

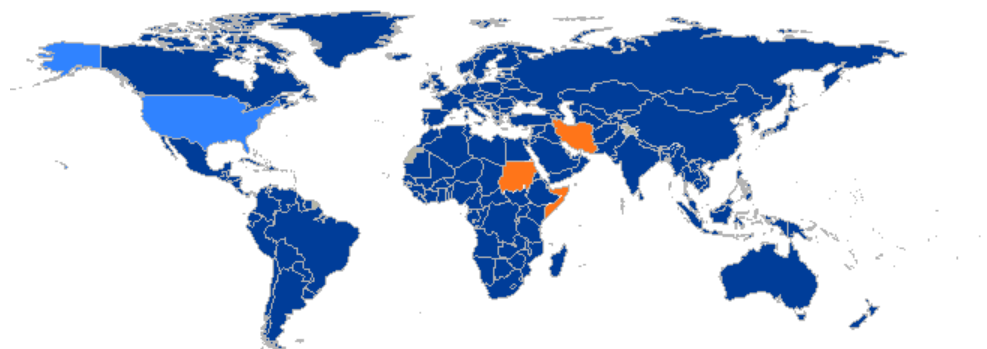
CHAPTER TWO

LITERATURE REVIEW

A. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is often referred to as the Women's Bill of Rights. And also, this is one of the cores of international human rights treaties, which requires states party to undertake legal obligations to protect, respect, and fulfill the human rights of the women.¹⁰ CEDAW was adopted as an international convention by the United Nations General Assembly on December 3, 1981. This Convention has been ratified or acceded to by 187 countries, or 90% of the United Nations member.

Figure 1. Maps of State Parties of CEDAW



¹⁰ United Nations Women, "Frequently Asked Questions (FAQ) about CEDAW", taken from <http://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq> accessed on March 4th, 2019 at 3 pm.

Country Status:



Source: <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

Among the international human rights treaties, the Convention assumes a significant position in bringing the women portion of mankind into the focal point of human rights concerns. The soul of the Convention is established in the objectives of the United Nations: to reaffirm confidence in essential human rights, in the respect, and worth of the human individual, in the equivalent privileges of people. The present record illuminates the importance of equity and how it may very well be accomplished. In this manner, the Convention builds up not just a global bill of rights for women, yet also a plan for activities by nations to ensure the satisfaction in those rights.

The Articles of CEDAW are divided into three main sections; the first section of the Articles explains the nature and scope of the obligations of state party. The second section shows specific designs of discrimination and outlines the measures to eliminate discrimination in all aspects that should be undertaken by State parties. Moreover, the last section governs procedural and administrative matters, such as how the process of reporting to CEDAW works.

The Convention has described that there are three duties to the realization of the resolution of CEDAW, these are: to ensure that there is no

discrimination against women in laws and women are protected against discrimination; improve the *de facto* position of women, and; address prevailing gender relations and the persistence of gender stereotypes.¹¹ The adoption of the Convention was driven by the necessity to strengthen the protection and end the undesirable discrimination against the lives of women around the world.

The important about CEDAW is entirely devoted to the equality of gender, one of the main elements of the Millennium Development Goals (MDGs). In CEDAW, the essentials of human rights of women to equality and non-discrimination is explained in detail, and the comprehensive kind of actions that should be made to accomplish the equality is mapped out. Furthermore, in CEDAW, the nature and sense of sex-based discrimination and gender equality are most obviously articulated.

The purpose of the presence of CEDAW has been contained in Article 1, as stated below:

“The term of discrimination against women means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹²

¹¹ Simone Cusack & Lisa Pusey, 2013, “CEDAW and the Rights to Non-Discrimination and Equality”, *Melbourne Journal of International Law*, Vol. 14, Melbourne, Melbourne Law School, p. 57.

¹² Article 1 of Convention on the Elimination of All Forms of Discrimination against Women.

One of the critical points of CEDAW is that it legally bounds all states parties to fulfill, protect, and respect human rights of women. It means that states are responsible not just for their actions, but also for eliminating discrimination that is being executed by individuals and organizations of the society.

B. Sexual Harassment

Harassment is the term that defines purposeful aggression to someone that may or may have not resulted to an injury to the harassed. In the beginning, harassment referred to an action when somebody harassed or bullied another, based on gender, race, religion, or sex. However, with the advent of digital technology, harassers have found new ways and channels to harass other with the benefit to conceal their real identities.¹³

Maggie Humn stated that sexual harassment is an undesired activity directed by men to women.¹⁴ Meanwhile, Margaret L. Andersen stated, sexual harassment is undesired activity which occur in the reason of unbalanced power among people.¹⁵ According to Grana, sexual harassment is one form of violence in which the suspect controls the victims.¹⁶

Sexual harassment can be categorized as a sexual invitation, unaccepted and unexpected such as comments, jokes, and touching. The harassment can

¹³ Erum Hafeez, 2014, "Cyber Harassment and Its Implications on Youth in Pakistan", *New Horizon*, Vol. 8, No. 2, London, New Horizon Greenwich University, p. 31.

