

ARTICLE

Struggling Against Violence and Harassment in the Workplace: A Legal Narrative of the BRICS Countries' Experience

Elena Sychenko,

Saint Petersburg State University (Saint Petersburg, Russian Federation)

<https://orcid.org/0000-0002-7045-9218>

Irina Chikireva,

University of Tyumen (Tyumen, Russian Federation)

<https://orcid.org/0009-0005-4544-6545>

Rupa Korde,

FLAME University (Pune, India)

<https://orcid.org/0000-0001-7192-8007>

Aakash Bothra,

WageIndicator Foundation (Bangalore, India)

<https://orcid.org/0009-0000-4119-7282>

Mauro Laruccia,

Pontifical Catholic University of São Paulo (São Paulo, Brazil)

<https://orcid.org/0000-0002-9624-6245>

Dalton Cusciano,

Catholic University of Brasília (Brasília, Brazil)

<https://orcid.org/0000-0003-1690-2669>

Jiaojiao Wang,

Jilin University (Jilin, China)

<https://orcid.org/0009-0008-2281-4407>

Nasima Carrim,

University of Pretoria (Pretoria, South Africa)

<https://orcid.org/0000-0002-1325-7978>

<https://doi.org/10.21684/2412-2343-2025-12-1-80-114>

Received: January 16, 2024

Reviewed: March 3, 2024

Accepted: October 17, 2024

Abstract. The adoption by the International Labour Organization (ILO) of a special convention dedicated to the struggle against violence and harassment in the workplace, namely the Violence and Harassment Convention, 2019 (C190), is a special opportunity to research the level of protection against these phenomena granted by national legislations and to better understand the ways to improve it. The main objective of this article is to analyze the national approaches of the BRICS countries to the issue of harassment in the world of work in order to identify the current problems and the possible ways of solving them, including through the implementation of the norms of the C190 or following Violence and Harassment Recommendation, 2019 (No. 206) (R206). In the five sections of this article, each of which is dedicated to a separate member state of BRICS, the authors examine the national labor legislation and other laws that are relevant to the topic, the gaps in these norms as compared to the requirements of the C190, and the case law in this field. The research demonstrates that certain BRICS nations, such as South Africa, have implemented a legal framework to address and prevent harassment, having ratified C190. In Brazil, violence and harassment in the workplace are not regulated by a special law; instead, the country's norms are rather fragmented and tend to protect mostly women, in particular against sexual harassment. On the other hand, countries such as China and India, despite their focus on prohibiting sexual harassment against women, often overlook the aspect of moral harassment. Russia tends to neglect both issues, altogether disregarding the inclusion of specific norms in the labor law.

Keywords: violence; harassment; workplace; employment; case law; national regulations; BRICS; prevention; occupational health and safety.

To cite: Sychenko, E., et al. (2025). Struggling Against Violence and Harassment in the Workplace: A Legal Narrative of the BRICS Countries' Experience. *BRICS Law Journal*, 12(1), 80–114.

Table of Contents

Introduction

1. Protection Against Violence and Harassment (V&H)

in the Workplace in Brazil

1.1. National Regulations on the Protection Against V&H

in the Workplace in Brazil

1.2. The Case Law and Current Challenges to Protection Against V&H

in the Workplace in Brazil

2. Protection Against V&H in the Workplace in Russia

2.1. National Regulations on the Protection Against V&H

in the Workplace in Russia

2.2. The Case Law and Current Challenges to Protection Against V&H

in the Workplace in Russia

3. Protection Against V&H in the Workplace in India

3.1. National Regulations on the Protection Against V&H

in the Workplace in India

3.2. The Case Law and Current Challenges to Protection Against V&H

in the Workplace in India

4. Protection Against V&H in the Workplace in China

4.1. National Regulations on the Protection Against V&H

in the Workplace in China

4.2. The Case Law and Current Challenges to Protection Against V&H

in the Workplace in China

5. Protection Against V&H in the Workplace in South Africa

5.1. National Regulations on the Protection Against V&H

in the Workplace in South Africa

5.2. The Case Law and Current Challenges to Protection Against V&H

in the Workplace in South Africa

Conclusion

Introduction

The need to protect human dignity is the cornerstone of national and international norms that prohibit workplace violence and harassment. Kantian philosophy taught the civilization that human dignity is an innate worth or status and that people should treat humanity in each person never merely as a means but always as an end in itself.¹ This idea might be found in the majority of core International Labour Organization (ILO) documents: for instance, the ILO Constitution affirms that all human beings,

¹ Hill, T.E., Jr. (2021). *Beyond duty: Kantian ideals of respect, beneficence, and appreciation*. Oxford University Press.

irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, whereas the Declaration of Philadelphia, which states that labor is not a commodity, is also a reflection of Kantian words about treating humans as means and not ends.

The ILO's adoption of the special convention dedicated to the struggle against violence and harassment (hereinafter V&H) in the world of work, namely the Violence and Harassment Convention, 2019 (No. 190, commonly referred to as C190), and its accompanying Recommendation (No. 206), are the most recent and very important steps towards protecting employee's dignity. The Convention defines the term "violence and harassment" as a range of "unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm, and includes gender-based violence and harassment."

C190 provides the rules and the guidelines for ensuring the protection of dignity in the workplace through developing an "inclusive, integrated, and gender-responsive approach"² to prevent and address violence and harassment at work (Art. 4(2)). This approach of the Convention includes action on prevention, protection, enforcement, remedies, guidance, training, and awareness raising (Arts. 4, 7–11) and takes into account third parties as both victims and perpetrators. Together with Recommendation No. 206, the C190 proposes a robust, strategic framework for the creation of the efficient protection of employees' dignity within the context of the occupational safety and health regulations.

This article aims to analyze the national approaches of the BRICS countries to the issue of harassment in the workplace in order to identify the current problems and the possible ways of solving them, such as through the implementation of the norms of the C190 or following the recommendations of R206.

At one of the earliest BRICS Summits, the leaders of the five countries affirmed their commitment to strengthen dialogue and cooperation in the fields of social protection, decent work, and gender equality.³ A workplace that is free from violence and harassment is undoubtedly one of the aspects of decent work. Even before the adoption of the Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation (No. 206), several ILO Conventions and Recommendations contained direct references to violence and harassment (V&H).⁴ Furthermore, United Nations (UN) human rights instruments have also embraced

² Preamble to ILO Convention No. 190.

³ Sanya Declaration, Hainan, China, April 14, 2011. <https://www.brics.utoronto.ca/docs/110414-leaders.html>

⁴ For example, the Indigenous and Tribal Peoples Convention, 1989, No. 169; the Domestic Workers Convention, 2011, No. 189, and its accompanying Recommendation No. 201; the Maritime Labor Convention, 2006 (MLC, 2006) as amended in 2016; the HIV and AIDS Recommendation, 2010, No. 200; the Transition from the Informal to the Formal Economy Recommendation, 2015, No. 204; ILO (2020). *Safe and healthy working environments free from violence and harassment*. <https://www.ilo.org/publications/safe-and-healthy-working-environments-free-violence-and-harassment>

the problem of harassment in the workplace through explicit recognition of the right to protection⁵ as either directly stated in the texts or through the interpretations of the human rights bodies.⁶

Some BRICS countries have already established the legal framework for the protection against harassment at work and ratified the C190 (South Africa, for example); others tend to mostly regulate the issue of sexual harassment while neglecting the aspects of moral harassment (as in China or India, for example); and a few others tend to altogether ignore the problem as such and avoid including special norms in the labor laws (as in Russia, for example). In this article, we will subsequently consider the national legal approaches to the issue of violence and harassment in the workplace, the data on the prevalence of these phenomena in the given societies, as well as their respective laws, national policies, and case law. We will seek to establish if the issue falls within the national Occupational Safety and Health (OSH) framework and whether the law provides effective remedies to the victims of V&H.

1. Protection Against Violence and Harassment (V&H) in the Workplace in Brazil

1.1. National Regulations on the Protection Against V&H in the Workplace in Brazil

The problem of V&H in the workplace is very widespread in Brazil. In 2021 alone, more than 52,000 cases related to moral harassment and more than 3,000 cases of sexual harassment were filed in labor courts nationwide, as per data from the Brazilian Superior Labor Court (TST).⁷

On March 8, 2023, President Luiz Inácio Lula da Silva signed statements to the National Congress for the ratification of Convention No. 190 and Convention No. 156, officially initiating the process that would lead to the ratification of the two conventions by Brazil.⁸ According to the 1988 Brazilian Federal Constitution, specifically Article 5, all

⁵ See, for example, Article 27 of the Convention on the Rights of Persons with Disabilities: "... (b) protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances."

⁶ See, General Recommendation No. 19, adopted by the Committee on the Elimination of Discrimination against Women: violence is recognized as a form of discrimination against women if it is committed because the victim is a woman or if the violence has a disproportionate impact on women. Also, the International Covenant on Economic, Social and Cultural Rights enshrines the right of everyone to just and favorable conditions of work (Art. 7). According to paragraph 48 of General Comment 2016, No. 26 of the International Committee on Economic, Social, and Cultural Rights, all workers should be free from physical and mental harassment.

⁷ <https://www.trt13.jus.br/informe-se/noticias/em-2021-justica-do-trabalho-registrou-mais-de-52-mil-casos-de-assedio-moral-no-brasil>. (In Portuguese).

⁸ International Labour Organization. (2023, March 8). *OIT saúda governo do Brasil por iniciar processo de ratificação das Convenções 190 e 156*. https://www.ilo.org/brasilia/noticias/WCMS_871030/lang-pt/index.htm. (In Portuguese).

treaties and conventions to which Brazil is a party enter into force immediately, which means that they must be applied without delay, and no prior adoption of legislative, administrative, or other measures is required. Therefore, once the instrument is ratified, all workers may claim their rights guaranteed by the C190 (i.e. the broad material and personal scope of protection stipulated in Arts. 2 and 3; the enumerated list of employer's obligations outlined in Art. 9; the right to remove themselves from a work situation that they have reasonable justification to believe presents an imminent and serious danger to life, health, or safety due to violence and harassment, the right to privacy protection, effective remedy, as articulated in Art. 10, among others).

At the present moment, violence and harassment in the workplace are not regulated by a special law in Brazil. The norms are somewhat fragmented and tend to protect mostly women, in particular against sexual harassment.

The Brazilian Federal Constitution of 1988, specifically Article 170, VI, emphasizes the importance of a balanced work environment by stipulating that the economic order and the exercise of free initiative must be based on protecting the environment and appreciating human labor. It establishes that the dignity of the human person and the value of social work are the fundamental principles of the Brazilian Republic and that every citizen has the right to health, work, and dignity.

The Brazilian Labor Code (CLT, 1943) prohibits some of the behaviors that may be considered as harassment under C190, including, for example, prohibition against causing harm to the workers (Arts. 373-A and 483 of the CLT); treating workers with excessive severity (either by the employer or hierarchical superiors); engaging in acts that damage the honor and good reputation of workers or their family members; and physical insults.

Although Law No. 8.112 of December 11, 1990 (Legal Regime of Civil Servants of the Union), which only governs the legal status of civil servants in the Brazilian Union, does not clearly regulate the issue of sexual harassment, the perpetrator's conduct may be punished when it violates the duty of morality and constitutes improper conduct. Thus, the employer is responsible for the actions of its employees and, if convicted, may bring an action for restitution against the employee.

