



# **SEXUAL HARASSMENT**

**in the Education Sector**

*A Malaysian Perspective*

*Edited by*

**ASHGAR ALI ALI MOHAMED**

**MUZAFFAR SYAH MALLOW**



**IIUM  
Press**

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## CONTRIBUTORS

**Adio Saliu Wahab** graduated with a Bachelor of Science (Bsc. Sociology) from the Usmanu Dan Fodiyo University, Sokoto, Nigeria in 1996. He earned his Master of Science in Sociology (Msc. Sociology) from the University of Ilorin, Nigeria in 2005. He is a senior lecturer at the Kwara State College of Education, Oro, Nigeria. He obtained his PhD at the Department of Sociology and Anthropology, faculty of Islamic Revealed Knowledge and Human Science (IRKHS), International Islamic University Malaysia (IIUM).

**Adnan Trakic** is a Lecturer at the School of Business, Monash University Malaysia. He is also the Director of Undergraduate Studies for the School of Business. He obtained his LLB (Hons.) degree, Master of Comparative Laws (*with Distinction*) (MCL), and PhD from the International Islamic University Malaysia (IIUM). His principal research interest is in conventional & Islamic finance law and business law. He has researched and published in Tier A journals and presented papers at conferences, including academic and industry seminars in the area of Islamic banking and finance, comparative banking law, corporate governance, and law of contract. He co-authored the book *Law for Business*, published by Sweet & Maxwell, Thomson Reuters. He is also co-editor of the book *Islamic Banking & Finance: Principles Instruments & Operations*, published by Current Law Journal (CLJ).

**Ahmad Tijani Surajudeen** obtained Interim Joint Matriculation Board (IJMB) A' Level certificate at the College of Basic and Advanced Studies (COBAS), former College of Preliminary Studies (CPS), Yelwa-Yauri, Kebbi State Nigeria in 2002. He obtained a B.A (Ed) Islamic Education in 2007 at the University of Ilorin, Ilorin Kwara State, Nigeria. He earned his M.Ed in Teaching of Islamic Education and his Ph.D in Curriculum at the Department of Curriculum and Instruction, Faculty of Education, International Islamic University Malaysia (IIUM) in 2011 and 2015 respectively. He served as a Chief-Facilitator in the IIUM's Study-Circle taught undergraduate students under the Co-Curricular Activity Centre (CCAC) between 2008 and 2014. He as well served as Leadership



Trainer in the same CCAC. He taught Islamic Studies at the Integrated Islamic School Kota Damansara Malaysia between 2010 and 2015 and later became the Islamic Studies Coordinator. In addition, he has attended various national and international conferences as a presenter as well as a participant. He has published articles in journals, chapters in book, book review and conference proceedings. He is a member of National Association of Teachers of Arabic and Islamic Studies (NATAIS) Nigeria, Fellow of International Institute of Muslim Unity (FIIMU) Malaysia; member of International Association for the Advancement of Curriculum Studies, Canada. He is the pioneer of Asraj Education Foundation-AEF- (Non-Governmental Organization - NGO) as well as Kisi Community Developmental Project (KCDP). He currently lectures at the Department of Curriculum Studies, Sokoto State University (SSU), Nigeria. His areas of interest are: Curriculum and Pedagogy, Islamic Education, Integrated and Holistic Education, Educational Thought of Medieval Islamic Civilization, Research Methodology, Statistics with specific focus on SPSS and community service.

**Ashgar Ali Ali Mohamed** graduated with a Bachelor of Law (LL.B (Hons.)) and a Master of Comparative Laws (MCL) from the International Islamic University Malaysia (IIUM), Master of Laws (LL.M (Hons.)) from the University of Auckland, New Zealand and Doctor of Philosophy in Business Law (PhD) from the Graduate School of Management, University Putra Malaysia. He was admitted to the Malaysian Bar as an Advocate and Solicitor by the High Court of Malaya in 1992 and thereafter, he joined the academic staff of the Ahmad Ibrahim Kulliyah of Laws, IIUM. He is currently a professor at the said Kulliyah. He has authored several books on employment law. He has written numerous articles published in both local and international journals/reports and has also presented papers at numerous conferences in the area of employment law and civil litigation. His area of interest includes employment law, civil litigation and alternative dispute resolution.

