**Title: Sexual Harassment Laws in Nigeria: Lessons from the United Kingdom**

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**Subject:** Employment. **Other related subjects:** Equality and discrimination. Human rights.

**Keywords:** Sexual harassment; women; workplace; Nigeria; United Kingdom; equality, discrimination.

**Introduction**

Sexual harassment has been recognised as a social problem and has formed a significant subject for feminist research since 1970.[[2]](#footnote-2) It is a widespread social malice that undermines equality at work with a negative impact on the victim’s salary, career progression and working conditions. The term was propounded by Catherine MacKinnon who largely influenced the United States law, the origin of the United Kingdom (UK) sexual harassment law. There is no agreed definition of sexual harassment, and perception varies in different contexts and is best defined by the legal consciousness of the society in which it occurs.[[3]](#footnote-3) Therefore, the definition and perception of sexual harassment can vary from one society to the other and will be interpreted and viewed differently across different societies.

Farley defined sexual harassment as an “*unsolicited nonreciprocal male behaviour that asserts a woman’s sex role over her function as a worker.”*[[4]](#footnote-4) Farley’s definition portrays sexual harassment in a stereotypical manner and amplifies the view that a woman is identified first as a female in the workplace and not as a worker with an expectation that her ‘feminine functions’ precede any other function in the workplace. According to McDonald, sexual harassment is an abusive or counter-productive behaviour which has hierarchical power at its core.[[5]](#footnote-5) Unlike other abusive behaviours such as bullying, sexual harassment has a sexual undertone and can be understood as a psychological construct appraised from the claimant’s point of view.

Mackinnon defined sexual harassment as “*the unwanted imposition of sexual requirements in the context of a relationship of unequal power”[[6]](#footnote-6).* This definition suggests that there is a relationship between the harasser and the victim normally in the context of a work relationship where the harasser is usually the employer who uses his organisational power to sexually extort his victim who is his female employee.[[7]](#footnote-7) Mackinnon divided sexual harassment into ‘*quid pro quo*’ which literally means ‘this for that’; and sexual harassment as a ‘*condition of work*’. She described *quid pro quo* as involving sexual compliance in exchange for an employment opportunity where the employer exercises his power to compel the female employee to give sexual favours in exchange for the employment.[[8]](#footnote-8) Scalia argues that it is also sexual harassment where a woman submits to the employer’s sexual advances and gains an employment benefit.[[9]](#footnote-9) The second type as a condition of work rarely involves outright sexual demands but involves making a woman’s work conditions unbearable in form of touching, sexual jokes to humiliate or degrade her and she is harassed simply because she is a woman without any benefit given or denied in respect of her job.[[10]](#footnote-10) The basis for this type of discrimination is that the harasser has made work conditions unbearable for the employee because of their sex.[[11]](#footnote-11)

The United Nations (UN) has recognised sexual harassment as a form of sex discrimination and gender-based violence and encourage governments to legislate and implement measures to prevent it. Article 2(b) of the UN Declaration on the Elimination of Violence against Women defines violence against women to include sexual harassment at work, educational institutions and elsewhere.[[12]](#footnote-12) The International Labour Organisation (ILO) has adopted the Violence and Harassment Convention No. 190 and its Recommendation No. 206 on 10th of June, 2019. The ILO Committee recognised that violence and harassment constitute human rights violation or abuse and is a threat to equal opportunities and decent work; and that everyone has a right to work free of violence and harassment, including gender-based violence and harassment.[[13]](#footnote-13) It also recognised that sexual harassment is a form of gender-based violence which disproportionately affect women and girls and that an inclusive, integrated and gender responsive approach should be used to tackle it.

Nigeria, a Member State of ILO does not have a federal law on sexual harassment which defines and prohibits it at work. The key legislation on employment in Nigeria is the Labour Act 1990 which has been found to be inadequate, weak and outdated in addressing current issues in employment such as workplace discrimination and sexual harassment.[[14]](#footnote-14) Therefore, there is no legal protection or remedies for individuals when they become victims of sexual harassment. Whereas UK a Member State of ILO, has a more detailed sexual harassment laws which defines and prohibits it.

This paper will examine the legal framework on sexual harassment at work in Nigeria and the UK with the aim of identifying the inadequacies of the Nigerian provisions and a view to learn lessons from the UK legal framework. International provisions on sexual harassment will also be examined with a view to confirming whether both countries comply with their obligations under international treaties and conventions. But first, a review of the theories and perception of sexual harassment will be carried to understand why it exists.

***Theories of Sexual Harassment***

Sexual harassment is a social problem[[15]](#footnote-15) which has become institutionalised because of the control men have over women’s survival in the home, in schools and at work.[[16]](#footnote-16) Women are vulnerable to sexual harassment at work because they need their income for survival, and having few alternatives due to society’s male dominated structure have to tolerate sexual advances from their employers, managers, superiors and colleagues who are mostly men in positions of power to hire or fire them.[[17]](#footnote-17) In addition to this, women often fail to recognise sexual harassment as an abuse because society accepts that it is in a man’s nature to make unsolicited sexual advances towards women while women on their part (mostly in less developed countries) see it as a taboo to confront these ill-natured and unsolicited advances due to the fact that complaints are more often than not addressed by punitive actions against them by their employer in a position of authority.[[18]](#footnote-18)