Brazilian legislation began to specifically regulate sexual harassment on May 15, 2001, adding by the Law No. 10,224 of the new norms criminalizing sexual harassment in the workplace by a supervisor (Article 216-A of the Criminal Code). Article 216-A specifically prohibits sexual harassment, but it only addresses one type, the *quid pro quo* ("this for that") or sexual harassment by extortion, in which the actor (the superior) demands an unwanted behavior of a sexual nature from the victim by threatening the loss of an advantage or promising an advantage.⁹ Sexual harassment by intimidation, characterized by intrusive sexual inducements or other expressions of the same nature (verbal or physical) that interfere with a person's

⁹ Decreto-Lei nº 2.848, de 7 de dezembro de 1940. Planalto. http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm. (In Portuguese).

work performance or create an offensive, hostile, or intimidating situation in the workplace, is not covered by criminal law.

Law 14,188 of July 2021 additionally adds to the Criminal Code the offense of psychological violence against women, attributed to any person who causes emotional harm “that disrupts and interrupts their full development or attempts to degrade or control their actions, behaviors, beliefs, and choices.” Such an offense may be committed through threats, shaming, humiliation, manipulation, isolation, blackmail, ridicule, restriction of the right to come and go, or other methods. This legal measure is part of the Brazilian fight against domestic violence, which is why it is aimed only at women.

In 2002, the Brazilian Civil Code (Law No. 10406) established that the employer or principal can be held civilly liable by his employees, servants, and agents if, in the performance of their duties or by virtue of these acts, they violate the law and cause harm to others, even if this harm is exclusively moral (Arts. 186, 927, and 932).

Also, Article 187 of the Brazilian Civil Code addresses the concept of abuse of rights. It states that a person commits an unlawful act when, in exercising a right, they manifestly exceed the limits imposed by its economic or social purpose, good faith, or morals.

In addition, since 2007, the Annual Budget Law prohibits the granting or renewal of loans or financing by official financial development agencies for institutions whose directors have been convicted of child labor, slave labor, crimes against the environment, moral or sexual harassment, or racism, not including any public procurement. (Law No. 14,436/2022).¹⁰

In the same vein, Law No. 11,948/2009 of the Brazilian Development Bank (BNDES) prohibits the granting or renewal of loans or financing to private sector companies whose directors have been convicted of moral or sexual harassment, racism, child labor, slave labor, or crimes against the environment.¹¹

In September 2023, a legal opinion from the Federal Attorney General’s Office mandated the dismissal of civil servants found guilty of sexual harassment.¹² It was approved by the President of the Republic on the 4th of September, which means that such opinion became binding on all federal administration bodies and entities (Article 40, § 1º, of Brazil’s Complementary Law No. 73, dated February 10, 1993).

In October 2021, Ministerial Order No. 423, 17 Regulatory Standard, Annex II, issued by the Ministry of Labor,¹³ prohibited the use of methods that cause moral harassment, fear, or embarrassment in workers, such as the following:

¹⁰ Lei nº 14.436, de 9 de Agosto de 2022. Planalto. https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/l14436.htm. (In Portuguese).

¹¹ Lei nº 11.948, de 16 de Junho de 2009. Planalto. https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/l11948.htm. (In Portuguese).

¹² <https://www.in.gov.br/en/web/dou/-/despacho-do-presidente-da-republica-508264976>. (In Portuguese).

¹³ <https://www.in.gov.br/en/web/dou/-/portaria-mtp-n-423-de-7-de-outubro-de-2021-351614985>. (In Portuguese).

- abusively promoting competition among workers or work groups or teams;
- requiring workers to permanently or temporarily wear props, accessories, costumes, and clothing for punishment, promotion, or publicity;
- publicly disclosing performance evaluations of operators.

On September 21, 2022, Brazilian Law No. 14,457/2022, for the promotion of a healthy and safe work environment that favors the inclusion and retention of women in the labor market, required companies that have an Internal Commission for the Prevention of Accidents and Harassment (Cipa) to adopt the following measures to prevent and combat sexual harassment and other forms of violence in the workplace:

1. Include rules of conduct regarding sexual harassment and other forms of violence in the company's internal control mechanisms and widely disseminate the content among both male and female employees.

2. Establish procedures for receiving and following up on complaints; establish and verify the facts; and, where appropriate, impose administrative sanctions on those directly or indirectly responsible for sexual harassment and violence while ensuring the anonymity of the complainant.

3. Incorporate issues related to preventing and combating sexual harassment and other forms of violence into Cipa's activities and practices.

4. Conduct training, counseling, and awareness-raising activities for both male and female employees on issues related to violence, harassment, equality, and diversity in the workplace, at all levels of the company's hierarchy, at least once every twelve months, using accessible formats.

These recent norms largely comply with Articles 9, 10, and 11 of the C190.

1.2. The Case Law and Current Challenges to Protection Against V&H in the Workplace in Brazil

As mentioned above the understanding of sexual harassment by the Criminal Code is very narrow. Additionally, the level of proof required by the criminal proceedings is very high. As a result, it becomes extremely difficult to prove sexual harassment because harassing behavior does not usually occur in public places or in front of witnesses. On the contrary, they typically occur only in the presence of the harasser and the victim, as Nunes Schneider points out.¹⁴

The protection against V&H at work in public service was developed by the case law of the Brazilian Superior Court of Justice (STJ). In its Special Appeal 1.286.466/RS judgment, it recognized moral harassment as an act of administrative improper behavior, as stated in Article 11 of Law No. 8,429/92, and that it might also be punished as such. The reporter in this case, Minister Eliana Calmon, pointed out that

moral harassment, more than provocations in the workplace like sarcasm, criticism, ridicule, and intimidation, is a psychological campaign of terror aimed

¹⁴ Nunes, G.H.S. (2013). A dificuldade probatória do assédio moral no trabalho. *Repertório IOB de Jurisprudência*, 27(1), 21–25. (In Portuguese).

at making the victim feel like a rejected person. The target is subjected to slander, abuse, aggressive behavior, and cold and impersonal treatment.¹⁵

This approach was further developed in the case where an expert physician of the INSS sexually harassed two insured persons who were performing a medical examination. The Court found that the physician was violating the guiding principles of public administration, especially the rules of administrative morality, which can be classified as an active subject of the administrative offense provided for in Article 11 of Law 8,429/92.¹⁶

Classification of an act as administrative improper behavior allows for both dismissal of the public servant and payment of a civil fine for violation of administrative morality.

When considering the case law, it is essential to emphasize the significant role of the labor courts in ensuring due remedy and compensation. In two landmark cases, the higher instances courts significantly increased the sum of the compensations paid to the victims. For instance, the 1st Chamber of the Brazilian Superior Labor Court (TST) increased the sum paid by a Rio de Janeiro company for sexual harassment of a female employee by a supervisor from R\$2,040 (approximately four hundred and forty dollars) to R\$20,000 (approximately four thousand dollars) based on Articles 186 and section III of Article 932, both of the Brazilian Civil Code from 2002 (and which have been applied subsidiarily to Brazilian Labor Law (CLT), as regulated by Article 8º of CLT) for violation of dignity and of Article 483 from CLT. The case was subject to judicial secrecy to preserve the employee's dignity but was highlighted in the judgment session as a warning of the seriousness of the problem of sexual harassment and the corrective role of the labor court. "Women are still treated like objects in the 21st century," stressed the reporting judge, Minister Walmir Oliveira da Costa.¹⁷

In another decision, from 2020, McDonald's in the city of Varginha (MG) was ordered by the 2nd Chamber of the Brazilian Superior Labor Court (TST) to pay R\$20,000 (four thousand dollars) in compensation to a former employee who the manager morally harassed, while the court of first instance had only ordered a payment of R\$2,000 (four hundred dollars). The female employee reported that she was insulted by the store manager in front of the other employees. According to her statements, words like "hell" and "a bunch of pigs who don't know how to work" were common in the

¹⁵ Superior Tribunal de Justiça. (2013, September 3). Special Appeal No. 1.286.466/RS. Reporting Justice Eliana Calmon. http://www.stj.jus.br/docs_internet/revista/electronica/stj-revista-electronica-2013_232_capSegundaTurma.pdf. (In Portuguese).

¹⁶ Tribunal Regional Federal da 4ª Região. (n.d.). Appeal No. 5002966-94.2018.4.04.7201, 3rd Chamber. https://consulta.trf4.jus.br/trf4/controlador.php?acao=consulta_processual_resultado_pesquisa&xtValor=50029669420184047201&selOrigem=SC&chkMostrarBaixados=&selForma=NU&hdnRefId=&txtPalavraGerada=-. (In Portuguese).

¹⁷ Tribunal Superior do Trabalho. (n.d.). *Assédio sexual: o que é, quais são os seus direitos e como prevenir?* https://www.tst.jus.br/assedio-sexual/-/asset_publisher/89Dk/content/id/24416578. (In Portuguese).

work environment. The employee, who had only been on the job for eight months, also said the manager made offensive comments to her and sought physical contact. Embarrassed and humiliated, she said the only alternative was to quit.¹⁸

Despite the numerous suits that were filed in labor courts nationwide, research specialist B. Lima claims that, in general, the trivialization and normalization of sexual harassment results in many women still being unable to recognize unprofessional and improper behavior as acts of sexual harassment.¹⁹ A number of victims think it is “part of the game.” The fear that no one will believe the victims and fear of being personally or professionally avenged by the harasser results in many cases “being dropped.” Shame and guilt, stemming from a perceived feeling of responsibility for the harasser’s criminal behavior because they wear a certain type of clothing or are alone in a place with the harasser, also lead to withdrawal of complaints. Fear of reliving what they have experienced, fear that the process will go nowhere because of the length of such processes, inability to bear the costs of the lawsuit, or the possibility of losing and instead having to pay something to the harasser often lead to the charges being withdrawn.

Here it is important to underline that C190 provides the norms on protection against victimization of or retaliation against complainants, victims, witnesses, and whistle-blowers, as well as the right to legal and other support of the victims (Art. 10). The implementation of these norms in Brazil might be an efficient way to solve the problems mentioned above. Ultimately, it is important to keep in mind that Brazil is considered a sexist country, and this is also reflected in the world of work.²⁰

2. Protection Against V&H in the Workplace in Russia

2.1. National Regulations on the Protection Against V&H in the Workplace in Russia

According to statistics, one third (31%) of young workers aged 18 to 24 have been subjected to harassment, while one in ten (9% of workers) have experienced sexual propositions or demands at work as adults in Russia. However, the majority of Russians, apparently, have not experienced such situations in their workplace (87%).²¹ There are no official statistics available regarding the number of applications to the

¹⁸ Tribunal Superior do Trabalho. (2020, August 26). Case No. RR-10062-58.2019.5.03.0153. Reporting Justice Delaíde Miranda Arantes. <https://www.tst.jus.br/-/rede-de-lanchonete-%C3%A9-condenada-por-ass%C3%A9dio-moral-comprovado-contra-atendente>. (In Portuguese).

¹⁹ Lima, B.A.A.C., et al. (2014). Reflexões sobre assédio moral: Um estudo à luz da organização pessoense com maior incidência em ações trabalhistas entre 2008 e 2012. *Revista Gestão & Tecnologia*, 14(1), 201–224. (In Portuguese).