**Farheen Baig Sardar Baig** is a graduate of the International Islamic University Malaysia (IIUM) with the following qualifications: Diploma in Islamic Studies; Bachelor of Law (LL.B (Hons)); Master of Comparative

Laws (MCL); and Doctor of Philosophy (PhD) in Law. She was admitted to the Malaysian Bar as an Advocate and Solicitor by the High Court of Malaya in 1996 and had been in practice for several years before joining the Ahmad Ibrahim Kulliyah of Laws, IIUM as an academic staff member. She is currently an associate professor at the said Kulliyah and her area of interest includes employment law and tort law. She has also co-authored several books on employment law and published numerous articles in both local and international journals/reports and further, presented papers on the abovementioned areas at various conferences.

**Ibrahim A. Oladapo** holds a bachelor's degree in Economics Education from Lagos State University, Nigeria, and a Master's degree in Economics from International Islamic University Malaysia. He obtained a Diploma in Islamic finance from the Chartered Institute of Management Accountants, UK in 2013. He is currently pursuing his PhD in Islamic Economics from University of Malaya (UM), Malaysia. His area of interest includes development economics, Islamic economics, Islamic commercial law, accounting for Islamic financial institutions, Islamic banking and *takaful*, and money and banking. He is also an author of a book on Islamic capital markets.

**Kyaw Hla Win @ Md. Hassan Ahmed** is a Senior Lecturer at School of Law (SOL), College of Law, Government and International Studies (COLGIS), Universiti Utara Malaysia (UUM). He is also a Research Fellow at the Institute for Governance and Innovation Studies (IGIS), COLGIS, UUM. He previously served various academic positions at University of Malaya (UM), International Islamic University Malaysia (IIUM), Islamic Science University of Malaysia (USIM), Management & Science University (MSU) and International University College of Technology Twintech (IUCTT). He graduated with a Bachelor of Law (LL.B) degree from Dagon University, Yangon, Myanmar. He obtained Master of Comparative Laws (MCL) and Doctor of Philosophy in Law (PhD) from International Islamic University Malaysia (IIUM). Furthermore, he acquired a Diploma in Information & Communication Technology (Dip in ICT) and a Diploma in Electronics (Dip in EC) from University of Yangon, Myanmar. He has published a number of research



articles in local as well as international academic journals and presented several research papers at various national as well as international conferences. His areas of expertise include Public International Law, Private International Law, International Trade Law and Comparative Law.

**Mohd Akram Shair Mohamed** obtained his undergraduate and postgraduate degrees, LL.B (Hons.), LL.M, M.Phil., from University of London and Ph.D from International Islamic University Malaysia (IIUM). He is Barrister At Law, Lincoln's Inn, London and a non-practising Advocate and Solicitor of the High Court Malaya. He also holds post-graduate Diploma in Public International Law (Hague) and International Humanitarian Law (IHL) (Geneva). He started his career as a law lecturer in the Faculty of Law, University of Malaya in March 1975 until June 1983 when he was seconded to IIUM. He is currently a Professor of Law at the Ahmad Ibrahim Kulliyah of Laws, IIUM. His areas of teaching and deep interest are Law of Evidence, Public International Law, International Humanitarian Law, Commercial Law, Sports Law and Medical Law (being a Registered Nurse of Nursing Council of England and Wales). His written books are Law of Confession in Malaysia, Introduction to International Humanitarian Law, Introduction to Jurisprudence and Public International Law. Further, he has published a number of research articles in referred academic journals and presented research papers at various international conferences.

**Mohammad Naqib Ishan Jan** is a Law Professor and the Head of Alternative Dispute Resolution Unit (ADRU) at Ahmad Ibrahim Kulliyah (Faculty) of Laws (AIKOL), International Islamic University Malaysia (IIUM). He is also a member of the World Trade Organization and Globalization Unit and the International Law and Maritime Affairs Unit (ILMA) at IIUM where he obtained his bachelor's, master's degrees and PhD in Law. His areas of expertise include public international law, international humanitarian law, international human rights law, international dispute resolution, international commercial arbitration, use of force in international relations, refugee law and the law of the United Nations. He

has taught and published extensively in these specialized areas. He has published a number of books and numerous articles in refereed law journals, and presented papers at various conferences.