Many feminist theorists have given various reasons for sexual harassment in the workplace. A leading theory is one postulated by Gutek termed “the sex-role spill over” which she defined as the carryover of irrelevant or inappropriate gender-based roles into work settings.[[19]](#footnote-19) She argues that this occurs when the sex ratio is skewed leading to male or female dominated work environments where people enact gender roles learned from childhood which affect their interaction with others in ways that are compatible with their learned roles.[[20]](#footnote-20) The work environment assumes the sex role of the majority and where this is male dominated, women will be viewed as women first before workers and would be expected to carry over their feminine attributes into the work environment such as serve as helpers in the organisations without the possibility of getting to the managerial positions.[[21]](#footnote-21) It is accepted that sexual harassment is more likely to occur in these circumstances where men are dominant because they would exhibit their sex-role of sex seeking and sexual aggression using their workplace as an opportunity to interact with women in a sexual manner.[[22]](#footnote-22)

Other theorists believe that sexual harassment occurs due to power imbalance at work and in society.[[23]](#footnote-23) There is a presumption that men hold the highest power in the organisations and they use these powers to harass their female subordinates.[[24]](#footnote-24) Benson and Thomas believe that experiences of sexual harassment of women in organisations often have elements of unequal power between the sexes.[[25]](#footnote-25) Since women started participating in the labour market with male employers and supervisors, there is an increased contact between employers and female employees. In this light, Benson and Thomas assert that men’s authority over female subordinates will coincide with a male’s sexual attention towards her which will bring about sexual harassment in these organisations.[[26]](#footnote-26) This theory aligns with MacKinnon’s view that sexual harassment derives from power and masculinity and that it is the mechanism through which male dominance and women subordination is maintained. Mackinnon was of the view that sexual harassment has nothing to do with attraction but is as a result of men’s organisational power in the workplace, leading the employer to exercise his power over a woman’s economic survival and thus enforcing his sexual authority as a man to subject the woman to sexual harassment.

However, Schultz believe that sexual harassment occurs because of the social structure of organisations whereby roles are structured to give the impression of masculine attributes as a requirement hence facilitating men to use their masculinity to undermine their female colleagues since they believe they fit better into these roles.[[27]](#footnote-27) She also points out that making a woman the object of sexual attention frequently acts as a tool to undermine their confidence as competent workers.[[28]](#footnote-28) This is affirmed by Farley that sexual harassment is a tool for men to dominate women and put them where they believe is their rightful place leading to job segregation by sex categorisation thereby putting women in low ranking and dead end jobs. Mackinnon confirms these views arguing that most employers would rather not employ female applicants but that they should be placed in their rightful positions which is outside the organisation as a result of sex role stereotypes which is an intrinsic part of the wider society.[[29]](#footnote-29)

McLaughlin et al believe that the power-threat model is at the root of sexual harassment.[[30]](#footnote-30) They argue that women in power are more likely to face sexual harassment and discrimination more than other women. It is considered that women in authority threaten men’s superiority and challenge their dominant positions. These women are then subjected to sexual harassment and discrimination in order to undermine their position. Berdahl et al supporting the view that power-threat model is at the root of sexual harassment studied sexual harassment of men in the workplace.[[31]](#footnote-31) They maintain that sexual harassment is about power and having the ability to influence and control other people in order to resolve conflict to one’s advantage. They argue that sexual harassment of women by men has plagued workplaces for centuries because men have always been at the helm of affairs. But as more women have entered into the labour market and have gained more power in the organisations, they are in a position to sexually harass men and they are found to do so. But this is rare because it is uncommon to find male employees with female supervisors and women lack the socio-historical and physical power held by male supervisors over female subordinates which makes it rare to find sexual harassment of men by women in the workplace.[[32]](#footnote-32) For women who make it to the positions of supervisors end up being harassed by their male subordinates because of men’s social power which overrides the organisational power of the female supervisor. Moreover, it is against societal norms and assigned gender roles for women or another man to aggressively pursue a sexual relationship with men.[[33]](#footnote-33)

***Perception of Sexual Harassment***

Men and women experience sexual harassment differently and it may be perceived differently in different locations. Berdahl et al found that women experience sexual harassment differently from men because sexual harassment of women takes place in a society of pervasive male sexual violence where male physical power surpasses that of the woman.[[34]](#footnote-34) Social and physical powers are invoked when women receive unwanted sexual attention, powers that are not involved in the sexual pursuit of men by women. Where women are found to harass men, men do not feel the same sense of dread women experience but instead enjoy it because they believe they have the power to control the situation or stop or change it.[[35]](#footnote-35) Power therefore is the difference between a behaviour which a man or a woman would perceive as sexual harassment. This lack of power is what makes women experience high levels of anxiety and threat which men do not experience.

In their study, Berdahl et al found that more of the men who reported harassment were harassed by other men and this aligns with the power analysis model because men have more organisational, societal and physical power with which to harass other men than women do. They expressed that unwanted sexual attention received by men in the workplace merely challenges gender roles and undermines a man’s sense of masculinity and is not threatening as it would be for a woman if the situation was reversed. They found that behaviours which people generally describe as harassing are behaviours which threaten their ability to have control over the situation, and the extent to which a victim finds a situation threatening depends on the power differential between the harasser and the victim. They suggested based on this premise that similar harassing behaviours would have different meanings for men and women because of power differentials between the two genders.