²⁰ http://www.onumulheres.org.br/wpcontent/uploads/2016/04/MapaViolencia_2015_mulheres.pdf

²¹ All-Russian Center for the Study of Public Opinion. (2020, August 3). *Harassment and harassment at work: we haven't encountered it, but we condemn it!* <https://wciom.ru/analytical-reviews/analiticheskii-obzor/pristavaniya-i-kharassment-na-rabote-ne-stalkivalis-no-osuzhdaem>. (In Russian).

courts, prosecutor's offices, and the State Labor Inspectorate on the actual numbers of V&H in the workplace.²² Nevertheless, the presence of mobbing and harassment and judicial practice in this area is evidenced by workers' claims in court to appeal against forced dismissal at will, workers' applications to the State Labor Inspectorate with complaints about various forms of psychological pressure and harassment in the workplace,²³ as well as by publications in the media²⁴ and the scientific literature.²⁵ Despite the widespread occurrence of the phenomena, there is no special regulation that addresses the issue of V&H. The Russian laws do not comply with the provisions of the C190, nor do they prevent V&H or protect victims. Remedy in the form of compensation of moral damage, as we will demonstrate further, might be granted if discrimination or other violations of labor law norms can be proven.

In Russia, there is no legal definition of V&H and no right to protection against them in the Labor Code of the Russian Federation. Nevertheless, Article 75.1 of the Constitution of the Russian Federation guarantees the protection of the dignity of citizens and respect for human labor. In accordance with Article 2 of the Labor Code of the Russian Federation, ensuring the right of employees to protect their dignity during employment is a basic principle of the legal regulation of labor relations.²⁶ In 2014, Russia adopted the National Standard GOST R 55914-2013 "Guidance on the Management of Psychosocial Risk in the Workplace," which is identical to the publicly available specification PAS 1010:2011* (PAS 1010:2011 "Guidance on the Management of Psychosocial Risks in the Workplace") and specifies that "harassment (bullying, mobbing) at work" is any form of "harassing, insulting, socially excluding someone or exercising a negative influence on someone's performance of their work tasks; the negative actions are repetitive, regular and continue over a period of time." "Harassment occurs when one or more employees or supervisors are subjected to repeated and deliberate insult, intimidation and/or humiliation in work-related circumstances," and bullying is defined as "abusive behaviour in the form of vindictive, violent, malicious or humiliating attempts to undermine the position of an individual or group of employees."²⁷

²² Judicial statistics of the Russian Federation. <https://stat.xn----7sbqk8achja.xn--p1ai/>. (In Russian).

²³ Onlineinspektsiya.rf. <https://xn--80akibcicpdbetz7e2g.xn--p1ai/>. (In Russian).

²⁴ Changellenge. (n.d.). *This is (un)acceptable! Harassment checklist*. <https://changellenge.com/article/eto-ne-dopustimo-chek-list-po-kharassmentu/>. (In Russian).

²⁵ Kursova, O. (2014). Protection from mobbing in labor relations: Problems of legal regulation. *Siberian Legal Review*, 3(24), 28–31. (In Russian); Golovina, S., Sychenko, E., & Voitkovskaya, I. (2021). Protection from violence and mobbing in work: Challenges and possibilities for Russia and Kazakhstan. *Bulletin of Perm University. Legal Sciences*, 53, 624–647. (In Russian).

²⁶ Labor Code of the Russian Federation, Art. 2. (In Russian).

²⁷ Risk management. Guidance on the management of psychosocial risks in the workplace. (2014). <https://docs.cntd.ru/document/1200108135>. (In Russian).

Special rules have been established in respect of pedagogical workers, as well as state and municipal employees.²⁸ Other employees can likewise be held disciplinary, administratively, and criminally liable for psychological violence and harassment in the workplace.

If victims perceive mobbing and harassment as a manifestation of discrimination, then Article 5.62 of the Code of Administrative Offences of the Russian Federation provides for administrative liability, and Article 136 of the Criminal Code of the Russian Federation provides for criminal liability. The general norm of part 1 of Article 5.27 of the Code of Administrative Offences of the Russian Federation, which provides for liability for any violation of labor legislation, may also serve as the basis for administrative liability for psychological violence in the sphere of labor in Russia. Furthermore, Article 5.61 of the Code of Administrative Offences provides for liability for insult, i.e. humiliation of the honor and dignity of another person, expressed in an indecent or other form contrary to generally accepted norms of morality and ethics.

A victim of V&H may seek remedy by referring to Article 237 of the Labor Code of the Russian Federation, which provides for compensation for moral damage caused to an employee by unlawful acts or omissions of the employer.

Coercion to engage in actions of a sexual nature, if committed by blackmail, threatening to destroy, damage, or seize property, or by exploiting material or other dependencies of the victim, also entails criminal liability under Article 133 of the Criminal Code of the Russian Federation. But it should be noted that other forms of sexual harassment, such as unwanted hints, physical touching, and proposals are not covered by this rule of law.

OSH legislation in theory can be extended to violence and harassment, as labor protection is a system for preserving the life and health of workers in the process of labor activity, which includes legal, socio-economic, organizational and technical, sanitary and hygienic, therapeutic and preventive, rehabilitation, and other measures.²⁹ The main principles of labor safety are minimization of damage to workers' health.³⁰ Given that health is a state of physical, mental, and social well-being of a person in which there are no diseases or disorders of the functions of the organs and systems of the body,³¹ employers are obliged to ensure labor safety,

²⁸ Article 336 of the Labor Code of the Russian Federation provides for an additional ground for termination of a labor contract with a pedagogical worker, as well as the head or deputy head of a state or municipal educational organisation of higher education, for the use, including one-time use, of methods of upbringing associated with physical and (or) mental violence against the personality of a student or pupil.

²⁹ Labor Code of the Russian Federation, Art. 209. (In Russian).

³⁰ Labor Code of the Russian Federation, Art. 209.1. (In Russian).

³¹ Federal Law No. 323-FZ of November 21, 2011 "On the Fundamentals of Health Protection of Citizens in the Russian Federation," Art. 2. Collection of Legislation of the Russian Federation, 2011, No. 48, Art. 6724. (In Russian).

develop measures to ensure labor safety, and implement them.³² However, the Labor Code does not contain a special regulation for employers to identify, record, and take appropriate measures to prevent violence and harassment in the workplace as psychosocial risks, which significantly reduces the possibility of protecting violated rights. It is interesting to note that the Government of the Russian Federation has expressed its intention to supplement Article 214 of the Labor Code of the Russian Federation with the obligation of the employer to inform employees about the ways of protection against harassment expressed in infringement of human dignity, threatening, hostile, humiliating, or insulting situation.³³

Prohibition of mobbing and harassment may be stipulated by local regulations of the organization. For example, an employee who violates the rules may be subject to disciplinary sanctions and violations repeated within twelve months may result in dismissal.

2.2. The Case Law and Current Challenges to Protection Against V&H in the Workplace in Russia

The absence of special norms that protect against V&H in Russia reduces the effectiveness of judicial protection afforded. This is confirmed by numerous court decisions that rejected claims because employees were unable to provide evidence of the violations. When appealing the unlawfulness of forced dismissals and disciplinary sanctions resulting from mobbing and harassment, employees quite often refer to discrimination³⁴ and violation of the principle of respect for the dignity of the employee.³⁵ Researchers who have conducted comprehensive analyses of judicial practice in these categories of cases conclude that courts of general jurisdiction often take a formalistic approach to the consideration of the claims made by plaintiffs, leaving in most cases the claims without satisfaction.³⁶

The gaps in the federal legislation governing violence and harassment in the workplace could be more quickly addressed at the level of organizations. The Codes of Corporate Ethics of state organizations and large private companies quite often prohibit obscene, vulgar, rude, cruel, discriminatory, aggressive or offensive expressions, gestures, and forms of behavior.³⁷ In these types of cases, an employee

³² Labor Code of the Russian Federation, Arts. 22, 214. (In Russian).

³³ European Committee of Social Rights. (2019, January 20). *Second report on the non-accepted provisions of the European Social Charter*. <https://rm.coe.int/2nd-report-russianfederation-eng-naprovisions/16809e1123>

³⁴ Labor Code of the Russian Federation, Art. 3. (In Russian).

³⁵ Labor Code of the Russian Federation, Art. 2. (In Russian).

³⁶ Sychenko, E.V., & Bobovnikova, E.V. (2023). Comparative legal analysis of the application of the principle of respect for the dignity of the employee. *Russian Journal of Labour & Law*, 13, 223–230. (In Russian).

³⁷ The Code of Corporate Ethics of Sberbank. <https://media.rspp.ru/document/1/a/b/ab28a778f83ec053dd1081f8d959b952.pdf>, almost similar to the Code of Corporate Ethics of Public Joint

who has suffered from such actions could seek protection from the employer, the state labor inspectorate, the prosecutor's office, or the court.³⁸

Before the adoption of ILO Convention No. 190, mobbing and harassment were rarely invoked by employees, and in most cases, they could not be proved.

The adoption of Convention No. 190, despite the lack of its ratification by the Russian Federation, has had a positive impact on Russian judicial practice, as plaintiffs began to refer more frequently to mobbing and harassment as a reason for forced dismissal and unlawful disciplinary liability, describing unlawful behavior in accordance with the Convention. Claims now reference various forms of psychological pressure, including creating unbearable working conditions, constant threats and reproaches, forced dismissal, turning the team against the plaintiff,³⁹ emotional pressure, excessive and unjustified criticism, providing false information to senior management, humiliation in front of colleagues and superiors,⁴⁰ as well as social isolation.

The few rulings by the courts of first instance that are in favor of workers are mainly found in cases where psychological violence is associated with a clear violation of labor law by the employer, such as numerous unjustified assignments allotted during night-time or downtime due to discrimination on the grounds of belonging to a trade union organization and regular obstruction of access to the workplace.⁴¹

However, in the vast majority of cases, employees either cannot prove the fact of psychological violence or courts do not attach importance to it, even in cases when audio and video recordings of unethical remarks and actions are presented as evidence.⁴²

In 2020–2021, judicial practice changed in a positive direction. The Supreme Court of the Russian Federation has since repeatedly overturned the decisions of

Stock Company "Gazprom." <https://www.gazprom.ru/f/posts/60/091228/2014-02-25-codex-of-corporate-ethics-2019-08-20-edit.pdf>, Code of Business Ethics of the Public Joint Stock Company "LUKOIL Oil Company." <https://www.lukoil.ru/FileSystem/9/312213.pdf>

³⁸ See, for example, the Decision of the Supreme Court for Civil Cases of the Fourth General Court of Cassation of March 17, 2022 in Case No. 8G-4051/2022[88-9906/2022. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

³⁹ Determination of the Fourth Cassation Court of General Jurisdiction of February 24, 2022 in Case No. 88-6184/2022. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

⁴⁰ Appellate Determination of the Murmansk Regional Court of May 18, 2022 No. 33-1409/2022 in Case No. 2-98/2022. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

⁴¹ Appellate Determination of the Omsk Regional Court of April 18, 2018 in Case No. 33-2297/2018. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

⁴² Decision of the Pervomaisky District Court of Penza (Penza Region) of July 28, 2020 in Case No. 2-1005/2020; Decision of the Surgut City Court of July 9, 2019 No. 2-5019/2019 in Case No. 2-5019/2019; Decision of the Supreme Court for Civil Cases of the Fourth General Court of Cassation of March 17, 2022 in Case No. 8G-4051/2022[88-9906/2022/. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

lower courts because facts of psychological violence were ignored by the court.⁴³ The Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation has recognized as unlawful insults and ridicule by management and other employees, the creation of unbearable conditions for an employee,⁴⁴ and obstacles to the performance of labor duties in the form of disabling his account, forcing him to undergo an extraordinary certification, threats, and hitting. The Supreme Court drew attention to the fact that the facts of psychological violence were not properly assessed by the lower courts. The Supreme Court further ascertained that the lower courts should determine that this circumstance is relevant to the case and put this circumstance on the table in order to verify the arguments related to psychological coercion for dismissal. Moreover, if the employee is referring to a conflict that is creating unbearable working conditions the employer has the obligation to find out the reasons for dismissal.⁴⁵