**Muzaffar Syah Mallow** graduated with a Bachelor of Law (LL.B (Hons.)), a Master of Comparative Laws (MCL) and a Doctor of Philosophy from the International Islamic University Malaysia (IIUM). He is currently a Senior Lecturer at the Faculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM). He has written several articles published in the local journals/reports in the area of employment law. His area of interest includes industrial relations, human resource management, criminal law and procedure, the Malaysian legal system, law of evidence, and Islamic law.

**Muhamad Azim Bin Mazlan** graduated with a Bachelor of Syariah and Law with Honours (LLB and Syariah with Honours) in 2013 from the Faculty of Syariah & Law, Universiti Sains Islam Malaysia (USIM). Upon finishing his studies in 2013, he has been working as the Executive for Islamic Banking, Group Legal at the RHB Bank Berhad. Simultaneously, he has been a graduate fellow at the Faculty of Syariah & Law, Universiti Sains Islam Malaysia (USIM) where he specializes in area Islamic finance and human resource management

**Yusuf Abdul Azeez** is a senior lecturer and research fellow at the Faculty of Islamic Civilization, Universiti Teknologi Malaysia (UTM). He attended Al-Qarawiyyeen University, Fes, Kingdom of Morocco where he obtained his Associate of Law Certificate and LL.B Degree in Islamic Law in 1991 and 1993 respectively. He earned his MA Degree in Islamic Studies with a specialization in comparative criminal justice systems from University of Ilorin, Kwara State, Nigeria in 1997 and his PhD Law from International Islamic University Malaysia in 2011. He has participated in several conferences, workshops and seminars, and has some publications to his credit at local and global levels. He is a Fellow of Certified Board of Administrators of Nigeria (FCBAN); Fellow, International Institute for Muslim Unity Malaysia (FIIMUM), Fellow, International Union for Muslim Scholars Qatar (FIUMSQ), and Fellow, Corporate Governance



and Sustainability International Group (FCGSIG), United Kingdom. His research interest covers the twin areas of Islamic and common law, and Middle Eastern studies.

**Yusuff Jelili Amuda** studied and obtained his B.A in Shari'ah from Al-Azhar University, Cairo Egypt and completed his Master's degree and PhD in Comparative Laws at the Ahmad Ibrahim Kulliyyah of Laws, IIUM. He was employed as a Senior Lecturer at Sultan Idris Education University, Malaysia between 2010 and 2012. He is currently an assistant professor at the Kulliyyah of Economics and Management Sciences, IIUM. He has published numerous articles in local and international journals such as International Journal of Sustainable Development, Scopus, International Journal of Trade, Economics and Finance (IJTEF), Journal of Advanced Management Science, Lambert Academic Publishing, Shariah Law Report, Journal of Islamic Law Review, Malaysian Law Journal, Journal of Al-Risala, Procedia-social and Behavioral Journal, and International Journal of Social Policy. His areas of interest are: comparative laws, chight rights, child labour, *waqf*, *zakāh*, *hadaqah*, *takaful* and Islamic Finance.



## Chapter One

# Sexual Harassment in Education Sector: An Introduction<sup>1</sup>

Farheen Baig Sardar Baig  
Yusuf Abdul Azeez

### 1.1 Introduction

The issue of sexual harassment in the educational sector, in schools, universities and colleges, should not be taken lightly.<sup>2</sup> It is an everyday predicament for students and staff at schools, universities, and colleges. It takes place in the school premises such as in the classroom, in the sports complex and stadiums, among others. Both sexes can be victims of sexual harassment.<sup>3</sup> However, the bulk of reported cases and legal decisions involve male harassers and female victims. This is not to say that males are not sexually harassed, or it does not signify that females

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<sup>1</sup> This chapter is contributed by Farheen Baig Sardar Baig and Yusuf Abdul Azeez.

