Legal Action and Social Change: The Case of Sexual Harassment in Israel

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Enacted in 1988, Israel’s Prevention of Sexual Harassment Law is an innovative and progressive act of legislation by any standards. For the first time, the law “imported” the concept of “sexual harassment” into Israeli law and included verbal references to sexuality and sexual proposals as criminal offenses and civil torts. One of the main innovations of the law was the imposition of a liability on employers to clarify complaints of sexual harassment by employees. As part of this liability, Israeli employers were required to publish a code on this issue and to appoint a sexual harassment referee to clarify complaints. The imposition of this liability on employers sought to make it easier for the victims of sexual harassment to make complaints and to enable the clarification of the complaint within the community in which it was committed. The Prevention of Sexual Harassment Law has an educational character and seeks to change prevalent behavioral patterns in Israeli society. In this context, the transfer of liability to employers to clarify complaints constitutes an additional and perhaps more effective way of educating the general public. My study will seek to examine the extent to which these proceedings outside the formal legal system encourage the inculcation of the values in the law.

The Prevention of Sexual Harassment Law

Section 1 of the Prevention of Sexual Harassment Law, 5758-19 98 (“the Law”) establishes that sexual harassment is prohibited insofar as it injures individuals and important social values: human dignity, liberty, and privacy, and the advancement of gender equality. The definition of sexual harassment as an offense that primarily injures human dignity was a unique approach at the time the Law was enacted. The United States and other countries defined sexual harassment as an offense that injures a women’s right to equal opportunities at work. The Law defines six types of behavior that constitute sexual harassment. The American law does not explicitly address or define sexual harassment. Legal attention to this issue in the United States developed through case law, and the definition of conduct varies from one ruling to another. The approach adopted in Israel seeks to ensure certainty, predictability, stability, and equality. Despite the ostensibly clear definitions in the law, its implementation with employers and others has not always been consistent with the purpose of the law. One of the reasons for this is the
vague grounding of sexual harassment on the right to “kavod” – a Hebrew word that can mean both “honor” and “dignity” and accordingly is open to different interpretations. The Law opens three legal channels for addressing sexual harassment: a criminal channel, a damages channel, and a channel related to the workplace. The definition of three complaint tracks from which the victim is free to choose is unique to Israeli law, which adopted the approach that women should be encouraged to submit complaints concerning sexual harassment by offering diverse legal and disciplinary options. Moreover, the fact that the Law can be activated against the harasser himself is unique to Israeli law and highlights its underlying theoretical approach. In the United States, a women who has experienced sexual harassment may only sue her employer, and only if the sexual harassment occurred in the workplace (and not in the harasser’s workplace).

In any workplace in Israel – small or large, private or public – the employer must take reasonable steps to prevent sexual harassment and persecution in the context of working relations, and must process any complaint of sexual harassment effectively. An employer who fails to meet these obligations can be sued both on account of sexual harassment and on account of failure to meet his obligations. The employer’s obligations include a requirement to appoint a suitable person as an address for receiving and clarifying complaints and an obligation to establish a method for the submission of the complaint. A person who employs more than 25 workers must establish and publish a code for preventing sexual harassment and must inform his workers of the provisions of the Law.

The manner in which liability is imposed on the employer is unique to the Israeli Law. In American law, an employer alone is liable to sexual harassment of which his employee is the victim. Israeli law imposes liability on the harasser’s employer (and not the victim’s), but only if the employer failed to take a series of actions detailed at length by the Law. An employer who acted in accordance with the Law is exempt from liability for harassment committed by his employee.

Orit Kamir’s study found that 69 percent of instances of harassment that led to complaints occurred in a common workplace of the complainant and the alleged offender, while 80 percent of the instances occurred in the workplace itself (Kamir, 2014).

Almost 75 percent of the complaints submitted in workplaces common to the complainant and the respondent were submitted while the complaints were still working in the workplaces in which they submitted their complaints.
According to the findings of Orit Kamir’s study, women are more willing to refrain from responding to sexual harassment in their private life than to harassment in the workplace. The reason is that harassment in the workplace is liable to be protracted and may have more serious ramifications for their wellbeing and livelihood. In some workplaces (particularly in the civil service and the police), the complaint mechanisms are less off-putting than the law enforcement system, and accordingly women are more willing to complain in the workplace about harassment in this setting than to complain to the police about harassment on the street or at home (Kamir, 2014, 47).

Complainants who submitted complaints about colleagues tended to do so (in almost half of the instances) exclusively within the framework of the disciplinary proceeding in the workplace. Conversely, women who submitted complaints against employers very rarely confined themselves to a disciplinary proceeding, and in most cases also embarked on a criminal and/or civil proceeding (Kamir, 2014, 48).

Kamir notes that the respondents in disciplinary proceedings were much more likely to apologize than in criminal proceedings (1.5 times more likely) or than in civil proceedings (3.5 times more likely). She suggests that disciplinary proceedings are more clearly intended to cause the respondents to apologize to the complainant, since they usually take place in the common workplace of both sides, and one of their central goals is to enable both sides to continue to work together in the future. The disciplinary proceeding is the proceeding that yields apologies.