Ladebo examines the socio-cultural model presented by Dey, Korn and Sax which views sexual harassment as the enforcement of gender inequality role within the social system, and he believes that in patriarchal systems it is used as a tool of domination to keep women subordinated to men.[[36]](#footnote-36) According to Ige and Adeleke, any society organised along the patriarchal system tends to condone acts and practices that are discriminatory to women.[[37]](#footnote-37) Johnson is of the view that cultural factors play a major role in contributing to sexual harassment in traditional societies.[[38]](#footnote-38) In patriarchal societies like Nigeria, male sexual prowess and sexual virility are encouraged and men are urged to pursue their sexual interest in a woman in an aggressive manner while the same behaviour in women is stigmatized and devalued. Women are therefore conditioned to accept men’s aggressiveness as normal.[[39]](#footnote-39) Ige and Adeleke believe that in patriarchal societies, sexual harassment is used as an instrument to intimidate women and preserve men’s traditional dominance over women.

In addition to gender, Zimbroff believes that culture is another factor that contributes to perception of sexual harassment.[[40]](#footnote-40) She considers that defining sexual harassment in a multicultural society can become complex and controversial because values and beliefs are culturally derived, and they act as norms that determine the appropriateness of certain behaviours and feelings. Different people from different cultural backgrounds are expected to perceive various workplace conduct differently and respond to them differently. As sexual harassment is defined as an unwelcomed behaviour, cultural factors and differences will influence what kinds of conduct and the extent the victim will find such conduct unwelcomed as well as how the victim will respond to such conduct or demonstrate its unacceptability.[[41]](#footnote-41) Zimbroff believes that in patriarchal and hierarchical societies where women are subordinate to men and where the culture encourages men to make sexual advances towards women, sexual advances in such societies would not be viewed as sexual harassment but instead it would be looked upon as a normal innocent romantic gesture. In other words, individuals from patriarchal societies will find sexual advances as less harmful, non-abusive and non-discriminatory.

Okongwu found in her study that there is a low perception of sexual harassment at work in Nigeria.[[42]](#footnote-42) She argues that culture and the patriarchal system in Nigeria contributes to the low perception found amongst workers. She believes that the Nigerian cultural practice that encourages male sexual virility and aggressive pursuit of sexual interest in women can alter a woman’s perception of what constitutes sexual harassment because such behaviours will be considered normal. This will also alter what society perceives as sexual harassment, how it will define it and behaviours it will consider as sexual harassment. She is also of the view that lack of laws prohibiting sexual harassment in Nigeria has also contributed to the low perception found. She argues that since there are no laws defining behaviours which constitute sexual harassment, women may not recognise such offensive behaviours as sexual harassment because they lack terms to describe it even where they have to endure it and suffer consequences such as psychological trauma, physical and mental ill health. This aligns with Gutek who believes that if there is no clear definition given as to what amounts to sexual harassment, it cannot be differentiated from other legal behaviours.[[43]](#footnote-43) Okongwu also found that women in Nigeria are willing to deal with sexual harassment when it occurs and would go as far as the courts to defend their rights when they have been sexually harassed. Extensive laws are therefore needed in Nigeria to define what constitutes sexual harassment, prohibit it and specify appropriate remedies.

**Legal Framework on Sexual Harassment**

This section will set out some of the available international and regional instruments, and national laws relevant to sexual harassment in Nigeria and the UK. The international community sees sexual harassment in the workplace as a widespread phenomenon affecting mainly women which undermines their equality at work. Many national and regional instruments have set minimum standards for national governments to adopt in order to prohibit and eliminate sexual harassment.

***International Laws***

The UN General Assembly recognises sexual harassment as a form of violence against women and encourages governments to develop penal, civil, labour and administrative sanctions in domestic law to punish and redress the wrongs against women.[[44]](#footnote-44) The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) does not specifically prohibit sexual harassment in its provisions but encourages State Parties to implement measures to eliminate all forms of discrimination against women in all fields and areas of public and social life. The CEDAW Committee adopted the General Recommendation No.19 on Violence against women (CEDAW No.19) in 1992 and made suggestions that State Parties should review their laws and policies to have regard to gender-specific violence women face at work such as sexual harassment as an impediment to equality in employment.[[45]](#footnote-45) The Beijing Declaration and Platform for Action recognises sexual harassment and intimidation at work, educational institution and elsewhere as a form of gender-based violence against women, and calls on governments to enact and enforce laws and for employers to implement preventive measures to eliminate it.[[46]](#footnote-46)

The ILO adopted Convention No. 111 on Discrimination (Employment and Occupation) Convention (ILO No.111) in 1958 to eliminate discrimination that exists in the workplace. The Convention does not specifically address sexual harassment, though the Committee of Experts on the Application of Conventions and Recommendations maintain that the Convention can be used to address sexual harassment.[[47]](#footnote-47) The ILO recently adopted the Violence and Harassment Convention No. 190 and its Recommendation No. 206 in its Centenary International Labour Conference 2019 which came into force on the 25th of June 2021 and is legally binding on the states that have adopted it.[[48]](#footnote-48) This historic Convention is the first time violence and harassment in the world of work is covered in international labour standards. The Convention acknowledges that violence and harassment affect women and girls disproportionately and, in a bid to end it that the underlying causes of violence and harassment including gender stereotypes, multiple and intersecting forms of discrimination and unequal gender-power relations need to be tackled.

The Convention covers a range of abusive behaviours and requires Member States to define and prohibit violence and sexual harassment at work within their national laws. It extends protection to everyone at work irrespective of their contractual status and Member States are encouraged to use an inclusive, integrated and gender-responsive approach for the prevention of violence at work.[[49]](#footnote-49) Employers are also required to regulate against risks involving third parties.[[50]](#footnote-50) Governments are required to adopt laws and regulations that require employers to take appropriate steps to prevent violence and harassment as well as identify hazards and assess the risks of violence and harassment occurring and take measures to prevent and control it.[[51]](#footnote-51) Governments are also required to recognise the effects of domestic violence and to mitigate its impact in the world of work.[[52]](#footnote-52) These issues can be addressed in employment laws, health and occupational laws or criminal laws, whichever governments deem appropriate.