Nevertheless, due to low awareness of the illegality of mobbing and harassment among employees, the majority of employees who are subjected to humiliation in the workplace do not realize that they are facing unethical and unacceptable behavior and therefore do not seek judicial protection. This situation could be changed by incorporating the employees' right to protection from psychological violence and sexual harassment in the workplace into Article 21 of the Labor Code and the employer's obligation to respect the employee's dignity, refrain from actions that violate the principle of respect for dignity, and ensure the prevention of violations in this area into Article 22 of the Labor Code. Furthermore, Article 241 of the Labor Code of the Russian Federation, regulating the employer's obligations in the area of labor protection, should be supplemented with the obligation to ensure a psychologically healthy working environment.⁴⁶

In addition to improving legislation, it is necessary to formulate appropriate policies, adopt and implement program documents, and raise awareness about the issue. In summing up this analysis, it is important to underline that a systemic approach to V&H is urgently needed in Russia, starting with the recognition of the problem by the authorities, making changes to the norms regarding the duties of employers and employees in the OSH, and recognizing V&H as legitimate occupational risks. All of these steps are fixed in the C190. These conventions can

⁴³ Determination of the Supreme Court of the Russian Federation of July 13, 2020 in Case No. 39-KG20-3-K1; Determination of the Supreme Court of the Russian Federation of February 1, 2021 in Case No. 14-KG20-14-K1. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

⁴⁴ Determination of the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation of August 16, 2021 in Case No. 56-KGPR21-11-K9. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

⁴⁵ Decision of the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation of April 5, 2021 in Case No. 5-KGPR20-165-K2. ConsultantPlus Legal Database. <https://www.consultant.ru>. (In Russian).

⁴⁶ Sychenko & Bobovnikova, 2023.

establish a stronger framework for the creation of healthy and safe workplaces free from V&H.

3. Protection Against V&H in the Workplace in India

3.1. National Regulations on the Protection Against V&H in the Workplace in India

According to a survey conducted by Careerbuilder.in, 55% of Indian workers are bullied at their workplace.⁴⁷ Furthermore, a study of 100 Bombay Stock Exchange companies in 2019 revealed that there was a 14% increase in sexual harassment with 823 cases registered against 722 cases the previous year. It is also revealed that 70% of women choose not to report cases of harassment.⁴⁸ The vision of the legislator in India is focused primarily on the sexual harassment of women, which is more widespread. India has not yet ratified C190 but is making strides in its legal structure for the protection of workers in preventing and addressing workplace harassment and violence.

A Confederation of Indian Industry (CII) () survey conducted on the topic “sexual harassment in the workplace” covering 4,000 employees across four Information Technology (IT) companies found a “lack of awareness” and “anxiety of stigma and defamation” as the most common reasons for why women avoided complaining about sexual harassment. Some of the women also stated that they feared the “loss of job, demotion, and loss of opportunities.”⁴⁹ Workplace violence and harassment pose even more complex and challenging issues in a culturally and geographically diverse country with a high degree of collectivism and patriarchal culture. While new laws are being codified, there is a gap between the *de facto* and the *de jure*.

The Indian Constitution enshrines the right to equality, prohibiting any form of discrimination that is based on caste, religion, race, gender, and other protected characteristics. A few important laws, the Equal Remuneration Act, 1976; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and the Rights of Persons with Disabilities Act, 2016, explicitly prohibit discrimination in the workplace. These laws view discrimination as a form of workplace violence when it leads to harassment, mistreatment, or denial of opportunities for employees based on their protected characteristics.

⁴⁷ India Today. (2020, December 22). *55% Indian Employees Bullied at Work: Effects of Workplace Bullying and How to Address the Issue*. <https://www.indiatoday.in/education-today/jobs-and-careers/story/55-indian-employees-bullied-at-work-effects-of-workplace-bullying-and-how-to-address-the-issue-1752096-2020-12-22>

⁴⁸ India Today. (2020, May 10). *Why Does Prevention of Sexual Harassment at the Workplace Remain Elusive?* <https://www.indiatoday.in/education-today/jobs-and-careers/story/why-does-prevention-of-sexual-harassment-at-the-workplace-remain-elusive-1676362-2020-05-10>

⁴⁹ Taneja. (2013, September 22). *Lack of Awareness Main Problem of Sexual Harassment Victims*. DNA India. <https://www.dnaindia.com/pune/report-lack-of-awareness-main-problem-of-sexual-harassment-victims-1891656>

Pre-1997, the Indian Penal Code was the main law in this field. While there are more specific acts today, the failure in compliance still leads back to the Indian Penal Code. The Indian Penal Code, which is the foundation of criminal law, covers this field under sections 323 (punishment for voluntary causing hurt), 354 (outraging the modesty of a woman), and 509 (punishment of an individual or individuals for using a word, gesture, or act intended to insult the modesty of a woman).⁵⁰ Sections 354 and 509 were the most frequently used sections pre-1997. In the period from 1997 to 2013, when the special law, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, was adopted, the prohibition of V&H in the workplace was mainly drawn from case law (see further in section 3.2 below).

The Sexual Harassment of Women in the Workplace (Prevention, Prohibition, and Redressal) Act is a key legal framework that defines sexual harassment in the workplace. It encompasses unwelcome acts or behavior of a sexual nature, including physical, verbal, or non-verbal conduct, that creates an intimidating, hostile, or offensive work environment for women. The Act defines the responsibilities of employers, requires the establishment of Internal Complaints Committees (ICCs) in workplaces, and mandates the process for filing complaints, conducting investigations, and providing redressal for victims of sexual harassment. The Act significantly expanded the scope of protection to also include “domestic workers” under section 2e; nevertheless, the disparities that exist between these victims and their perpetrators have led to minimal or no improvement for these workers.⁵¹

Therefore, this law is partly in line with the requirements of the C190, but only in certain aspects, specifically with regard to women and sexual harassment. The downside is that the act does not allow for settlement using monetary compensation, instead it only results in an adverse entry in the perpetrator’s records and a deduction from the employees dues. Moreover, this point appears to contradict the norms of the C190 regarding providing effective remedy (see also para. 15 of the R206).⁵²

The Occupational Safety and Health (OSH) legislation in India covers violence and harassment in the workplace. The OSH legislation mandates employers to take appropriate steps to prevent violence and harassment during and in relation to work, in particular, as stipulated in section 2, subsection (p) of the Occupational Safety, Health, and Working Conditions Code.⁵³ This includes conducting risk assessments, implementing preventive measures, providing training and awareness programs to

⁵⁰ Das, R. (2017). *All you need to know about workplace discrimination laws in India*. IPleaders. <https://blog.ipleaders.in/need-know-workplace-discrimination-laws-india/>

⁵¹ Human Rights Watch. (2020, October 14). *India: Women at risk of sexual abuse at work*. <https://www.hrw.org/news/2020/10/14/india-women-risk-sexual-abuse-work>

⁵² Paragraph 15 of the R206 (Violence and Harassment Recommendation, No. 206): “Victims of violence and harassment in the world of work should have access to compensation in cases of psychosocial, physical or any other injury or illness which results in incapacity to work.”

⁵³ Ministry of Labour & Employment. (2023, March 31). *The Occupational Safety, Health and Working Conditions Code*. <https://labour.gov.in/occupational-safety-health-and-working-conditions-code>

employees, and establishing effective grievance redressal mechanisms. The legislative framework also requires that employers consider the psychosocial risks associated with violence and harassment in the management of occupational safety and health, thereby ensuring the overall well-being of employees.⁵⁴ These norms indicate that the ILO approach to preventing V&H in the workplace as a component of workplace safety measures is already implemented in India (Art. 9(b) of the C190).

Victims of workplace bullying can seek remedy under the Industrial Employment (Standing Orders) Act, 1946, which requires employers to establish standing orders that prohibit any behavior that is detrimental to the dignity and well-being of employees covered by section 2(g) of the act.⁵⁵

3.2. The Case Law and Current Challenges to Protection Against V&H in the Workplace in India

As stated before, prior to 1997, the Criminal Code was the only instrument punishing sexual harassment in the workplace in the legal frameworks that encompassed several criminal offenses. This changed after the introduction of the “Vishaka” guidelines. The Supreme Court in *Vishaka v. State of Rajasthan*⁵⁶ for the first time in Indian law recognized and defined sexual harassment. While pre-1997, sexual harassment was prohibited under the Indian Penal Code, employers had no roles or responsibilities. The case led to a series of guidelines for employers called the “Vishaka” Guidelines. These apply to all women, whether they are students, part-time or full-time employees, contract or voluntary, or honorary.⁵⁷ Although they are not legally binding, these guidelines act as a form of guidance for expected behavior. The guidelines place a strong emphasis on preventive and curative measures for employers.

The following are some of the most important ways in which the guidelines place the onus on employers to provide a harassment-free work environment:

1. Employers must form a complaints committee.
2. Expressly emphasize the prohibition of any form of sexual harassment and make the employees aware of the implications through in-house communication systems, posters, and meetings.

⁵⁴ Tiwari, S. (2020, September 22). *Bill Summary: The Occupational Safety, Health and Working Conditions Code, 2020*. PRSIndia. <https://prsindia.org/billtrack/prs-products/prs-bill-summary-3576>

⁵⁵ Jain, Y. (2019). *The Industrial Employment (Standing Orders) Act, 1946 in India*. IPleaders. <https://blog.ipleaders.in/industrial-employment-standing-orders-act-1946/>; Shodhganga: a reservoir of Indian theses @ INFLIBNET. <https://shodhganga.inflibnet.ac.in:8443/jspui/pdfToThesis.jsp?toHandle=https://shodhganga.inflibnet.ac.in/handle/10603/206578&toFile=https://shodhganga.inflibnet.ac.in/bitstream/10603/206578/2/11-chapter%207.pdf>

⁵⁶ *Vishaka and Ors. v. State of Rajasthan and Ors.*, (1997) 6 SCC 241. <https://indiankanoon.org/doc/1031794/>

⁵⁷ Pandey, G. (2017, March 17). *Bhanwari Devi: The rape that led to India's sexual harassment law*. BBC. <https://www.bbc.com/news/world-asia-india-39265653>; Dogra, A., & Ahluwalia, N.K. (2015, February 3). *Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013: A Critical Analysis*. Academike. <https://www.lawctopus.com/academike/sexual-harassment-workplace-prevention-prohibition-redressal-act-2013-critical-analysis/>

3. Prohibition of sexual harassment must also be accompanied by appropriate penalties against the offender in the company's conduct rules.

4. Prohibition of sexual harassment must be incorporated in the standing orders as mandated under the Industrial Employment (Standing Orders) Act, 1946, and must be included by all private employers.

5. Provision of appropriate work conditions with respect to work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women.

6. Victims of sexual harassment should be given the option to seek either the transfer of the perpetrator or their own transfer.⁵⁸

The guidelines led to a legal stipulation for the creation of a complaints committee,⁵⁹ which would be headed by a woman employee, and no less than half of its members would be women. Complaints of sexual harassment would be directed to this committee, which would maintain confidentiality and advise on the action to be taken by the management to resolve the complaint as well as the action to be taken against the perpetrator.