<sup>2</sup> SL Bem, "The Measure of Psychological Androgyny" (1974) *Journal of Consulting and Clinical Psychology*, 42:2, 155–162; Development Action for Women, Trade Union Congress of the Philippines (DAWN-TUCP) *Sexual Harassment is a Trade Union Issue: A workers' handbook* (Quezon City, 2001); Cathy LZ Du Bois, Robert H Faley, Gary A Kustis, & Deborah Erdos Knapp, Deborah. "Perceptions of Organizational Responses to Formal Sexual Harassment Complaints" (1999) *Journal of Managerial Issues* 11; Robert Husbands, "Sexual Harassment Law in Employment: An international perspective" (1992) *International Labour Review* 131:6.

<sup>3</sup> D Crocker, & V Kalemba, "The Incidence and Impact of Women's Experiences of Sexual Harassment in Canadian Workplaces" (1999) *Canadian Review of Sociology and Anthropology*, November (4), 541–552.



do not sexually harass other people.<sup>4</sup> Sexual harassment in education is an unwanted or unwelcome manner of sexual advances. It is disgusting, discomforting, intimidating, or embarrassing and may affect both students' and staffs' performance either in an academic setting or at the workplace, negatively impacting health, career or employment.

The issue of sexual harassment is a worldwide problem. It is prevalent in Asia generally, and South-East Asia specifically. In Malaysia, cases of sexual harassment are not new. It has recently been acknowledged as a serious organisational problem. The subject of sexual harassment aroused the public attention when the Ministry of Human Resources in Malaysia issued a Guideline for Sexual Harassment in the Workplace in 1999.<sup>5</sup> In the past, sexual harassment has been taken with levity in the workplace. It was seen as usual practices and part of customary working life that only some people, apart from the aggrieved party, were conscious of its happenings.<sup>6</sup> A lot of such experiences were not reported. They were buried in silence for fear of retribution and embarrassment. In the workplace, sexual harassment has become a serious problem. It was once regarded as a predictable part of a woman's job; it has now been tagged by the world and the law as intolerable behaviour.<sup>7</sup> Employers and institutions are beginning to understand and concede the significance of putting in place rules that deal with sexual harassment and prescribe penalties for offenders.

In a similar vein, sexual harassment in schools and universities has been recognised as a serious issue demanding greater attention. Some schools and universities have now formulated policies which

prescribe rules to suppress sexual harassment. Lecturers, students and administrators are currently being educated on the issue.<sup>8</sup> This chapter will investigate the culture of sexual harassment in schools, universities and colleges. It begins by examining the conceptual meaning of sexual harassment, the various forms of sexual harassment in the school and university environment and the factors that aid or are responsible for sexual harassment in Malaysia.

## 1.2 Sexual Harassment: General definition

In general, sexual harassment is defined as behaviour which consists of offensive, abusive, belittling, humiliating, threatening or intimidating actions directed at a person or a group of persons. Sexual harassment means any unwanted or unwelcomed conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment: (i) that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature; or (ii) that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being. Sexual harassment generally refers to sexual conduct which is imposed on, and is unsolicited or unreciprocated by the recipient. Examples would be repeated unwelcome sexual comments, looks or physical contact, among others, which are usually committed by a male against a female or vice versa.

Sexual harassment may occur in many places such as in the workplace, schools, universities, colleges, or other public places. The act of sexual harassment may be committed either against teachers or administrators of the institution, or against peers or colleagues. The latter however, is the focus of this chapter. In Malaysia, sexual harassment involving public servants is regulated by the Public Services Department circular issued on September 10, 2005 known as "Guidelines for Handling Sexual Harassment in the Workplace among the Civil Servant No. 22 of 2005". While employees in the private sector are regulated by the "Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace 1999" which came into effect on August 17, 1999 in the

<sup>4</sup> BS Dansky, & DG Kilpatrick, "Effects of Sexual Harassment" in W. O' Donohue ed., *Sexual Harassment: Theory, research, and treatment* (Boston: Allyn & Bacon, 1997), 23.; European Commission, Sexual harassment in the workplace in the European Union (Directorate-General for Employment, Industrial Relations and Social Affairs, Unit V/D.5, 1998) 33-45.

<sup>5</sup> Ministry of Human Resources, Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (Kuala Lumpur, August 1999).

<sup>6</sup> A Feingold, "Good-looking People are Not What We Think" (1992) *Psychological Bulletin*, 111, 304-341.