***Regional Laws***

***The African Charter and the Maputo Protocol***

The African Charter on Human and People’s Rights (the Charter) was enacted in 1981 to protect the human rights of people in Africa. The Charter has been domesticated in Nigeria through the African Charter on Human and People’s Rights (Ratification and Enforcement) Act 1983. The Charter provides for the protection of the dignity of human beings and prohibits the exploitation and degradation of man to cruel, inhuman and degrading punishment or treatment.[[53]](#footnote-53) Due to the inadequacies of the Charter to address the discriminatory issues African women encounter, it made provisions for the adoption of Protocols.[[54]](#footnote-54) The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa popularly known as the Maputo Protocol was adopted in June 1995 to supplement the Charter. The Protocol seeks to address the issues women encounter and ensure their rights are protected so they can enjoy all their human rights. The protocol covers many issues facing African women including but not limited to discrimination and sexual harassment. State Parties are required to take appropriate measures to eliminate all forms of discrimination against women and girls and to guarantee them equal opportunities in education and training.[[55]](#footnote-55) It also requires parties to protect women and girls from all forms of abuse including sexual harassment in educational institutions and the workplace.

***European Union Law***

The Charter of Fundamental Rights of the European Union (EU Charter) recognises that human dignity is inviolable and must be respected.[[56]](#footnote-56) It enshrines the right to be free from discrimination on the grounds of sex and requires that equality between men and women must be ensured in all areas including employment, work and pay. Sexual harassment was not specifically provided for under the EU Charter but was dealt with through a dignity-harm approach that suggests that sexual harassment is a form of sex discrimination that affects and violates the dignity of men and women at work.[[57]](#footnote-57) Sexual harassment and harassment were made autonomous concepts in Directive 2002/73[[58]](#footnote-58) which was the first directive to define the terms and acknowledges it as a form of gender discrimination.[[59]](#footnote-59) Sexual harassment was also defined in Directive 2004/113 and was also acknowledged as a form of gender discrimination.[[60]](#footnote-60)

The right to equality was further emphasised in Directive/2006/54 which proclaims equality between men and women as one of the fundamental aims of the Community and imposes a positive obligations on Member States to promote equality as well as ensure the principles of equal opportunity and treatment in employment and occupation.[[61]](#footnote-61) The Directive emphasises that sexual harassment is discrimination on the grounds of sex and should be prohibited as it is contrary to equal treatment between men and women. The Directive defines sexual harassment and also defines discrimination to include harassment and sexual harassment[[62]](#footnote-62) and it encourages Member States to adopt measures to ensure full equality between men and women and for employers to take preventive measures against harassment and sexual harassment in the workplace. [[63]](#footnote-63)

**The Legal Framework in Nigeria**

In Nigeria, sexual harassment is treated as personal problems between the employer and the employee which they are expected to resolve between themselves.[[64]](#footnote-64) There is currently no federal law in force against sexual harassment. The Labour Act 1990 is the main piece of legislation that regulates employment in Nigeria and provides for women’s rights at work in the areas of maternity, night work and underground work. [[65]](#footnote-65) There are currently no protections against workplace discrimination and sexual harassment or provisions addressing current issues in employment such as equal pay or equal opportunities between men and women at work.[[66]](#footnote-66) These inadequacies called for a review of the Labour Act which brought about a proposed review in form of the Labour Standards Bill 2008.[[67]](#footnote-67) The Bill proposed to introduce a lot of novel changes to the Labour Act to bring it up to the minimum labour standards proposed by the ILO. The Bill proposed to criminalise sexual harassment with a 10-year prison sentence. The Bill was criticised because it aimed to fine perpetrators but does not compensate victims for injury they have suffered or for lost wages or employment opportunities.[[68]](#footnote-68) The Bill is yet to be passed into law twelve years since it was proposed.

The Sexual Offences Act Bill 2013 was introduced to make provisions for sexual offences, prevention and protection of persons from harm and unlawful sexual acts. The Bill contains a section on sexual harassment which seeks to protect against sexual harassment in the office or school and holds a person in a position of authority or in public office guilty of an offence of sexual harassment if they persistently make sexual advances or requests which they know or ought to know are unwelcomed.[[69]](#footnote-69) The bill has been passed by the National Assembly, but has not yet been signed into law.[[70]](#footnote-70)

Without laws criminalising or penalising sexual harassment, it has become a growing menace in the Nigerian workplace and educational institutions.[[71]](#footnote-71) In response to the growing cases in Nigerian universities and the recent accusation of a student of sexual harassment by her professor, the National Assembly in July 2020 passed the Sexual Harassment Bill proposed in 2016 and has sent it to the House of Representatives for consideration. The Bill defines what constitutes sexual harassment and proposes to prohibit sexual harassment in Tertiary Institutions and protect students from becoming victims at the hands of their lecturers or university administrators. It prescribes a jail term for offenders for different offences and it excludes mutual consent as a defence and the need to prove intent of the accused.[[72]](#footnote-72) Though welcomed, the law has been criticised for its limited scope as it only protects students in tertiary institutions and protection is not extended to other areas where sexual harassment is likely to occur[[73]](#footnote-73) such as to students in secondary schools, prospective students in universities and their parents, workplaces, co-workers, students against students and to third parties.[[74]](#footnote-74)

In view of lack of adequate laws to protect against sexual harassment, some authors have suggested the use of existing laws to address incidents of sexual harassment in the workplace such as the Compensation Act 2010 which makes provision for compensation for mental stress as a result of sudden and traumatic event caused to employees in the course of their employment.[[75]](#footnote-75) Enaikele et al is of the view that sexual harassment can come under the purview of section 34 of the Constitution of the Federal Republic of Nigeria 1999 which provides that a person should not be subjected to torture, or inhuman or degrading treatment. Eghrefuvwomr and Folarin believe that since there are no specific provisions in the Labour Act against discrimination and sexual harassment, that protection provided in the Constitution is greatly reduced when it is made a constitutional matter.