In *Medha Kotwal Lele v. Union of India*, Aalochana,⁶⁰ a center of documentation and research on women along with other women's rights groups, petitioned the Indian courts to implement the Vishaka guidelines more effectively, citing individual cases in which the Vishaka guidelines failed to live up to its purpose. The major issue appeared to be the inadequate or inefficient implementation of these guidelines by the various states. Later these developments were fixed in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act.

Despite the presence of a legal framework for combating V&H at work, even if fragmented, the primary challenge is the fear of retaliation from the perpetrator or even from the employer. Retaliation can come in various forms, such as threats, discrimination, demotion, or termination. This fear of retaliation may prevent workers from speaking up and seeking protection, as they fear the potential negative consequences of reporting harassment. This, in turn, can create a culture of silence and impunity, where workers are afraid to come forward and seek redressal for the harassment they have experienced. There was an attempt to consider these acts as offenses under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act; however, the Delhi High Court, at the time in 2020, refused to create a new category of offense stating that

retaliation, or victimisation, is only the provocation for an act of assault. If an act of assault amounts to sexual harassment, it would anyway be punishable

⁵⁸ Goyal, A. (2014, December 7). *Sexual Harassment at the Workplace*. Academike. <https://www.lawctopus.com/academike/sexual-harassment-at-the-workplace/>

⁵⁹ Cyrill, M. (2021). *India's Occupational Safety, Health and Working Conditions Code, 2020*. India Briefing. <https://www.india-briefing.com/news/indias-occupational-safety-health-and-working-conditions-code-2020-what-is-it-and-how-should-companies-prepare-21545.html/>

⁶⁰ *Medha Kotwal Lele & Ors. v. U.O.I. & Ors.*, AIR ONLINE 2012 SC 632. <https://indiankanoon.org/doc/48293767/>

under the Act, 2013. If it does not, it cannot be punishable under the said Act, as the Act deals with only offences of a sexual nature, and an offence which does not lead to sexual harassment, can obviously find no place therein.⁶¹

However, more recently, in 2023, the Supreme Court delivered a judgment in the case of *Sunita Thawani v. Union of India and Another* and refused to entertain a public interest litigation (PIL) filed in relation to the issuance of directions for protecting complainants, witnesses, and other persons in cases of sexual harassment from potential retaliation or victimization at the hands of the accused person or the concerned organization.⁶²

Therefore, Indian legislation and case law do not wholly correspond to the requirements of the C190 for ensuring the protection against victimization of or retaliation against complainants, victims, witnesses, and whistle-blowers (Art. 10). Interestingly, the Handbook on the Act does list “threats, intimidation or retaliation against an employee who speaks up about unwelcome behavior with sexual overtones” as examples of sexual harassment in the workplace.⁶³ However, this document has only a soft law nature.

Another challenge is the lack of awareness and education among workers about their rights and the legal provisions related to violence and harassment or sexual harassment in the workplace. Workers are frequently not aware of what constitutes violence and harassment and the forms it takes as well as the legal remedies available. This can hinder workers from recognizing violence and harassment and taking appropriate actions to report and address it. Employers may also lack proper knowledge and understanding of their obligations under the law, leading to inadequate implementation of policies and procedures to prevent and address such incidents. Therefore, in conjunction with the implementation of the C190 norms, also providing guidance, training, and awareness-raising (Art. 11) is extremely essential.

India shows limited progress in creating a safe work environment, although there are positive developments. The changing global landscape and formalization of the workforce have left India with little choice but to make significant strides towards improving its labor laws. Factors such as reduced bureaucracy, increased female employment, rising living costs, and growing aspirations fuelled by shifting societal values from collectivism to individualism have created a political climate that prioritizes simplifying laws and integrating digitalization for greater effectiveness. An example of this trend is the Occupational Safety and Health (OSH) Act, which has replaced multiple outdated British-era laws with a more modern and streamlined

⁶¹ Chatterjee, S. (2023, July 22). *SC declines PIL to protect complainants of sexual harassment against retaliation at workplace: Is the law adequate?* The Leaflet. <https://theleaflet.in/sc-declines-pil-to-protect-complainants-of-sexual-harassment-against-retaliation-at-workplace-is-the-law-adequate/>

⁶² *Id.*

⁶³ Ministry of Women and Child Development. (2015, November). *Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal Act) 2013*. <https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

legislation. While there may be multiple reasons for these changes, including urbanization, improved communication, and better access to education, India's progress towards ensuring fundamental rights for all, not just in theory but also in practice, has significant social benefits. As the world's largest democracy, any positive change in India has far-reaching implications, even though it may take time for such a massive country to make significant strides. Nevertheless, there are promising signs of progress in this direction.

4. Protection Against V&H in the Workplace in China

4.1. National Regulations on the Protection Against V&H in the Workplace in China

Scholars have often stated that Chinese culture may be characterized as being a high power distance culture⁶⁴ and that such an environment may be conducive to fostering hierarchical and autocratic relationships between managers and subordinates, as well as workplace bullying.⁶⁵ At the same time, there are very few researchers who have addressed this issue;⁶⁶ the Chinese law lacks provisions that can be directly invoked in situations of V&H other than sexual harassment. However, for some types of harassing behaviors that infringe workers' "personality rights," workers can ask relevant responsible personnel to bear tort liability for such conduct, as this is regulated by tort liability law. For instance, if the managers commit indecency, insulting, slander, or other similar acts, or any other bullying behavior at work that causes minor injuries, the violation might be considered a crime. In addition, the labor law clearly stipulates that if an employer forces an employee to work, humiliates, physically punishes, beats, illegally searches, or detains a worker, the public security organs may warn, fine, or detain the person who is responsible, and in serious cases, he or she may be investigated for criminal responsibility.

Like in India, the attention of the legislator in China is also mainly focused on sexual harassment, so the present research will primarily address this issue. According to the Executive Report of the 3rd Survey on the Status of Chinese Women, 7.8% of women have encountered sexual harassment in the workplace or at school.⁶⁷

⁶⁴ Schaubroeck, J., et al. (2007). Embracing transformational leadership: Team values and the impact of leader behavior on team performance. *Journal of Applied Psychology*, 92(4), 1020–1030; McCormack, D., et al. (2009). Workplace bullying and intention to leave among schoolteachers in China: The mediating effect of affective commitment. *Journal of Applied Social Psychology*, 39(9), 2106–2127.

⁶⁵ McCormack et al., 2009.

⁶⁶ Wang, H. (2022). Legislative and judicial responses to workplace sexual harassment in Mainland China: Progress and drawbacks. *Frontiers in Public Health*, 10, Article 1000488; Cheo, R. (2017). Migrant workers and workplace bullying in Urban China. *Social Indicators Research*, 132(1), 87–115.

⁶⁷ Project Group of the 3rd Survey on the Status of Chinese Women. (2011). Executive Report of the 3rd Survey on the Status of Chinese Women. *Journal of Chinese Women's Studies*, 108(6), 13–14. (In Chinese).

In their effort to prevent sexual harassment, China has formed a legal system consisting of one code, multiple laws, one special provision, and multiple local regulations.⁶⁸ Article 38 of the Constitution of the People's Republic of China stipulates that the personal dignity of its citizens is inviolable. Insulting, slandering, and falsely accusing citizens by any means are all explicitly prohibited.⁶⁹ In 1994, the "Measures of Hubei Province for Implementation of the Law of the People's Republic of China on the Protection of Women's Rights and Interests" clearly stipulated "sexual harassment" in local regulations for the first time. Subsequently, the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005 Revision) used the term "sexual harassment" in the basic law for the first time. Article 11 of the "Special Provisions on the Labor Protection of Female Employees," promulgated in 2012, stipulates that employers have the responsibility to prevent and stop sexual harassment of female employees in the workplace.⁷⁰ As a result, some provinces have introduced and even refined the specific implementation measures that are relevant to each province. Article 1010(1) of the Civil Code of the People's Republic of China (promulgated in 2020) stipulates that in the event of sexual harassment against another person's will by way of words, characters, images, or physical acts, the victim has the right to request the actor to assume civil liability according to the law.⁷¹ Article 23 of the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2022 Revision) stipulates the general rules for the prevention of sexual harassment; Article 24 outlines special regulations for sexual harassment on a campus; Article 25 pertains to workplace sexual harassment; and Article 80 specifies the legal liability provisions.⁷²

However, these laws and regulations do not explicitly define sexual harassment but rather delineate it by enumerating and describing infringements. Although China's basic law does not officially define sexual harassment, the term is clearly defined in local regulations in some regions. For example, the Sex Discrimination Ordinance of the Hong Kong Special Administrative Region of the People's Republic of China defines sexual harassment as: (a) making an unwanted sexual demand against a woman or an unwanted demand for sexual favors or other sexual acts, where having regard to all the relevant circumstances, it is reasonable to expect that

⁶⁸ Wang, L. (2022). Legislation against sexual harassment in China: Experience and prospects. *Journal of Chinese Women's Studies*, 5, 89. (In Chinese).

⁶⁹ <https://www.npc.gov.cn/npc/c505/201803/e87e5cd7c1ce46ef866f4ec8e2d709ea.shtml>. (In Chinese).

⁷⁰ Art. 11 of the Special Rules on the Labor Protection of Female Employees (2012 Issued): "An employer shall prevent and stop sexual harassment of female employees in the workplace." https://www.gd.gov.cn/zwgk/wjk/zcfgk/content/post_2532181.html. (In Chinese).

⁷¹ <https://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>. (In Chinese).

⁷² <https://www.npc.gov.cn/npc/c30834/202210/d80092ae46b24946b30b3a880c2f2be5.shtml>. (In Chinese).

the woman will feel offended, insulted, or intimidated; and (b) a person committing an act involving sex, either independently or in conjunction with others, that creates a hostile or intimidating environment for the woman, constitutes sexual harassment against the woman.⁷³

China does not use the term “employer” in labor legislation but instead uses the phrase “employing units” to refer to the equivalent of workers. This includes enterprises, individual economic organizations, private non-enterprise units, and other organizations in China; additionally, state organs, public institutions, and social organizations can also qualify as employing units when establishing labor relations with workers, as can legally established accounting firms, law firms and other partnerships, and foundations. On the other hand, civil servants and the staff of public institutions and social organizations that apply the civil servant system, rural workers (except for workers in township enterprises and farmers working in cities and doing business), military personnel in active service, and family nannies are not considered workers in labor relations.⁷⁴ According to Article 1010(2) of the Civil Code of the People’s Republic of China,⁷⁵ state organs, enterprises, schools, and other entities are all subject to the duty and responsibility of preventing and controlling sexual harassment. At the same time, the Civil Code of the People’s Republic of China abandons the traditional practice of protecting women only, as was the case in the previous sexual harassment legislation, and provides protection to men as well. On this basis, Article 25 of the Law of the People’s Republic of China on the Protection of Women’s Rights and Interests (2022 Revision) lists the measures that employers should take to prevent and stop sexual harassment, including formulating rules and systems, specifying responsible persons and institutions, conducting education and training activities, taking security measures, setting up complaint channels, establishing and improving investigation and resolution procedures, assisting in enforcement of rights, providing psychological counseling, and other reasonable measures.⁷⁶ The “Special Rules on the Labor Protection of Female Employees” also clarifies the employer’s obligation to prevent and stop sexual harassment.

⁷³ https://www.elegislation.gov.hk/hk/cap480?xpid=ID_1438403244330_001

⁷⁴ https://www.mohrss.gov.cn/fgs/202103/t20210312_411025.htm. (In Chinese).

⁷⁵ Art. 1010(2) of the Civil Code of the People’s Republic of China: “Organs, enterprises, schools, and other entities shall take reasonable measures of prevention, acceptance of complaints, investigation, and handling, so as to prevent and cease sexual harassment conducted by violators by making use of their powers and affiliation relationships.”