<sup>7</sup> LF Fitzgerald, F Drasgow, CL Hulin, MJ Gelfand, & V Magley, "The Antecedents and Consequences of Sexual Harassment in Organizations" (1997) *Journal of Applied Psychology*, 82, 578-589. ; LF Fitzgerald & AJ Ormerod, "Perceptions of Sexual Harassment: The influence of gender and academic context" (1991). *Psychology of Women Quarterly*, 15, 281-294.

<sup>8</sup> LF Fitzgerald & SL Shullman, "Sexual Harassment: A research analysis and agenda for the 1990s" (1993). *Journal of Vocational Education*, 42, 5-27.



country. The 1999 Code was basically drawn up to guide the employer to set up in-house mechanism that defines, regulates, investigates and penalises incidents of sexual harassment within the workplace. It is further intended to educate and create awareness, thereby ensuring a working environment free from the dangers of sexual harassment, apart from setting avenues for victims to lodge complaints to their management.

At the outset, it would be appropriate to point out that the range of sexual harassment reported within a school setting is serious. Examples conduct considered sexual harassment include, sexual comments, jokes, gestures or looks; touching, grabbing or pinching in a sexual way; spreading sexual rumours about another person; intentionally brushing up against another person in a sexual way; blocking another person in a sexual way; showing, giving or leaving sexual pictures, photographs, illustrations, messages or notes; the clothing of the victim may be pulled off or down in a sexual way; forcing the victim to kiss someone; writing sexual messages about another on public walls; forcing someone to do something sexual other than kissing; spying on someone while they are dressing or showering, to mention but a few. Further, more girls are reported to have experienced more sexual harassment as compared to boys and it impacts their school performance, such as leading to difficulty of concentrating in their studies, fear and low self-esteem, among others. Hence, it is vitally important to explain the forms of sexual harassment.

### 1.3 Forms of Sexual Harassment

Sexual harassment in schools, colleges and universities can take many forms. Some forms of sexual harassment can be annoying or irritating, while others can actually amount to sexual assault. Sexual harassment may be broadly categorised into six possible forms, namely: verbal, non-verbal, gestural written, visual, psychological and physical harassment, each of the aforementioned shall be subsequently elaborated.

(i) Verbal harassment: Making sexually suggestive comments such as making jokes, jesting, kidding, sounds and questioning. Subjecting a female student to sexually suggestive comments is sexual harassment. Likewise, making open comments about the personal or sex life of

another person, inappropriate sexually sounds like kissing sounds could also amount to sexual harassment.

(ii) Non-verbal or gestural harassment: It refers to sexually suggestive gestures such as leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity and persistent flirting. It also includes unzipped trousers in front of the victim, touching and grabbing the victim's buttocks, and sticking out the tongue in a lewd and suggestive manner towards the victim.

(iii) Written harassment: It includes printed material for example, showing pornographic materials, drawing sex-based sketches or writing sex-based letters. The mode of sending the printed material may include faxing, short message service (SMS), multimedia message service (MMS), electronic mail (e-mail) and many other online modes.

(iv) Visual harassment: This could be something which is not directed at any particular person but which, nevertheless, creates a hostile or humiliating environment for others to be, for example, displaying sexual jokes or pin-ups obscene pictures. This has the potential effect of degrading or offending the victim for example, a female student.

(v) Psychological harassment: An example would be repeated unwanted social invitations; relentless proposals for dates or physical intimacy. An example would be inviting the female student to spend the night together or vice versa.

(vi) Physical harassment: This may include unwanted physical contact for example, inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, providing unsolicited back or neck rubs, among others. A clear example would be physically molesting a female student by pulling her hand and inappropriately touching intimate parts of her body.



## 1.4 Code of Conduct for Industrial Harmony

It would be worthwhile to briefly discuss the definition of sexual harassment in the Code of Conduct for Industrial Harmony (the Code) in Malaysia for purposes of identifying with more clarity the definition of sexual harassment and the circumstances where sexual harassment may occur, which circumstances are also applicable to the school setting. Paragraph 4 of the Code defines 'sexual harassment' as:

"Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment: (i) that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on his/her employment; or (ii) that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment".