The findings presented to date in research into sexual harassment in Israel shows that sexual harassment in the workplace constitutes the most significant injury for the complainants. Most complainants prefer to clarify the complaint within the workplace, since they find this proceeding less off-putting. A complaint in the workplace yields an apology – i.e. reconciliation between the complainant and the target of her complaint.

The purpose of the Prevention of Sexual Harassment Law is primarily to raise public awareness of sexual harassment on several levels – the existence of the phenomenon, its ramifications for the individual victims, and its impact on the general social atmosphere. The Law also seeks to raise awareness of the fact that sexual harassment violates human dignity, liberty, and the right to equality.

The Law is worded as a law for preventing sexual harassment. It is not intended solely to ensure penalization and compensation for the damages caused to victims by acts of sexual harassment, but primarily to prevent such acts and the damages they entail. The Law seeks to secure an educational
objective: To secure profound change in public behavior and to reduce significantly the scope of this common social phenomenon.

Sexual harassment often occurs in the workplace, where many people spend most of their time and come into contact with others. The most effective way to prevent sexual harassment in the workplace, and thereby to influence the public atmosphere in general, is for the employer to adopt clear and binding policy negating sexual harassment, and to clarify this policy to his workers. Accordingly, although the Law imposes direct and personal liability on the harasser in the framework of working relations, as elsewhere, section 7 establishes that “An employer must take steps that are reasonable under the circumstances, in order to prevent sexual harassment and persecution within the realm of labor relations by his employee or by a person who has been put in charge on his behalf, even if he is not his employee, and to that end he shall provide an effective method for the submission of complaints of sexual harassment or persecution and for the investigation of such complaints.” The employer must also “take effective action in cases of sexual harassment or persecution of which he is aware and do all that he can to prevent a repetition of the aforesaid acts and to make good any harm caused to the complainant as a result of such sexual harassment or persecution.”

In order to encourage and motivate employers to take the steps the Law imposes on them, section 7(C) establishes that an employer who fails to meet the said obligations will be liable for damages for sexual harassment that occurs in the workplace. Thus the Law motivates the employer to prevent sexual harassment in the workplace, to respond to its effectively, and to prevent its recurrence to the best of his ability.

One of the most serious problems encountered in the response to sexual offenses is that victims very rarely complain about them. Women victims of sexual offenses feel ashamed of the assault, close in on themselves, blame themselves, fear society’s response, and prefer to keep the incident to themselves. The Prevention of Sexual Harassment Law seeks to break this bond of silence and to encourage women and men who are victims of sexual harassment to complain. It is well known that many women are hesitant, or indeed completely refuse, to submit a complaint to the police. The reason for this are the invasive investigations, which are experienced as a “second rape.” The victim is a complainant and a “witness,” but not a party to the proceeding. Similarly, many women are also deterred from submitting claims for damages on issues relating to their sexuality. The quantification of the damages caused by sexual assault in monetary terms is perceived as “extortion,” “distasteful,” and reminiscent of prostitution. Accordingly, many women prefer to complain in the workplace and to rely on an internal
solution, rather than to “wash their dirty laundry in public” and risk being perceived as traitors by their colleagues, superiors, and employers.

As the above analysis implies, most victims indeed choose the option of submitting a complaint to the employer. In accordance with the Law, the employer bears an obligation to process a complaint of sexual harassment and to appoint a person responsible for handling the complaint. This is an usual demand of an employer, who is usually responsible only for processing minor offenses such as the insulting of one employee by another, and such like, while referring more serious instances (such as theft or physical injury) to the law enforcement agencies. The Law places trust in the employer and encourages him to implement an informal proceeding for clarifying the complaint, based on the understanding that the employer is the most appropriate function to be charged with writing a code consistent with the particular circumstances of the organization he directs and its typical organizational culture. The legislator seeks to ensure that the values of the Law are inculcated amongst different groups of workers, diverse working environments, and distinct cultural and organizational circumstances. Accordingly, the preference is for clarification as determined by the employer, who enjoys freedom of action to establish regulation adapted to the workplace.

In my talk I will present the regulation introduced following the Prevention of Sexual Harassment Law: codes enacted by public, private, and community organizations. My lecture will present the charters adopted by Israeli universities, as well as that proposed by Takana, a forum of rabbis and women’s organizations that processes complaints about sexual harassments. I will discuss the different cultural features that form the foundation of these charters and seek to show that they are not always compatible with the goals of the Law, raising serious questions about their capacity to promote social change. The fact that the Prevention of Sexual Harassment Law is implemented “everywhere,” rather than in courts, offers advantages in terms of the ability to promote social change from sources of authority more diverse, and perhaps more effective, than the courts, including religious or spiritual authority. However, when these arenas distance themselves from the goals of the Law, the question arises as to whether they are actually fulfilling their function. I will also consider the extent to which sexual harassment charters use new tools to address the phenomenon of sexual harassment in a way that can make the workplace a creative space that may permit the positive processing of conflicts, the management of risks for the organization, the creation of new law offering alternative justice, and a balance between authority and treatment.
I will argue that a careful blend of theoretical and cultural foundations relating to the concept of sexual harassment should be combined with the development of diverse mechanisms for handling complaints in this field, as well as meaningful mechanisms for the supervision of workplaces. This approach may ensure that the workplace and other communities become a meaningful arena for promoting social change in the spirit of the Prevention of Sexual Harassment Law.