⁷⁶ Art. 25 of the Law of the People’s Republic of China on the Protection of Women’s Rights and Interests (2022 Revision): “An employer shall take the following measures to prevent and stop sexual harassment of women: (1) Formulating rules and systems prohibiting sexual harassment. (2) Specifying a responsible department or person. (3) Conducting education and training activities to prevent and stop sexual harassment. (4) Taking necessary security measures. (5) Publishing complaint telephone numbers and mailboxes, among others, and keeping complaint channels unimpeded. (6) Establishing and improving investigation and resolution procedures, resolving disputes in a timely manner, and protecting the privacy and personal information of parties. (7) Supporting and assisting aggrieved

Sexual harassment is not specifically regulated in the relevant legislation on occupational safety and health. However, as a labor standard law, Article 3 of the Labor Law of the People's Republic of China (2018 Amendment) stipulates that workers have the right to be employed on an equal basis and receive labor safety and sanitation protection; Article 13 provides the right of workers to non-discrimination; in particular, Chapter VI is a special chapter on labor safety and sanitation, in which Article 52 stipulates that employers shall establish and improve the labor safety and sanitation system.⁷⁷ The relevant legislation, such as the "Work Safety Law of the People's Republic of China" and the "Law of the People's Republic of China on the Prevention and Control of Occupational Diseases," also requires employers to provide a safe working environment for workers, and such a safe production environment should include a working environment for employers to provide workers free from sexual harassment. In the end, the state has explicitly clarified the security obligations of employers with respect to sexual harassment in legislation.

There are several guidelines in place to encourage employers to establish a prevention mechanism against workplace sexual harassment.⁷⁸ In terms of legal liability, the perpetrator of sexual harassment may bear civil liability,⁷⁹ administrative liability,⁸⁰

women in lawful enforcement of rights, and providing them with psychological counseling when necessary. (8) Other reasonable measures to prevent and stop sexual harassment." <https://www.npc.gov.cn/npc/c30834/202210/d80092ae46b24946b30b3a880c2f2be5.shtml>. (In Chinese).

⁷⁷ Labor Law of the People's Republic of China. <https://www.66law.cn/tiaoli/2.aspx>. (In Chinese).

⁷⁸ The Manual of Guidance on Preventing Workplace Sexual Harassment adopted by the Rights and Interests Department of the All-China Women's Federation and the Model Texts of the Rules for Eliminating Workplace Sexual Harassment in 2021 and the Model Texts of the Rules for Female Workers Special Labor Protection in the Workplace adopted by the Ministry of Human Resources and Social Security of the People's Republic of China, the Supreme People's Procuratorate of the People's Republic of China, and the All-China Federation of Trade Unions.

⁷⁹ Art. 1010(1) of the Civil Code of the People's Republic of China: "In the event of sexual harassment against another person's will by words, characters, images, or physical acts, the victim has the right to request the actor to assume civil liability according to the law."

⁸⁰ Art. 80(1) of the Law of the People's Republic of China on the Protection of Women's Rights and Interests: "Where this Law is violated by sexually harassing a woman, public security authorities shall give reprimand and education, or issue a written admonition and the entity where the violator works shall administer discipline according to the law." The Public Security Administration Punishments Law of the People's Republic of China, Art. 42: "A person who commits any of the following acts shall be detained for not more than five days or be fined not more than 500 yuan; where the circumstances are more serious, he shall be detained for not less than five days but not more than ten days, and may also be fined not more than 500 yuan: ... (2) openly insulting another person or slandering another person by fabricating stories; ... (5) repeatedly dispatching pornographic, insulting, intimidating or other information to disturb the normal life of another person; ..." Art. 44: "A person who molests another person or intentionally exposes his/her body in a public place, and the circumstances are abominable, shall be detained for no less than five days but no more than ten days; A person who molests an intellectually disabled person, or a person suffering mental disorder, or a person who has not attained to the age of 14, or commits such an act with other serious circumstances, shall be detained for no less than ten days but no more than fifteen days." https://www.law-lib.com/law/law_view.asp?id=403793. (In Chinese).

or criminal liability.⁸¹ The Civil Code of the People's Republic of China does not specify what kind of legal liability the employer should bear if it fails to fulfill its obligation to prevent sexual harassment, and there are many controversies on this topic in the academic circle.⁸² However, Article 77 and Article 80⁸³ of the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2022 Revision) stipulate the responsibilities of employers, including that the procurator organ may issue recommendations to the employer, and the superior organ or the competent department shall then order the corrections and administer discipline to the directly liable executive in charge and other directly liable persons in accordance with the law.

The workers have the right to be removed from working environments where they have reasonable grounds to believe that violence and harassment would constitute an imminent peril to their life, health, or safety. When a worker encounters workplace sexual harassment, the victim may make a complaint, apply for mediation and arbitration, institute legal proceedings, while procurator organs may file a public interest litigation, and the trade union might negotiate with the employer on behalf of the employee, as well as request intervention from the local government to deal with the employer if he or she refuses to solve the problem.

4.2. The Case Law and Current Challenges to Protection Against V&H in the Workplace in China

In Chinese jurisprudence, direct lawsuits for sexual harassment are rare. In sexual harassment damage compensation disputes, there are often problems, such as the

⁸¹ Art. 237(1) of the Criminal Law of the of the People's Republic of China: "Whoever acts indecently against or insults a woman by violence, coercion or any other forcible means, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention."

⁸² Some think it is general tort liability, some think it is the employer's vicarious liability, some think it is the violation of the employer's incidental obligations, and some think the employer bears jointly and severally assume the compensatory liability. Zhang, Y. (2022). Research on the anti-sexual harassment duty of organizations and relevant tort liability. *China Legal Science*, 3, 60–81. (In Chinese); Tian, X., & Zhang, Y. (2021). Employer's responsibility in sexual harassment in the workplace – Comments on Article 1010 and 1191 of the Civil Code of the People's Republic of China. *Journal of Tianjin University (Social Sciences)*, 23(04), 327–333. (In Chinese); Lu, H. (2020). Employer liability for sexual harassment in the workplace: Expanding on Art. 1010 of the Civil Code. *Journal of Chinese Women's Studies*, 5, 87–96. (In Chinese); Wang, L. (2021). Legal regulation on sexual harassment in workplace during the age of the Civil Code. *Law Science*, 1, 133–154. (In Chinese); Zheng, M. (2022). On the civil liability of institutions for failing to fulfill obligations to prevent and curb sexual harassment. *Northern Legal Science*, 16(03), 5–16. (In Chinese).

⁸³ Art. 77 of the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2022 Revision): "Where the violation of the lawful rights and interests of women causes damage to the public interest, procurator organs may issue a procurator recommendation." Art. 80(2): "Where a school or an employer violates this Law by failure to take necessary measures to prevent and stop sexual harassment, causing violation of women's rights and interests or creating an execrable social impact, superior organ or the competent department shall order it to take corrective action, and administer discipline to the directly liable executive in charge and other directly liable persons in accordance with the law, if corrective action refuses to be taken, or the circumstances are serious" <https://www.npc.gov.cn/npc/c30834/202210/d80092ae46b24946b30b3a880c2f2be5.shtml>. (In Chinese).

inability to prove the existence of sexual harassment, the flaws in the probative force of evidence, and the risk of infringing the legitimate rights and interests of others in the process of providing proof.⁸⁴ In addition, it is difficult to determine what kind of civil liability the employer bears,⁸⁵ and the amount of damages to be granted.⁸⁶

In practice, the most common cases are disputes over how employers handle employees suspected of sexual harassment in the workplace. There are mainly two kinds of situations. First, the employer actively acts to dismiss the employee who commits sexual harassment in the workplace, which leads to a labor dispute between the laid-off employee and the employer. Second, employers take no action and are even indifferent to sexual harassment incidents in the workplace, resulting in labor disputes between the infringed employees and employers. However, in both these two types of disputes, the identification of sexual harassment in the workplace is only to prove the legality of the employer's dismissal decision and does not involve the protection of the rights and interests of the victim, nor does it effectively compensate for the physical or psychological trauma of the victim.

As mentioned above, the inability to prove the existence of sexual harassment, the weaknesses in the evidence's probative power, along with the risk of infringing the legitimate rights and interests of others in the process of proof are all common issues that arise in sexual harassment damage compensation disputes.⁸⁷ Moreover, the chances of victory for the victims are extremely slim. At the same time, although the Civil Code of the People's Republic of China stipulates the civil litigation rights of sexual harassment victims and the employer's obligation to prevent such occurrences, which breaks through the gender limitations that are traditionally associated with sexual harassment prevention and the protection of women's rights and interests, in cases when an employer does violate this obligation, the specifics regarding the kind

⁸⁴ Wang, L., & Yu, H. (2022). Relief dilemma of sexual harassment in the workplace and the way out of judgment – Based on judicial case analysis. *Human Rights*, 2, 180–300. (In Chinese); Lu, H. (2019). Research on the issue of proving cases of sexual harassment in the workplace. *Journal of Chinese Women's Studies*, 5, 80–88. (In Chinese); Gu, J. (2020). Research on the legal liability of employer in the workplace: Sexual harassment. *Shandong Trade Unions' Tribune*, 26(06), 87–101. (In Chinese); Jiang, Y., et al. (2021). The dilemma of legal intervention and improvement route to prevent workplace sexual harassment: Based on statistical analysis of 147 related civil litigation cases. *Journal of China Women's University*, 33(6), 40–53. (In Chinese).

⁸⁵ The Civil Judgment of Hangzhou Jinjiang District People's Court, 2014-Hang-Bin- Min-Chu-Zi-1173. The court held that “not everything illegal that occurs in the workplace of the employer is the employer's failure to provide labor protection or labor conditions, or breach of its obligation to prevent and stop sexual harassment of female employees.” (In Chinese).

⁸⁶ The Civil Judgment of Beijing Chaoyang District People's Court, 2019-Jing-0105-Min-Chu-27423. The court awarded the compensation to the employer for the economic loss of \$40,000, and no compensation was ordered for the harassed person. The Civil Judgment of Henan Province Queshan County People's Court, 2019-Yu-1725-Min-Chu-3936. The court awarded the defendant \$500 for the plaintiff's mental comfort. (In Chinese).

⁸⁷ Wang & Yu, 2022; Lu, 2019; Gu, 2020; Jiang et al., 2021.

of civil liability, the criteria of liability and the methods of bearing such liability are not clear,⁸⁸ and the amount of compensatory damage is difficult to determine.⁸⁹

The present analysis leads us to conclude that a clear legislative framework covering all forms of V&H is absent in China. However, there are employers' policies in place that forbid discrimination and V&H in an effort "to create a healthy, safe, positive, diverse and inclusive work environment, and to ensure that employees are not subjected to any form of discrimination and harassment at work."⁹⁰ Still, much needs to be done to ensure that law prohibits not only sexual but all forms of harassment, that it covers all types of workers, that these risks are part of the OSH, and that the mechanisms of prevention, protection, and remedy are established.