To cure this defect, the Constitution was amended in the form of the Third Alteration Act[[76]](#footnote-76) giving the National Industrial Court (NIC) the jurisdiction to deal with issues of discrimination, equal pay, sexual harassment, unfair labour practices, application of international labour standards etc.[[77]](#footnote-77) Sections 254 C (2) gives the NIC the power to deal with any matter connected with or pertaining to the application of any ratified international convention, treaty or protocol relating to employment and the workplace. The court can rely on the provisions of international conventions as a guide to interpret victims’ rights but cannot directly apply any of the conventions in a case before it. This is because by virtue of section 12 of the 1999 Constitution, treaties which have been ratified will not be applicable unless a corresponding law is made by the National Assembly to give effect to that treaty. This was confirmed by the Court of Appeal in *MHWUN v Minister of Health and Productivity & ors[[78]](#footnote-78)* that the provisions of an International Labour Convention cannot be invoked and applied by a Nigerian court until it has been re-enacted by an Act of the National Assembly. The National Industrial Court in the case of *Ejieke Maduka v Microsoft & Ors*[[79]](#footnote-79) used the CEDAW No.19 and ILO No.111 as a guide to interpret the fundamental rights of the victim as guaranteed in the Constitution and the African Charter Ratification Act which embody the concept of freedom from discrimination and the right to dignity. Referring to both Conventions and the employers’ anti-bullying and anti-harassment policies, the court found that the victim was sexually harassed because she was a woman and the sexual activities initiated by the victim’s manager would not have happened if not for her sex. The court further held the employers vicariously liable for the sexual harassment by failing in their duty of care to ensure that the victim’s fundamental rights to freedom from discrimination and degrading treatment was not violated. The court also declared that the incessantly handling of the victim’s waist against her will amounted to assault and trespass.

As a guide to claimants’ counsels, the NIC included in its Civil Procedure Rules the definition of sexual harassment as “an unwanted, unpleasant, offensive or threatening conduct of a sexual nature distinguished from sexual attention that is welcome and mutual” and goes further describe what amounts to sexual harassment.[[80]](#footnote-80)

The NIC Civil Procedure Rule is only a guide and not the law, and there is no national law that protects people from sexual harassment in Nigeria. The Criminal Law of Lagos State 2011 makes provision for sexual harassment in section 264 of the Law where it protects against harassment in schools, universities and workplace.[[81]](#footnote-81) This law however is only applicable in Lagos State and not in any other state in Nigeria and therefore is limited in scope.

**The Legal Framework in the UK**

In the UK, sexual harassment is recognised as sex discrimination and provisions are made for the protection of victims in section 26 of the Equality Act 2010*.* The section defines sexual harassment as an unwanted conduct of a sexual nature which has the purpose or effect of violating the victim’s dignity or create an intimidating, hostile, degrading or offensive environment. It is inconsequential that the worker has put up with the harassment for a long period of time because there could be many reasons why a person could put up with harassment even though the conduct was unwanted[[82]](#footnote-82) which was confirmed in *Munchkins Restaurant v Karmazyn.[[83]](#footnote-83)*

An essential characteristic of the UK sexual harassment law is that it is a word or conduct which are unwelcomed to the victim and it is up to the victim to decide what they find offensive. This was the decision in *Reed and Bull Information Systems Ltd v Stedman[[84]](#footnote-84)* that it was up to the recipient of the words or conduct to decide their level of acceptance and what they find offensive. If the conduct is not expressly invited, it could be regarded as unwelcomed and a woman does not have to make it clear in advance that she wishes not to be touched in a sexual manner. Lewis is of the opinion that where the harasser had no intention of causing offence and the harassment was unintentional, the conduct would not necessarily be unlawful if the worker found it offensive. In determining this, the court has to take into consideration the circumstances of the case and if it was reasonable for the conduct to have that effect.[[85]](#footnote-85) If the conduct can have the effect and the worker genuinely felt that her dignity was violated, then the conduct would be unlawful. But if the worker was overly sensitive and a reasonable worker would not have felt that way, then the court would hold that the conduct was not unlawful. However, if it can be shown that the harasser’s intention was to create an intimidating and hostile environment, then there will be no need to show that the worker genuinely felt violated.[[86]](#footnote-86) The conduct could also be unlawful where the worker asked the harasser to stop and he did not or where the worker had never asked the harasser to stop. If the harasser continues or intensifies the harassment, the worker could have a claim for victimisation and further harassment.[[87]](#footnote-87)

Another important factor in establishing a case is that the act causes an adverse environment which violates the worker’s dignity and the act does not have to be related to the worker’s protected characteristic but could be remarks about other people or of false perception about the worker.[[88]](#footnote-88) In *Warby v Wunda Group plc[[89]](#footnote-89)* it was held that a court which decides a claim of an unlawful harassment must not look at the alleged act in isolation of all other acts but must decide what the context of the act complained of is and contextualise what has taken place. However, a court is entitled to take an alleged act as an act made in a particular context and that it does not stand on its own. It was held in *Reed and Bull Information Systems Ltd v Stedman* that the question whether or not a behaviour was unacceptable is a subjective one and that the court should not use an objective test to determine if the claimant has suffered a detriment.

