N = 7)	WOMEN (N = 13)
Gender Issue	28.57	38.46
Uninvited	28.57	23.07
Workplace Violence	14.28	15.38
Rape/Sexual Intercourse	28.57	23.07
Don't know	0	15.38

Table 2.1 (d)**Perception on Sexual Harassment of Employers (Multiple Responses)**

PERCEPTION	MALE (N = 10)	WOMEN (N = 1)
Gender Issue	60	25
Uninvited	30	75
Workplace Violence	20	25
Rape/Sexual Intercourse	20	25

Table 3.1**Realization of Sexual Harassment by Employees**

NATURE	MALE (N = 7)	WOMEN (N = 13)
Self	0	53.84
Others	57.14	23.08
No	14.29	23.08
Do not Know	28.57	0

Table 3.2**Sector of Employees Who Herself Realize Sexual Harassment**

SECTOR	EMPLOYEES (N = 7)
Hotel	14.28
Carpet	28.58
Garment	14.28
Airlines	28.58
Teachers	14.28

Table 3.3**Nature of Sexual Harassment (Multiple Responses)**

NATURE	POLICY MAKER/CIVIL SOCIETY(N = 25)	EMPLOYEES (N = 20)	EMPLOYERS (N = 11)
Physical	72	80	72.72
Verbal	84	80	81.81
Gesture	40	65	45.45
Pornography	16	0	9.09
Unreasonable Behavior	24	5	9.09

Table 3.4**Extent of Sexual Harassment at different sectors (Multiple Responses)**

SECTOR	POLICY MAKERS/CIVIL SOCIETY (N = 25)
Hotel	28
Restaurant	28
Carpet	68
Garment	72
Private Firm	48
Government and Others	32
Domestic	28

Table 3.5**Extent of Sexual Harassment at Different Levels (Multiple Responses)**

LEVEL	POLICY MAKERS/CIVIL SOCIETY (N = 25)	EMPLOYERS (N = 11)	TRADE UNIONS (5)
Executive level	13.04	14.28	40
Secretariat/Clerical level	52.17	42.85	60
Mass-worker level	78.26	64.28	60
Helper Level	93.91	64.28	40

Table 5.1**Responsibility of Management on Sexual Harassment (Policy Maker/Civil Society)**

RESPONSIBILITY OF MANAGEMENT	PERCENTAGE (N = 25)
Management Responsible	56
Management No-responsible	16
Don't know	28
Total	100

Table 5.2**Nature of Law for Sexual Harassment (Policy Maker/Civil Society)**

NATURE OF LAW	PERCENTAGE (N = 25)
Civil Law	24
Criminal Law	40
Both	28
Don't Know	8
Total	100

Table 5.3**Compensation to Victim on Sexual Harassment (Policy Maker/Civil Society)**

COMPENSATION TO VICTIM	PERCENTAGE (N = 25)
Compensation	72
No Compensation	8
Don't Know	20
Total	100

Labor Force Participation by Industry (1999)

INDUSTRY	MALE	WOMEN	BOTH
Agri., hunting & forestry	3164000	4026000	7190000
Fishing	12000	1000	13000
Mining & quarrying	6000	2000	8000
Manufacturing	366000	186000	533000
Electricity, Gas & Water	24000	2000	26000
Construction	292000	52000	344000
Wholesale, retail & trade	283000	125000	408000
Hotels & restaurants	63000	52000	114000
Transport, storage & comm.	130000	6000	135000
Financial intermediation	17000	2000	19000
Real estate, renting & business	25000	6000	32000
Pub. Adm. & defence	64000	6000	70000
Education	126000	37000	164000
Health & Social Work	26000	7000	34000
Other community, social activities	51000	6000	57000
Private household workers	80000	209000	289000
Extra territorial organization	6000	1000	8000
TOTAL	4736000	4727000	9463000

Source: Nepal Labor Force Survey, 1998/99, CBS/HMG, 1999.

Questionnaires

FORUM FOR WOMEN, LAW AND DEVELOPMENT

This question is developed for the study on 'Sexual Harassment at Workplaces'. The answers given will be analyzed collectively and the confidentiality of the answer and the name will be maintained.

For Employers/Managers

Name

Address

Age

Position

Organization

Marital Status

Date

1. What do you understand by sexual harassment?
2. What type of behavior is regarded as sexual harassment?
3. Have you ever seen or felt the problem of sexual harassment? In your opinion what is the extend of this problem in Nepal?
4. Are any particular jobs/situations more prone to this type of problem?
5. In your opinion how does sexual harassment affect the victim? How do family, society and friends perceive the victim, positive or negative?
6. Are there some indicators for the manager/employer to see if any staff/ under employment is becoming victim of sexual harassment?
7. Does it affect the organization and its productivity? How?
8. Does it have any affect on working relations and social relations within the places of work?

9. What can the women do to prevent this type of behavior within the workplace?
10. Has there been any revenge...
11. What can be the proof for sexual harassment? Should victim's complaint be enough for proof?
12. Are there any standard mechanisms/guidelines to deal with such cases? What precautionary or corrective measures can the management/employer take up regarding this issue?
13. Has there been any awareness raising campaign, training or seminars on this issue, how important do you think is such awareness raising campaigns?
14. Should there be criminal law or civil law? Should there be a law to compensate the victim? What kind of punishment should be there for sexual harassment at workplace?
15. Has there been any role of trade union or central trade union in such women issues?

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For Policy Makers, Civil Society, Trade Union

Name

Address

Age

Position

Organization

Marital Status

Date

1. What do you understand by sexual harassment?
2. What type of behavior is regarded as sexual harassment?
3. Have you ever seen or felt the problem of sexual harassment? In your opinion what is the extend of this problem in Nepal?
4. Are any particular jobs/situations more prone to this type of problem?
5. In your opinion how does sexual harassment affect the victim? How do family, society and friends perceive the victim, positive or negative?
6. Does it affect the organization and its productivity? How ?
7. Does it have any affect on working relations and social relations within the places of work?
8. What can the women do to prevent this type of behavior within the workplace?
9. Has there been any revenge?
10. What can be the proof for sexual harassment? Should victim's complaint be enough for proof?
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For Employees/ Workers

Name

Address

Age

Position

Organization

Marital Status

Date

1. What do you understand by sexual harassment?
2. What type of behavior is regarded as sexual harassment?
3. Have you ever seen or felt the problem of sexual harassment? In your opinion what is the extend of this problem in Nepal?
4. Are any particular jobs/situations more prone to this type of problem?
5. In your opinion how does sexual harassment affect the victim? How do family, society and friends perceive the victim, positive or negative?
6. Does it affect the organization and its productivity? How ?
7. Does it have any affect on working relations and social relations within the places of work?
8. What can the women do to prevent this type of behavior within the workplace?
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14. Are there any standard mechanisms/guidelines to deal with such cases? What precautionary or corrective measures can the management/employer take up regarding this issue?
15. Has there been any role of trade union or central trade union in such women issues? What kind of punishment should be there for sexual harassment at workplace?

For further information, please contact:

International Labour Office in Nepal

P.O.Box : 8971 Kathmandu, Nepal

Telephone: (+977) 1 554 2148, 552 2259, 555 0691

Facsimile : (+977) 1 555 0714

Website : www.ilo.org

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