5. Protection Against V&H in the Workplace in South Africa

5.1. National Regulations on the Protection Against V&H in the Workplace in South Africa

There has been an increase in harassment cases, especially sexual harassment cases, in South African workplaces. A recent study indicates that over 51,000 cases of sexual offenses are committed annually in South African workplaces.⁹¹ There are some industries where this issue is particularly spread. For example, in the mining industry, there are reported cases and incidences on an almost daily basis of women being physically assaulted, verbally abused, and raped, being asked to trade sexual favors for other benefits or employment.⁹²

The regulations pertaining to protection in this regard are rather fragmented in South Africa. We can refer to Article 10 of the South African Constitution as a cornerstone of protection. According to this article, everyone has inherent dignity and the right to have their dignity respected and protected.⁹³ In addition, the Employment Equity Act

⁸⁸ The Civil Judgment of Hangzhou Binjiang District People's Court, 2014-Hang-Bin- Min-Chu-Zi-1173. The court held that "not everything illegal that occurs in the workplace of the employer is the employer's failure to provide labor protection or labor conditions, or breach of its obligation to prevent and stop sexual harassment of female employees." (In Chinese).

⁸⁹ The Civil Judgment of Beijing Chaoyang District People's Court, 2019-Jing-0105-Min-Chu-27423. The court awarded the perpetrator of sexual harassment should compensate the employer for the economic loss of \$40,000, and no compensation was involved for the harassed person. The Civil Judgment of Henan Province Queshan County People's Court, 2019-Yu-1725-Min-Chu-3936. The court awarded the defendant \$500 for the plaintiff's mental comfort. (In Chinese).

⁹⁰ See, e.g., Xiamen C&D Co. Ltd. (n.d.). Anti-discrimination and Anti-harassment Policy. <https://www.chinacnd.com/upfiles/policy/202303/1678876407546.pdf>. (In Chinese).

⁹¹ Kubjana, M. (2020). Understanding the law on sexual harassment in the workplace (through a case law lens): A classic fool's errand. *Obiter*, 41(1), 88–105. <https://hdl.handle.net/10520/EJC-1df91e392a>

⁹² Minerals Council South Africa. (2020, March). *Women in Mining in South Africa*. <https://www.mineralscouncil.org.za/womeninmining/wp-content/uploads/2023/08/fact-sheet-minerals-council-women-in-mining-sa-2020.pdf>

⁹³ Constitution of the Republic of South Africa, 1996. South African Government. <https://www.gov.za/documents/constitution-republic-south-africa-1996>

(EEA) prohibits harassment of an employee when it is a form of unfair discrimination (sec. 6). Section 54 of the Amended Employment Equity Act provides the Code of Good Practice on the Prevention and Elimination of Harassment and elaborates on the diverse forms of violence and harassment prohibited in the workplace.⁹⁴ Section 60(3) renders the employer liable if one of its employees contravenes a provision of the EEA while at work in respect of another employee, and it is immediately brought to the attention of the employer (not necessarily by the victim), who then fails to take the necessary steps to eliminate the conduct. Upon such a failure, the conduct of the primary perpetrator is assigned to the employer. However, even if the employer fails to act as contemplated in section 60(2) of the EEA, subsection 4 does provide another “escape route” for the employer, if the employer can show that “it did all that was reasonably practicable to ensure that the employee would not act in contravention of” the EEA. Violence and harassment are covered under the Occupational Health and Safety Act No. 85 of 1993 in South Africa. Section 5(1) of the Occupational Health and Safety Act 85 of 1993 states that it is the obligation of every employer to provide and maintain a workplace that is safe and without risk to the health of employees.⁹⁵ A labor inspector can assist and investigate harassment violations in the workplace and ensure that the law is enforced within the workplace.⁹⁶

The Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA) prohibits unfair discrimination by the government, by private organizations and individuals and forbids hate speech and harassment.⁹⁷ The Protection from Harassment Act, No. 17 of 2011 (PHA) came into force on April 27, 2013. The PHA applies to everyone who commits acts of harassment and is specifically designed to protect victims of “stalkers”. It also covers harassment in the workplace. Harassment and sexual harassment are defined in detail in this Act.⁹⁸ The definition covers also the actions prohibited by C190.

⁹⁴ Employment Equity Act, No 55 of 1998. Department of Employment and Labour. <https://www.labour.gov.za/DocumentCenter/Acts/Employment%20Equity/Act%20-%20Employment%20Equity%201998.pdf>

⁹⁵ Occupational Health and Safety Act No. 85 of 1993. South African Government. https://www.gov.za/sites/default/files/gcis_document/201409/act85of1993.pdf

⁹⁶ AgriOrbit. (2022, October 31). *Three types of labor inspections*. <https://agriorbit.com/three-types-of-labour-inspections/>

⁹⁷ Promotion of Equality and Prevention of Unfair Discrimination Act, 2000. Department of Justice. <https://www.justice.gov.za/legislation/acts/2000-004.pdf>

⁹⁸ Under this Act, “harassment” means directly or indirectly engaging in conduct that the respondent knows or ought to know that (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably (i) following, watching, pursuing, or accosting the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies, or simply happens to be; (ii) engaging in verbal, electronic, or any other form of communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or (iii) sending, delivering, or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail, or other

Under the terms of the PHA, victims of harassment are entitled to have an interim protection order (restraining order) issued against the harasser. The harasser can be moved to another department due to the restraining order.⁹⁹ After obtaining a court order against a harasser in the workplace, an employee can use the Employment Equity Act to proceed with the grievance process.¹⁰⁰

Under the Protection from Harassment Act, an employer can be vicariously held liable for an employee being harassed in the workplace. When the court grants a protection order against a harasser employed in the same department as the aggrieved party, the employer is obliged to take measures to ensure compliance with the protection order. In addition, the employer is required to take disciplinary action against the harasser. The employer is also liable for the conduct of delivery persons, customers, and other third parties. Thus, the scope of protection provided is broad and corresponds to the requirements of the C190.

Particular attention should be paid to the Code of Good Practice on the prevention and elimination of harassment in the workplace.¹⁰¹ According to this instrument, all forms of violence and harassment are regarded as unfair discrimination and are deemed an obstacle to equality and equity within South African workplaces. The Code consolidates the terms “violence” and “harassment” into a single term, “harassment.”¹⁰² It sets forth the guidelines on best practices for employers to follow when dealing with labor matters or disputes. However, the Code is not binding, as employers are not legally required to follow them. Thus, employers can depart from the guidelines in the Code as long as they are able to justify not using them. Nonetheless, when departing from the guidelines, it becomes difficult to justify this in a workplace, the reason for this being that the Labor Court judges and arbitrators

objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of the complainant or a related person; or (b) amounts to sexual harassment of the complainant or a related person. “Harm” is defined as any mental, psychological, physical, or economic harm. “Sexual harassment” is defined as any (a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome; (b) unwelcome explicit or implicit behavior, suggestions, messages, or remarks of a sexual nature that have the effect of offending, intimidating, or humiliating the complainant or a related person in circumstances, in which a reasonable person having regard to all the circumstances, would have anticipated that the complainant or related person would be offended, humiliated, or intimidated; (c) implied or expressed promise of reward for complying with a sexually oriented request; or (d) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.

⁹⁹ Protection from Harassment Act No. 17 of 2011. Department of Justice. <https://www.justice.gov.za/legislation/acts/2011-017.pdf>

¹⁰⁰ Landman, A., & Ndou, M. (2013). The protection from harassment act and its implications for the workplace. *Contemporary Labour Law*, 22(9), 81–90. <http://www.workplace.co.za/issues/cll2209.pdf>

¹⁰¹ Department of Employment and Labour. (2022). *Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace*. <https://www.labour.gov.za/DocumentCenter/Code%20of%20Good%20Practice/Employment%20Equity/Code%20of%20Good%20Practice%20on%20the%20Prevention%20and%20Elimination%20of%20Harassment%20in%20the%20Workplace.pdf>

¹⁰² *Id.*

refer to the Code before taking a decision on a legal issue.¹⁰³ The Code establishes the following obligations of an employer:

- conduct a risk assessment to assess the potential possibility of harassment to employees in its workplace;
- ensure that there is sufficient awareness training and communication to staff;
- upon receiving an allegation of harassment, the employer needs to consult with relevant parties; try and address the grievance in accordance with the terms of the Code, the collective bargaining agreement, and any other relevant policies; and take the necessary steps to eliminate the harassment;
- the employer's policy should outline the disciplinary sanctions that will be placed on the perpetrator.

Furthermore, it explicitly states that employers need to develop and implement a workplace policy related to violence and harassment. However, strictly speaking, this Code is still a soft law instrument, and as such, it cannot be considered as being fully compliant with the norms of the C190.

5.2. The Case Law and Current Challenges to Protection Against V&H in the Workplace in South Africa

When reviewing judgments on sexual harassment issued by the Labor Courts, it is clearly seen that some judges and arbitrators have a tendency to apply incorrect standards when dealing with evidence in general, particularly to the application of evidence involving single witnesses, from all of the various pieces of legislation dealing with harassment and especially sexual harassment.¹⁰⁴ Unlike the PEPUDA, the EEA does not define harassment in its broader sense.¹⁰⁵ However, even though the EEA does not explicitly define sexual harassment as a form of harassment, the Code of 2022 provides a test for assessing sexual harassment and sets out the criteria necessary to establish sexual harassment. It can be argued that a literal interpretation of the EEA cannot directly apply PEPUDA's definition as PEPUDA is not a labor law that applies to employees. On the other hand, a counter argument is that it may be applicable in so far as it relates to harassment within the scope of the EEA.¹⁰⁶

The Employment Equity Act (EEA) prohibits sexual harassment of employees by colleagues and holds the employer liable in such cases even if the employer does not know that the sexual harassment is going on. Section 60 of the EEA specifies that, if the employer fails to take the steps necessary to deal with unfair discrimination or sexual harassment and it is proven that an employee has contravened the relevant

¹⁰³ Legalese. (n.d.). *Workplace Harassment: The New Code and What You Need to Know*. <https://legalese.co.za/blog/workplace-harassment-the-new-code-and-what-you-need-to-know/>

¹⁰⁴ 22nd Commission for Employment Equity (CEE). *Annual Report (2021–2022)*. <https://www.abp.org.za/wp-content/uploads/2022/06/CEE-22nd-Annual-Report-2021-2022.pdf>

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

provisions, the employer must be deemed also to have contravened that provision. The courts have upheld this provision, for example, in the case of *Christian v. Colliers Properties*.¹⁰⁷ The above norm and its interpretation in this case might lead employers to believe that, in order to protect themselves, they need to dismiss any employee found guilty of sexual harassment.

However, this is not always the case. For example, in the case of *SABC Ltd. v. Grogan*,¹⁰⁸ a regional sales manager was dismissed for (among other things) sexual harassment after he had allegedly kissed a junior female colleague several times, given her love literature, and had physical contact with her in his car. An arbitrator later found that, while he was guilty of sexual harassment, the level of seriousness of his conduct did not merit dismissal. This was mainly because the alleged victim had not rejected his advances and had said she thought he should not be dismissed. The arbitrator therefore ordered the employer to reinstate the employee. The employer took this decision on review to the Labor Court but lost the case as the court pronounced the arbitrator's finding to not have been properly thought out and justified.¹⁰⁹

In a different case, the court stated that an alleged violation should be brought immediately to the attention of the employer in order to enable him to eliminate the alleged conduct. In this case, the employee started the proceedings three years after the alleged violation took place. The court referred to a previous Labor Appeal Court decision in *Liberty Group v. M.M.*, in which the court suggested that the word "immediate" must be afforded what it termed a "sensible meaning", and that a slight delay in reporting would be acceptable. In this case, it was one or two months.¹¹⁰

In another recent case, the Labor Appeal Court in Qheberha clarified the principles of dealing with cases of alleged sexual harassment in the workplace by an employer.¹¹¹ The complainant alleged that she was sexually harassed by her manager with whom she shared an office. This judgment developed three important principles, which are important for employers to take cognizance of.¹¹²

First, the credibility of evidence regarding the alleged sexual harassment must be proven on a balance of probabilities and not simply be taken for granted (as happened in this case). Second, the credibility of witnesses must be carefully

¹⁰⁷ *Christian v. Colliers Properties* (C323/2004) [2005] ZALC 56.