¹⁴ Hanafi Arief, 2017, "Sexual Harassment: Legal Protection against Workers in Malaysia", *Al-Adl Jurnal Hukum*, Vol. 9, No. 1, Banjarmasin, Islamic University of Kalimantan, p. 136.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

happen for people who may disturb others if the activity and speech are sexual.¹⁷ There are five categories of sexual harassment classified by Doyle and Paludi, these include gender harassment, seductive behavior, sexual bribery, sexual coercion, and sexual imposition.¹⁸

- a. Gender harassment; including unreal sexual interaction and sexual comments but more than to blame and to bring down one's dignity. Gender harassment also refers to an action that may involve things like bad jokes, dirty painting, pornography pictures, or giving signals in contrast with social order and good manners.
- b. Seductive behavior; this harassment can be referred to as an expected sexual action, aggressiveness, and an inappropriate context. Other instances include making a date, making telephone calls, or sending a letter and even spying.
- c. Sexual bribery; this is a requirement to carry out sexual interaction or additional sexual behaviors by giving rewards if the requirement has been fulfilled.
- d. Sexual coercion; this harassment is the coercion to force sexual interaction or additional sexual behaviors by giving a penalty if the harasser's intention is not be fulfilled.
- e. Sexual imposition; this harassment involves imposition in the form of attaching and raping.

¹⁷ *Ibid*, p. 137.

¹⁸ *Ibid*, p. 138.

The forms of sexual harassment that occur in society will be defined, namely:

- a. Verbal harassment: Offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, and questioning other people.
- b. Non-verbal/gestural harassment: Harassment that occurs involve ogling or staring, such as suggestive overtones, licking lips or eating food provocatively, hand signals or sign language denoting sexual activity, and persistent flirting.
- c. Visual Harassment: Showing pornographic things, sexual exposure, drawing sex-based sketches or writing sex-based letters to someone else.
- d. Psychological: Repeated undesirable social invitations, physical intimacy relentless or proposals for dates for another person.
- e. Physical harassment: Inappropriate patting, touching, stroking, pinching, brushing up against the body, kissing, fondling, hugging, and sexual assault.¹⁹

C. Cyber Harassment

Cyber harassment is harassment conducted by email, text (or online) messages or internet. It can take many forms, but not limited to:

- a. Unwanted sexually explicit emails, text (or online) messages;
- b. Inappropriate or offensive advances on social networking websites or internet chat rooms;

¹⁹ Women's Aid Organization, 2018, "Sexual Harassment", taken from <https://wao.org.my/Sexual+Harassment/> accessed on March 14th, 2019 at 5 pm.

- c. Threats of physical and sexual violence by, text (or online) messages, and email, and;
- d. Hate speech, meaning language that insults, denigrates, targets or threatens someone based on the identity (gender) and other traits (such as sexual orientation or disability).²⁰

CEDAW General Recommendation 35 extends the definition invented under General Recommendation 19 by including that Gender-based violence against Women is manifested in a continuum of numerous, recurring forms and interrelated in a scope of settings, in the private to public.²¹ This is including Gender-based violence against women, and technology-mediated settings occur in all aspects of human interactions, whether public or private and their redefinition through technology-mediated scope, such as contemporary forms of violence take place in the digital spaces and internet.²²

The United Nations General Assembly (UNGA) Consensus Resolution on protecting women defenders contains language on technology-related human rights violations. Information technology-related abuses are violations and violence against women, including women human rights defenders. The forms may include cyber stalking, cyber harassment, censorship, violation of hacking of e-mail accounts, mobile phones and privacy. However, to discredit

²⁰ European Institute for Gender Equality, “Glossary & Thesaurus”, taken from <https://eige.europa.eu/thesaurus/terms/1486> accessed on March 15th, 2019 at 4 pm.

²¹ CEDAW, 2017, “General Recommendation No 35”, taken from https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf accessed on March 16th, 2019 at 9 pm.

²² *Ibid.*

them and incite other abuses against them, this is a manifestation and growing concern of a systemic gender-based discrimination, requiring effective responses compliant for human rights of women.²³

The on-going report from the Special Rapporteur on Violence against women introduced to the Human Rights Council in June 2018 reviews that the terminology of crime against women on the internet is still growing and not univocal.²⁴ The Special Rapporteur utilizes the meaning of ICT-facilitated violence against women also engagements the terms online violence against women, namely: cyber violence, and technology-facilitated violence. Cyber violence against women is stated in the report as gender-based violence against women, namely committed, assisted or aggravated in part or thoroughly by the use of ICT. This include tools such as smartphones or mobile phones, internet, email or social media platforms, used against a woman because of their gender, or affects women disproportionately.²⁵

The United Nations Human Rights Council voted on July 4th, 2018, several of resolutions concerning the protection, promotion, and enjoyment of human rights on the cyber space, in which several addresses the specific matter

²³ United Nations General Assembly, 2014, “Promotion of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Rights Defenders”, taken from <http://www.gender.cawater-info.net/publications/pdf/n1345031.pdf> accessed on March 16th, 2019 at 9 pm.

²⁴ Human Rights Council, 2018, “Report of the Special Rapporteur on Violence against Women”, taken from https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A_HRC_38_47_EN.docx&action=default&DefaultItemOpen=1 accessed on March 16th, 2019 at 9 pm.

²⁵ *Ibid.*

of cyber violence against women. The Human Rights Council is expressing concern on the spread of hoax, disinformation and propaganda on the internet, which can be intended and implemented to mislead, to violate human rights and privacy and to incite violence, hatred, hostility or discrimination. It calls upon States to ensure effective preparation for the violations of human right, including all relating to the internet, in accordance with the international obligations; it also condemns unequivocally online violence against women, including sexual abuse of women, sexual violence, and calls for gender-sensitive responses that take into account the specific forms of online discrimination.²⁶

²⁶ Adriane Van Der Wilk, 2018, “Cyber Violence and Hate Speech Online against Women”, *The European Parliament's Committee on Women's Rights and Gender Equality*, Brussel, p. 12.