The Act also provides for a third type of sexual harassment in *section 3(c)* which is where a person treats another person less favourably because the other has either rejected or submitted to a conduct of a sexual nature or conduct that is related to sex which has the effect of creating a humiliating or offensive environment. Therefore, any retaliatory act or adverse treatment of a victim for either submitting to or rejecting sexual harassment will be considered an act of sexual harassment. A man or a woman who was not approached for sexual favours to gain an advantage could use of these provisions to establish a claim for hostile environment because the managers are passing on a message that women are viewed as sexual playthings.[[90]](#footnote-90)

The Act made provisions for third party harassment in section 40 where an employer could be held liable if a third party other than the employer or his employee harassed the worker in the course of his employment and the employer failed to take steps which are reasonable to put an end to such harassment. However, this provision would not apply unless the worker had informed the employer on at least two separate occasions and it would not matter that it was a different person on each occasion.[[91]](#footnote-91) In *Conteh v Parking Partners Ltd[[92]](#footnote-92)*, the EAT stated that if a third party created a hostile environment and the actions of an employer or inaction as the case maybe, made it worse, that both parties could be responsible for the harassment. The section on third party harassment has now been repealed because the government argued that it was an unnecessary burden on businesses, and it served no practical purpose. This position may be in breach of the ILO No.190 which requires governments to take account of violence and harassment involving third parties when adopting approaches to eliminate harassment.

However, an employee may still have a claim for third party harassment if they rely directly on the European Directive.[[93]](#footnote-93) This was the ruling in *Sheffield City Council v Norouzi[[94]](#footnote-94)* where the EAT upheld the tribunal’s decision that the claimant could rely directly on the Race Directive to hold the council liable for failing to protect him from third party harassment when the council had been put on notice of the problem. However, this applies to the public sector and employees in the private sector cannot rely on this ruling. Private sector employees may be protected under the Act if they bring a direct discrimination claim under section 13 of the Equality Act. If an employer fails to act when a third party harasses a worker, the worker could claim direct discrimination because the act resulted in a less favourably treatment because of a protected characteristic when compared to other workers. The worker could also claim harassment on the basis of the employer’s inaction which created an intimidating and an offensive environment for the worker because of her protected characteristics. The worker can also be protected by using the provisions of the Protection from Harassment Act 1997 (PHA).

The PHA although not designed for employment can be applied in employment situations and it provides that *“a person must not pursue a course of conduct—(a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.”* A conduct could be viewed as harassment under the PHA if the person finds it alarming and it causes him distress or if the person on two separate occasions feared that violence would be used against him. The conduct must be on at least two occasions carried out by the same person or if different people there must be a link for example one must be acting under the instructions of the other.[[95]](#footnote-95) The conduct will not be found to be unlawful if it was reasonable in the particular circumstance. The concept of vicarious liability would apply under the PHA and in the case of a third party, the worker could hold the third party’s employer vicariously liable for the harassment. Breach of section 1 and 4 of the PHA is a criminal offence and a worker can bring a civil liability claim for damages for loss and anxiety.[[96]](#footnote-96) The use of the PHA in employment cases is useful because it extends the claim to loss and anxiety and a worker does not have to prove that the conduct was because of a protected characteristic and it can be used when the act is not in the course of employment and a worker can seek an injunction to restrain the harasser from continuing with the act.[[97]](#footnote-97)

In *Majrowski v Guy’s and St. Thomas’s NHS Trust*, the appellant NHS trust appealed against the decision of the Court of Appeal that it was vicariously liable in damages to the respondent under the PHA for harassment committed by one of its employees against the respondent. The respondent alleged that his manager had harassed, bullied and intimated him over a period of years while acting in the course of her employment. An investigation conducted by the Trust found that the manager had indeed harassed him and offered the manager a chance to resign. The respondent claimed against the Trust for damages based on vicarious liability but the Trust submitted that the Act was not aimed at the workplace and that the award of damages under the Act was discretionary and therefore harassment could not be equated with a common law tort. Dismissing the appeal, the House of Lords held that the principle of vicarious liability was not confined to common law torts but was applicable to equitable wrongs and breaches of statutory obligation unless the statute expressly stated otherwise.

An employer therefore will be held vicariously liable for the harassment of his employee if the employee harasses his victim in the course of his employment because the employer will be deemed to have authorised or ratified the acts. Vicarious liability will also be imposed on cases where the employer did not expressly authorise nor ratify the act based on the test laid down by the House of Lords in *Lister v Hesley Ltd[[98]](#footnote-98)* that the employee’s tort is so closely connected to his employment that it would be fair and just to hold the employer vicariously liable.[[99]](#footnote-99) Section 109 of the Equality Act clarifies the common law principle of vicarious liability and widens it in employment cases to include acts of employees carried out without the knowledge or approval of the employer. This is in line with Waite LJ’s judgement in *Jones v Tower Boot Co Ltd[[100]](#footnote-100)* where judicial interpretation widened the scope of the application of vicarious liability by interpreting the meaning of “in the course of his employment”. The Court held that an employer is vicariously liable for the acts of his employees in the course of their employment regardless of restrictions of the common law principles of vicarious liability whether or not it was done with the knowledge or approval of the employer.[[101]](#footnote-101) Waite LJ stated that widening the scope will help deter racial or sexual harassment in employment as this will encourage employers to prevent such harassment because the Act gives him a defence if he has taken reasonable measures to prevent it from occurring. *Section 110* of the Act goes further to make the employee personally liable as well as the employer unless he can show that he relied on the statement of another that the act was not a contravention of the Act or that it was reasonable for him to rely on the statement.