Paragraph 5 divides sexual harassment into two categories; (i) Sexual coercion, for example where a superior, who has the power over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied. (ii) Sexual annoyance refers to sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. Sexual harassment by a fellow employee or by a company's client also falls into this category.

Paragraph 6 further states that sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationship. Situations under which such employment-related sexual harassment may take place includes, but are not limited to: (i) work-related social functions; (ii) the course of work assignments outside the

workplace; (iii) a work-related conferences or training sessions; (iv) work-related travel; (v) the phone; and (vi) through electronic media.

Paragraph 7 notes that sexual harassment refers to sexual conduct which is unwanted and unwelcome to the recipient. It is also sexual conduct which is imposed on, and is unsolicited or unreciprocated by the recipient.

Paragraph 8 encompasses the various conducts of a sexual nature which can manifest in five possible forms, namely: (a) verbal harassment such as offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning; (b) non-verbal or gestural harassment such as leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting; (c) visual harassment for example, showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure; (d) psychological for example, repeated unwanted social invitations; relentless proposals for dates or physical intimacy and (e) physical harassment, for example, inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.

Sexual harassment as noted from the above may be categorized as follows; (a) gender harassment which is the common type of sexual harassment. For example, graphic commentaries of the victims body; display of sexual suggestive objects or pictures at the workplace, describing victim in sexually degrading words, making proposition of a sexual nature; (b) seductive behaviour which involves unwanted, inappropriate and offensive sexual advances. For example, repeatedly unwanted sexual invitations or persistent letters, phone calls; (c) sexual bribery: solicitation of sexual activities or other sex-linked behaviours by the promise of a reward; (d) sexual coercion: insinuating, threatening or in any way implying that failure to sexually submitting to the aggressor would adversely affect the victim's livelihood, promotion, negative assessment of performance, among others; (e) sexual imposition involves physical touching, grabbing and fondling.

The Code further provides guidelines to employers on the establishment of an in-house mechanism to prevent and eradicate sexual harassment in the workplace. Paragraph 10 of the Code requires that



the company should introduce a policy statement which should provide (a) a declaration prohibiting sexual harassment in the organization, (b) a caution stating that 'sexual harassment' constitutes a breach of the company's policy and will incur disciplinary actions up to and including dismissal, and (c) a directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example.

Due to the sensitive and personal nature of sexual harassment complaints, Paragraph 16 of the Code provides that the employer should develop a separate complaint procedure to deal specifically with complaints.

Paragraph 17 further provides that the complaint procedure should provide for measures to protect victims from further embarrassment in the course of reporting and investigation into the complaint.

Paragraph 20 provides that the disciplinary rules should set out the penalties to which the harasser will be liable if an offence is committed. The nature and type of penalty should depend upon the severity of the offence.

Paragraph 23 encourages victims to report sexual harassment. There should be adequate measures to ensure maximum confidentiality so as to minimise embarrassment to the victim, especially at the time of reporting and in the course of investigation into the complaint.

In a case where the victim of sexual harassment has suffered loss, such as a demotion or a denial of a promotion, Paragraph 24 provides that the said loss must be restored.

Furthermore, Paragraph 25 requires that the victim should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due to him or her.

Where the complaint is found to be unjustifiable and baseless, Paragraph 26 requires that appropriate remedy should be granted to the accused person if there has been any loss suffered by such person.

As stated earlier, the Code was basically drawn up to guide employers to set up an in-house mechanism to handle sexual harassment cases. However, it does not have any legal force and this does not prevent the victim from taking action through the common law.<sup>9</sup>

<sup>9</sup> A.A.A. Mohamed, M.S. Mallow, & F.B.S. Baig, Sexual Harassment at the Workplace in Malaysia (The Malaysian Current Law Journal Sdn Bhd, 2011).

## 1.5 Categories of Sexual Harassment in Schools, Universities and Colleges

There are different categories of sexual harassment that can take place in schools, universities and colleges. It can emanate from lecturer or teacher to student; student to lecturer or teacher; and student to student which will be illustrated further below.