¹⁰⁸ *SABC Ltd. v. Grogan* (2006) 2 BLLR 207.

¹⁰⁹ Israelstam, I. (2023). *Employers cannot ignore sexual harassment*. Labor Guide. <https://labourguide.co.za/employment-equity/employers-cannot-ignore-sexual-harassment/>

¹¹⁰ *Id.*

¹¹¹ *Amathole District Municipality v. Commission for Conciliation, Mediation and Arbitration and Others* (PA9/2018) [2022] ZALAC 119; (2023) 44 ILJ 109 (LAC); [2023] 2 BLLR 103 (LAC).

¹¹² Mokoana, T., & Fulton, S. (2022, November 15). *Employers' liability for sexual harassment in the workplace*. Bowmans Law. <https://bowmanslaw.com/insights/employment/south-africa-employers-liability-for-sexual-harassment-in-the-workplace/>

assessed. In this regard, their demeanor is important, but so too is other evidence regarding the surrounding circumstances. Third, the employer's liability for damages or compensation flowing from sexual harassment in the workplace is not automatic. It has to also be established that the employee reported the alleged harassment and that the employer failed to take steps to protect the employee from such harassment in order for there to be liability.¹¹³

South African courts regularly endorse targeted employment equity policies, arguing that such policies do not amount to unfair discrimination since their aim is to achieve substantive equality. Yet, South African courts have said little about the duty of employers to dismantle the structural and systemic barriers that encumber the progress and well-being of those who find themselves on the wrong side of any power hierarchy in the workplace. The latter is about more than merely curtailing the bad behaviour of sexist co-workers. It is about changing the workplace rules originally designed in the image of an imaginary middle-class, middle-aged, white man. Rules, for example, that take for granted that their (senior) employees are never the primary caregivers of children. It is about changing the institutional culture of a workplace, including any aspect of that culture that condones or turns a blind eye to the harassment and sexual harassment of employees.¹¹⁴

Conclusion

In times of economic and political crisis, the vulnerability of numerous categories of workers increases, which in turn increases their dependence on their employers. In such circumstances, particularly in the absence of an effective legal framework for providing protection against V&H, the workers are exposed to an increased risk of these phenomena at the workplace. It is imperative to emphasize that harassment should be considered not only as a violation of an individual's right to dignity and the OSH regulations but also as a threat to the organization or business. Several studies have demonstrated that V&H at the workplace increases absenteeism and staff turnover, which can result in replacement costs and lost productivity, as well as affect group self-esteem and organizational climate.¹¹⁵ Therefore, efficient prevention of these phenomena and protection of victims is in the best interests of the state in order to ensure both human welfare and economic development.

Each of the BRICS states addresses the issue of V&H differently; at the present moment, only South Africa has ratified C190, while Brazil has officially committed to

¹¹³ Mokoana & Fulton, *supra* note 12.

¹¹⁴ *Id.*

¹¹⁵ Cusciano, D. (2020). Acidentes de trabalho no Brasil: história, regulação e judicialização. <https://biblioteca-digital.fgv.br/dspace/handle/10438/28832>. (In Portuguese); Paula, C. de F.N.Q. de, et al. (2021). O assédio moral nas organizações: as consequências dessa prática para a sociedade. *Serviço Social & Sociedade*, 142, 467–487. (In Portuguese); Ávila, R.P. de. (2014). As consequências do assédio moral no ambiente de trabalho. <http://www.dominiopublico.gov.br/download/teste/arqs/cp067933.pdf>. (In Portuguese).

do so. Gaps in the regulation exist, as it is demonstrated in this paper, in all of the five BRICS countries studied. Some countries, such as Russia, tend to completely ignore the problem and do not perceive it as a labor law matter, while in China and India, the attention is primarily focused on sexual harassment at the workplace and the protection of women. The authors believe that a greater awareness of the problem, combined with pressure exerted by the various labor organizations and trade unions upon the states to make steps towards the ratification of the C190, might be just the way to raise the standards in all the BRICS countries.

References

Cheo, R. (2017). Migrant workers and workplace bullying in Urban China. *Social Indicators Research*, 132(1), 87–115. <https://doi.org/10.1007/s11205-015-1214-0>

Cusciano, D. (2020). Acidentes de trabalho no Brasil: história, regulação e judicialização. <https://bibliotecadigital.fgv.br/dspace/handle/10438/28832>. (In Portuguese).

Das, R. (2017). *All you need to know about workplace discrimination laws in India*. IPleaders. <https://blog.ipleaders.in/need-know-workplace-discrimination-laws-india/>

Golovina, S., Sychenko, E., & Voitkovskaya, I. (2021). Protection from violence and mobbing in work: Challenges and possibilities for Russia and Kazakhstan. *Bulletin of Perm University. Legal Sciences*, 53, 624–647. <https://doi.org/10.17072/1995-4190-2021-53-624-647>. (In Russian).

Gu, J. (2020). Research on the legal liability of employer in the workplace: Sexual harassment. *Shandong Trade Unions' Tribune*, 26(06), 87–101. (In Chinese).

Hill, T.E., Jr. (2021). *Beyond duty: Kantian ideals of respect, beneficence, and appreciation*. Oxford University Press. <https://doi.org/10.1093/oso/9780192845481.001.0001>

Jiang, Y., et al. (2021). The dilemma of legal intervention and improvement route to prevent workplace sexual harassment: Based on statistical analysis of 147 related civil litigation cases. *Journal of China Women's University*, 33(6), 40–53. (In Chinese).

Kursova, O. (2014). Protection from mobbing in labor relations: Problems of legal regulation. *Siberian Legal Review*, 3(24), 28–31. (In Russian).

Landman, A., & Ndou, M. (2013). The protection from harassment act and its implications for the workplace. *Contemporary Labour Law*, 22(9), 81–90.

Lima, B.A.A.C., et al. (2014). Reflexões sobre assédio moral: Um estudo à luz da organização pessoense com maior incidência em ações trabalhistas entre 2008 e 2012. *Revista Gestão & Tecnologia*, 14(1), 201–224. (In Portuguese).

Lu, H. (2019). Research on the issue of proving cases of sexual harassment in the workplace. *Journal of Chinese Women's Studies*, 5, 80–88. (In Chinese).

Lu, H. (2020). Employer liability for sexual harassment in the workplace: Expanding on Art. 1010 of the Civil Code. *Journal of Chinese Women's Studies*, 5, 87–96. (In Chinese).

McCormack, D., et al. (2009). Workplace bullying and intention to leave among schoolteachers in China: The mediating effect of affective commitment. *Journal of Applied Social Psychology*, 39(9), 2106–2127. <https://doi.org/10.1111/j.1559-1816.2009.00518.x>

Nunes, G.H.S. (2013). A dificuldade probatória do assédio moral no trabalho. *Repertório IOB de Jurisprudência*, 27(1), 21–25. (In Portuguese).

Paula, C. de F.N.Q. de, et al. (2021). O assédio moral nas organizações: as consequências dessa prática para a sociedade. *Serviço Social & Sociedade*, 142, 467–487. <https://doi.org/10.1590/0101-6628.260>. (In Portuguese).

Schaubroeck, J., et al. (2007). Embracing transformational leadership: Team values and the impact of leader behavior on team performance. *Journal of Applied Psychology*, 92(4), 1020–1030. <https://doi.org/10.1037/0021-9010.92.4.1020>. (In Portuguese).

Sychenko, E.V., & Bobovnikova, E.V. (2023). Comparative legal analysis of the application of the principle of respect for the dignity of the employee. *Russian Journal of Labour & Law*, 13, 223–230. <https://doi.org/10.21638/spbu32.2023.115>. (In Russian).

Tian, X., & Zhang, Y. (2021). Employer's responsibility in sexual harassment in the workplace – Comments on Article 1010 and 1191 of the Civil Code of the People's Republic of China. *Journal of Tianjin University (Social Sciences)*, 23(04), 327–333. (In Chinese).

Wang, H. (2022). Legislative and judicial responses to workplace sexual harassment in Mainland China: Progress and drawbacks. *Frontiers in Public Health*, 10, Article 1000488. <https://doi.org/10.3389/fpubh.2022.1000488>

Wang, L. (2021). Legal regulation on sexual harassment in workplace during the age of the Civil Code. *Law Science*, 1, 133–154. (In Chinese).

Wang, L. (2022). Legislation against sexual harassment in China: Experience and prospects. *Journal of Chinese Women's Studies*, 5. (In Chinese).

Wang, L., & Yu, H. (2022). Relief dilemma of sexual harassment in the workplace and the way out of judgment – Based on judicial case analysis. *Human Rights*, 2, 180–300. (In Chinese).

Zhang, Y. (2022). Research on the anti-sexual harassment duty of organizations and relevant tort liability. *China Legal Science*, 3, 60–81. (In Chinese).

Zheng, M. (2022). On the civil liability of institutions for failing to fulfill obligations to prevent and curb sexual harassment. *Northern Legal Science*, 16(03), 5–16. (In Chinese).

Information about the authors

Elena Sychenko (Saint Petersburg, Russian Federation) – Associate Professor, Law Faculty, Saint Petersburg State University; Associate Researcher (7 22nd Line of Vasilievsky Island, Saint Petersburg, 199106, Russian Federation; e-mail: e.sychenko@spbu.ru).

Irina Chikireva (Tyumen, Russian Federation) – Associate Professor, Department of Civil Law Disciplines, University of Tyumen (38 Lenina St., Tyumen, 625000, Russian Federation; e-mail: i.p.chikireva@utmn.ru).

Rupa Korde (Pune, India) – Assistant Professor, FLAME University (Gat No. 1270, Lavale, Off Pune Bangalore Hwy., Pune, Maharashtra, 412115, India; e-mail: rupa.korde@flame.edu.in).

Aakash Bothra (Bangalore, India) – Researcher, WageIndicator Foundation (Mondriaan Tower, 17th Floor, Amstelveen 36, 1096 BC Amsterdam, Netherlands; e-mail: aakashbothra@wageindicator.org).

Mauro Laruccia (São Paulo, Brazil) – Associate Professor of Business, School of Economics, Business and Accounting, Pontifical Catholic University of São Paulo (710 Capote Valente St., São Paulo, 05409-002, Brazil; e-mail: mauro.laruccia@fundacentro.gov.br).

Dalton Cusciano (Brasília, Brazil) – Associate Professor, Master of Public Policies, Catholic University of Brasília (710 Capote Valente St., São Paulo, 05409-002, Brazil; e-mail: dalton.cusciano@p.uceb.br).

Jiaojiao Wang (Jilin, China) – Lecturer, Jilin University (2699 Qianjin St., Chao-yang, Changchun, Jilin, China; e-mail: halsbury@163.com).

Kabir Nagadia (Pune, India) – Data Analyst, WageIndicator Foundation (Gat No. 1270, Lavale, Off Pune Bangalore Hwy., Pune, Maharashtra, 412115, India; e-mail: rupakorde@wageindicator.org).

Nasima Carrim (Pretoria, South Africa) – Associate Professor, University of Pretoria (South Africa) (Dr. Savage Rd., Prinshof 349-Jr, Pretoria, 0084, South Africa; e-mail: nasima.carrim@up.ac.za).