Since the decision in *Tower Boot*, judicial interpretation has further widened the scope of “in the course of his employment” to include acts done outside of the workplace. In *Chief Constable Lincolnshire Police v Stubbs and others[[102]](#footnote-102)* the tribunal agreed that acts which occurred outside the workplace during a social event connected with the work were extensions of the workplace and come within the interpretation of “in the course of his employment”. They were of the view that the harassment could not have happened were it not for the applicant’s work; and there was no reason to restrict the interpretation to only what goes on in the workplace. However, in *Waters v Commissioner of Police of the Metropolis[[103]](#footnote-103),* the court held that an employer would not be vicariously liable where the alleged serious sexual assault was not committed in ‘the course of employment’. At the time of the offence, both the male and female officers were off duty, and the male officer was visiting the female officer in her room at the police accommodation. The court was of the view that in the circumstances the parties were in no different position than they would have been if they were mere social acquaintances with no work connection.

**Policy Evaluation**

The UK and Nigeria are both dualist countries and have to enact enabling laws for International Conventions, treaties and protocols to be applicable. The UK government has made a provision in the *Equality Act 2010* which recognizes sexual harassment and prohibits its occurrence at work. An important trait of this law is that it is words or conducts which are unwelcomed to the recipient.[[104]](#footnote-104) Such words or conduct could be described as unwelcomed if the woman did not expressly invite it and she does not have to make it clear in advance to the perpetrator that the words or conduct is unwelcomed. The Employment Appeal Tribunal (EAT) in *Reed and Bull Information Systems Ltd v Stedman* expressed the view that the fact that a tribunal does not find an act unacceptable is not a basis for rejecting a claim but that the tribunal should be careful in breaking up a case into a series of specific incidents which on its face would appear innocent but when taken as a whole would be found to be unacceptable. This is because conducts which on their own would not be distasteful to a woman could become unacceptable once she has turned down an unwelcomed sexual interest from a man. The EAT expressed that the victim does not have to make a public fuss about her rejection of the word or conduct for the perpetrator to understand that such words or conduct is unwanted, but it will suffice if a reasonable person understood her reaction to amount to a rejection of the word or conduct. Conduct can also include inaction which was the decision in *Conteh v Parking Partners Ltd* where the EAT agreed that if the conduct complained of is a failure to act (inaction), the victim has to show that the action was required and failure to do so contributed to the degrading and humiliating environment. The EAT also agreed that a single act of sexual harassment is enough to amount to a detriment for the purposes of the Act provided that it was sufficiently serious. The EAT rejected the argument that a single act of harassing conduct should not be treated as unwanted because one cannot know what is unwanted until it has been rejected. The reason for this rejection is that the EAT surmised that men would regard this as a license to harass women as they would argue that each conduct was different from the last and they were testing to see if the conduct was unwanted. Notwithstanding this argument, intention is irrelevant in sexual harassment cases, so if a reasonable person would find the conduct offensive, it would be deemed unwanted.[[105]](#footnote-105)

Another important attribute of sexual harassment in the UK is that the perception of sexual harassment is subjective rather than objective. In other words, the act will be viewed from the perspective of the victim rather than the perspective of the harasser and it is for the victim to decide whether they find the words or conduct offensive or not. According to the EAT in *Reed*, a woman may appear unduly sensitive to what may be regarded as unexceptional behaviour, but it is up to each person to define their own level of acceptance. The EAT was of the view that the tribunal should bear in mind that the woman is dealing with a man in a more senior position who would likely deny that anything untoward happened and whose defence would be that the woman was being sensitive. As Benson and Thomas pointed out, experiences of sexual harassment of women in organisations often have elements of unequal power between the sexes where the man would use his power to command sexual compliance. He can also use this power to obscure his sexual intentions towards her[[106]](#footnote-106) and claim that the woman was being overly sensitive. The harassment does not have to be related to the worker but could also be remarks made about other people which the worker finds offensive or violates her dignity.

There is no official data available on the number of people who report sexual harassment in the UK[[107]](#footnote-107) or any data from which to deduce that the law has been able to achieve its objectives of eliminating or reducing the occurrence of sexual harassment at work since the first provision against sexual harassment was made in 2005. This can be attributed to the fact that victims of sexual harassment are reluctant to take action against it or share their experiences or acknowledge that what happened to them is sexual harassment because they had viewed certain acts which happened to others as more serious than theirs.[[108]](#footnote-108) Some women did not report it or use official channels to challenge it because they felt it had become so normalized in the workplace and has become a part of life that it would be pointless to challenge it.[[109]](#footnote-109) Others failed to report it for fear of being blamed for not standing up to the harasser but victim blaming fails to take into account the power dynamics in the workplace.[[110]](#footnote-110) In 2013 a survey of 1036 women, commissioned by the law firm Gordon Slater, found that 60% of women had experienced a sexual inappropriate behaviour from a male colleague in the workplace and only 27% of them were able to report to someone senior.[[111]](#footnote-111) It was also reported that 24% of the harassment cases were perpetrated by a superior and 5% of these victims lost their jobs while 1% were turned down for a promotion.