### 1.5.1 Lecturer or teacher-to-student sexual harassment

Sexual harassment of students by lecturers is a serious offence. The relationship between students and lecturers is unique because teachers are in a position of authority or power.<sup>10</sup> They have much influence on the success of students.<sup>11</sup> As such, teachers are under both legal and professional obligations to keep all relationships with students completely professional. Sexual harassment of students by lecturers takes different forms.<sup>12</sup> It may be verbal, physical and non-verbal. This kind of harassment is common in schools, universities and colleges. A lecturer or teacher may even gain an advantage over the student especially where such a student is not academically sound.<sup>13</sup> This kind of attitude may be good grounds for termination of the lecturer or teacher.<sup>14</sup> For example, if a lecturer or teacher knows that his or her tricks or jokes are of a sexual nature and fails to end the attitude after there has been a word of warning about the conduct, that lecturer or teacher may lose his or her job. Several incidents of sexual harassment may be 'just cause' for termination.

<sup>10</sup> E.A.O.' Hare & W.O.' Donohue, "Sexual harassment: Identifying risk factors" (1998) *Archives of Sexual Behaviour*, 27, 561-562

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> BR Ragins & TA Scandura, "Antecedents and Work-related Correlates of Reported Sexual Harassment: An empirical investigation of competing hypotheses" (1995). *Sex Roles*, 32, 429-455.



### 1.5.2 Student to lecturer or teacher sexual harassment

In some instances, lecturers or teachers are the victims of sexually harassing behaviour and students are the harassers. In this situation, the victims are always female lecturers or teachers. Male university or school students may be physically bigger than their female lecturers or teachers. They may even be older in age than the lecturers or teachers and may sexually harass the lecturers or teachers.<sup>15</sup> This could be done by way of bodily intimidation which can be a momentous feature in student-to-lecturer or teacher sexual harassment. Also, harassment may take verbal and non-verbal forms. For example, cracking a joke on the dress and appearances of a passing lecturer or teacher in the hallways is a form of harassment.

### 1.5.3 Student-to-student sexual harassment

This type of sexual harassment is common and prevalent especially in tertiary institutions. This may take different forms: it may be verbal, physical and non-verbal. Whether or not the conduct amounts to sexual harassment may depend on the response of the harassed person.<sup>16</sup> Verbal harassment entails any upsetting or insulting words directed at someone because of her or his sex. For example, certain nicknames like 'stud,' 'babe,' 'chick', or 'sexy' may have negative connotations. Physical harassment is any unwanted physical contact. This may include (but is not limited to) touching, grabbing or pinching in a sexual way.<sup>17</sup> This may upon availability of evidence be regarded as sexual assault which is a criminal offence. Non-verbal (without words) harassment may include leering (staring), or sexual gesturing (movements).

<sup>15</sup> K.M. Rospenda, JA Richman, J.L.Z. Ehmke & K.W. Zlatoper, "Is Workplace Harassment Hazardous to Your Health? (2005). *Journal of Business and Psychology*, 20:1, Fall, 95-110. ; SS Tangri, MR Burt & LB Johnson, "Sexual Harassment at Work: Three explanatory models." (1982). *Journal of Social Issues*, 38, 33-54.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

## 1.6 Sexual Harassment: A violation of individual's rights

The Universal Declaration of Human Rights 1948 provides, *inter alia*, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". It refers to the basic principles of life and ensuring a minimum standard of dignity of a person, both spiritually and materially. Spiritual dignity, for example, means that no one should be treated like animals or be enslaved, while material dignity indicates a certain standard of living such as proper housing. The former, would include ensuring that a person is not subject to inappropriate conduct belittling a person's dignity and honour, such as the act of sexual harassment.

Further, the Malaysian Federal Constitution stresses on the importance of preservation of 'life' which is regarded as a priceless possession which cannot be made a mockery. Article 5(1) of the Federal Constitution provides that no person shall be deprived of his or her life, liberty and property without due process of law. The word 'life' in the aforesaid article is not merely confined to physical existence alone but includes also the quality of life. Sexual harassment in all its forms, however, is a violation of the rights of the individual.

In *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang and Anor v Utra Badi K Perumal*,<sup>18</sup> Gopal Sri Ram JCA stated that:

"When a person is deprived of his reputation, it would in my judgment, amount to a deprivation of "life" within article 5(1) of the Federal Constitution. The right to reputation is part and parcel of human dignity and specifically students' dignity. And it is the fundamental right of every person within the shores of Malaysia to live with common human dignity".

<sup>18</sup> (2000) 3 CLJ 224, 239 (CA).



1.5.2 In short, a person's reputation, honour and dignity are priceless possessions, an integral part of the rightful meaning of life. Therefore, it is the duty of every fair-minded person to respect another's dignity and esteem and that he will not wilfully violate the same. Thereby, the schools and higher institutions of learning is expected to safeguard an individual student's right.

## 1.7 Conclusion

The existence of sexual harassment in the schools, universities and colleges in Malaysia is an undeniable fact. This is a bad and unlawful practice which needs not only to be condemned by all, but special mechanisms need to be put in place to checkmate the practice. No doubt, measures are taken by various schools, universities and colleges in Malaysia to combat the issue of sexual harassment in their educational premises. Sexual harassment in the educational sector is not a recent evil. This has however cropped-up in the schools, universities and college environments that should otherwise be places of high moral standards. The lecturers and teachers whose job is to inculcate moral values in the students and teachers are not exempt from allegations of this nature. Sexual harassment takes different forms. It may involve lecturer or teacher to student, student to lecturer or teacher, student to student, student to administrative staff and lecturer or teacher to administrative staff. Whichever way it is looked at, the effect of this harassment on the family, university reputation, lecturer, and society is serious.

The investigative measures to resolve a sexual harassment case can be formal or informal depending on the institution and the policy that is put in place. However, it should be noted that there is no accurate statistical data of sexual harassment allegations and cases in Malaysian schools and universities. Furthermore, there is a paucity of judicial authorities on sexual harassment on school and university campuses. Very few perpetrators are taken to court. This is perhaps due to the publicity and procedures involved in court actions as well as difficulties in gaining the required evidence to established the allegation.



# SEXUAL HARASSMENT

*in the Education Sector*  
*A Malaysian Perspective*

Sexual harassment is one of the contemporary silent issues in the education sector in Malaysia. Despite the advocacy of no discrimination between male and female in education, sexual harassment in schools, universities and colleges has drastically prevalent. More importantly, of greater challenges is the inadequate and ineffective measure to eradicate sexual harassment in schools and institutions of higher learning in the Malaysian context. Admittedly, it has been reiterated that schools need to promote the values of the larger society. Indeed, one of the primary objectives of institutions of learning is to promote social norms, ethical values and desirable behaviours. Therefore, the teachers' commitment and students' engagement in the process of teaching and learning should revolve round the portrayal of good behaviour and moral values. To the contrary, sexual harassment is a social problem that the students are battling with either among the peers or among the superiors, the teachers and administrators of the schools. In this regards, sexual harassment does not promote positive moral values that the larger society would expect from the schools. Hence, this Book elaborately explicates the various issues relating to sexual harassment in the Malaysian schools and institutions of higher learning and further, the various approaches towards its prevention. Lessons from other countries which have an effective mechanism on this subject are also considered. The Book also examines the role of mental health professional or counsellor in dealing with the issue of sexual harassment. Further, the role of NGOs in creating awareness amongst the children and youth in schools and universities regarding the issue of sexual harassment is also highlighted in this Book. Besides the above, the Book also discusses the prevention of sexual harassment or sexual assault from the religious perspective with special reference to religions such as Buddhism, Hinduism, Christianity and Islam. It is argued that religious values and ideologies as well as customary values in the Malaysian context can be effective in dealing with the problem of sexual harassment in various settings. The research and multifarious knowledge of the contributors will certainly make this Book an excellent source of reference as it is an all-embracing manuscript on sexual harassment in the education sector. This Book will be a precious source of reference and be immensely beneficial to a wide range of readers, and an essential reading for educators such as teachers, lecturers, researchers, principals, administrators, and policymakers, among others. They will find the Book useful and beneficial in providing solutions to an endemic sexual harassment as part of social problems and liabilities in schools and institutions of higher learning in this country. It also provides instructive and thought-provoking reading.

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**IUM Press**

Tel : +603 6196 5014 / 6196 5004

Fax : +603 6196 4862 / 6196 6298

Email : [iiumbookshop@iium.edu.my](mailto:iiumbookshop@iium.edu.my)

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