In 2016 a similar survey of 1,533 women, carried out by Trade Union Congress (TUC) found that 52% of women had experienced sexual harassment in the workplace and only 13% reported to the employer and of those that reported, 16% said they were treated worse while 70% said nothing was done about it. The TUC survey found that 79% of women who were subjected to sexual harassment did not report it. Top barriers to reporting sexual harassment identified by the survey are fear that it would have a negative impact on victim’s working relationship with colleagues, victims would not be believed or taken seriously, or they would be too embarrassed to report it. Zimbroff believes that lack of awareness of what constitutes sexual harassment, absence of women’s advocacy groups and lack of laws or inconsistency in its enforcement contributes to non-reporting of sexual harassment and women fear that they would be humiliated or there would be a threat to retaliate if they reported. Review of literature established that power is at the root of sexual harassment and according to the survey by Slater Gordon, 24% of the perpetrators were men in superior positions over the victims while TUC survey shows that 17% of the perpetrators had authority over the female workers. Hunt et al. believe that sexual harassment is more likely in situations where there are substantial power differences between men and women or it can be used to exclude women in careers where women have improved their careers to the status of their male counterparts.[[112]](#footnote-112)

Conversely in Nigeria, there is currently no provision against sexual harassment at work because it is considered a personal problem between the employer and his employees which they must resolve within themselves.[[113]](#footnote-113) The Sexual Harassment Bill which proposes to protect students in tertiary institutions has been passed by the National Assembly but has not yet been signed into law. The CEDAW and ILO instruments can only be used as a guide to interpretation of applicable laws and cannot be applied directly within the country without an enabling law. No statistics was found on incidents or reports of sexual harassment in Nigeria, but it has been found that workers are not afraid to stand up for themselves and will use any appropriate channels including the courts to deal with sexual harassment when it occurs.[[114]](#footnote-114) Therefore, if laws are enacted to check the occurrence of sexual harassment at work in Nigeria, women will take recourse under such laws to control incidents of sexual harassment and create safe and conducive environments for them to work. Such laws will keep women safe because protection will be triggered where a conduct has an effect of creating an intimidating or hostile environment or the purpose of degrading or humiliating a worker.

A law similar to what obtains in the UK will be appropriate for Nigeria subject to minor modifications because of the cultural and patriarchal nature of the Nigerian society that encourages male outward expression of sexual interest in women. These practices may alter a woman’s perception of what is an acceptable expression of sexual interest and some women may view such aggressive pursuit as a normal romantic gesture from the man rather than an intention to harass or humiliate her. In addition to this, it will be viewed as normal when men make advances towards women because the Nigerian society expects women to be subordinate and passive. For these reasons, it would be recommended that sexual harassment laws in Nigeria should require a woman to be unambiguous in expressing their lack of interest in the man’s sexual advances by communicating it to him clearly. Along side this, boys and men should be educated and made aware that when a woman says ‘no’, it means ‘no’ and not an opportunity to intensify his pursuit. To further ensure that an innocent gesture from a man is not penalized, the law should require a woman in the first instance to raise a formal or an informal grievance against the perpetrator before she can file a sexual harassment claim as this will ensure that the conduct is clearly communicated to the man as unwanted. Any victimisation which may arise because of the complaint must be penalised. If the law makes this a pre-condition to filing a sexual harassment case, the victim’s perception in section 26(4) of the UK Equality Act becomes irrelevant as the unwanted conduct would have been clearly communicated.

**Conclusion**

An analysis of the sexual harassment law in the UK revealed that the law can help reduce or eliminate the occurrence of sexual harassment at work if women utilized it. However, given there is no official data showing the achievement of this law, one cannot assert that it has had any impact in the UK. The UK should re-introduce the third-party harassment in the Equality Act to comply with the new ILO convention. Women have been found not to report incidents of sexual harassment at work for various reasons. However, it is submitted that this law could have an impact in eliminating sexual harassment at work in Nigeria if it is modified taking into consideration the cultural and patriarchal nature of the Nigerian society. The intervention of the government and other interest groups are needed to change individuals’ attitudes and conceptions through the enactment of comprehensive legislation and providing appropriate enforcement mechanisms to investigate cases and bring actions against offending organisations and individuals. By doing this, the government will comply with its international obligations under the ILO and CEDAW. Both men and women need to be educated on the ills of sexual harassment and make them aware that a woman has a right to her body and a right to choose her relationships and not be penalised for rejecting sexual interests from superiors or co-workers. To comply with the ILO labour standards, employers should have comprehensive policies against sexual harassment and have appropriate procedures to investigate complaints and implement measures to protect workers and punish perpetrators. The policies should also ensure that victims will not be victimized for reporting such behaviour. By doing this, employers will also protect themselves from being vicariously liable for the sexual harassment of their workers.

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110. Sexual harassment in the workplace is endemic <https://www.theguardian.com/lifeandstyle/womens-blog/2013/oct/23/sexual-harassment-workplace-endemic-women> assessed on 28/02/17 [↑](#footnote-ref-110)
111. Slater Gordon (2013) <http://www.slatergordon.co.uk/media-centre/press-releases/2013/10/sexual-harassment-rife-in-the-workplace-new-study-reveals/> accessed on 28/02/17 [↑](#footnote-ref-111)
112. C.M. Hunt M.J. Davidson S.L. Fielden H. Hoel, Reviewing sexual harassment in the workplace – an intervention model, *Personnel Review*, **39**:5 (2010) pp. 655 – 673. [↑](#footnote-ref-112)
113. Ladebo *supra* note 36 at p.121 [↑](#footnote-ref-113)
114. Okongwu *supra* note 42 [↑](#footnote-ref-114)