sexual harassment

IT IS NOT A COMPLIMENT

Sexual harassment sounds like a fairly new issue.

In fact, it is not. Sexual harassment is a new name for an old problem that has existed for centuries. During the Middle Ages, a feudal lord regularly subjected the brides of his vassals and serfs to a custom called the "right of the first night," certainly a form of rape.

Even in local history, landlords demanded labor and favors from their tenants and expected that these demands be also extended to the tenants' families, including their daughters.

With the onset of the Industrial Revolution, women moved out of their homes and into factories, where they suffered long hours, miserly wages and unsafe working conditions.

But even male factory workers were exploited...

Yes, but for women, there was the added prospect of unwelcome sexual attention, not just from their bosses but also from male co-workers. Then as now, women workers had to endure lewd comments and gestures, leering, and other early manifestations of sexual harassment.

Are you saying that women have always been singled out for this type of behavior?

Yes. In a paper on the subject, Atty. Myrna Felician said that men throughout history nurtured the belief that they can harass women in the workplace because of the notion of a "woman's place," which is the home. Presumably, women who left their homes for factories also left behind their personal integrity. Thus, non-traditional and non-conforming women working outside the home were considered "fair game" by men and subject to sexual abuse.

The social conditioning of boys has also been based mainly on feudal concepts of man as head of the household with everything in it belonging to him, including the women. This has given men the impression that women are their subordinates who deserve to be put in their place should they aspire for equal treatment especially in the workplace. At the same time, showing masterful control over women became a gauge of a man's status, proof that he remains in control. The behavior has been translated into the concept of machismo, of some men viewing women as sexual conquests and trophies to their maleness.

Current realities bear this out. A U.S. survey showed that 95 percent of reported cases of sexual harassment involve men harassing women. Only three to four percent involve cases of men harassing other men.

But surely, with more and more women occupying executive positions now, there would be less opportunities for sexual harassment.

Unfortunately, women in executive positions are highly visible precisely because they are the exception rather than the rule. Most women still remain in lowly positions where their jobs often depend on how well they please their bosses.

Still, women seem to have made a lot of economic strides lately.

That is true. According to the NCRFW Fact Sheet on Women published in 1992, the labor force participation rate of women is 47% as against the men's 82.5%.

The same fact sheet however shows that only one percent of these employed women are in the top level administrative, executive and

managerial posts. Most are in low-level occupations: 29.9% of women are in agriculture-related jobs; 25.6% are sales workers; 14.5% are in services; 12.6% are in production, transport equipment and similar work; 10.2% are professional, technical and related workers, and 6% are in clerical jobs.

If sexual harassment is a centuries-old practice, how come women didn't complain about it earlier?

Because of social and cultural norms that automatically place a stigma on women who are perceived to have been sexually molested or taken advantage of.

The legal system also offers women little protection. Even when they have legal recourse, the fear of being fired, penalized or ridiculed, or else the promise of a much-wanted promotion, keeps many women silent.

Also, most women are either unaware of their rights or are afraid to exercise them: "Women are subjected to a barrage of sexual innuendo, pictures and verbal abuse, and most don't have the vaguest idea that they don't have to put up with it," says Sheila Kuehl of the California Women's Law Center. Most women who file complaints "have no choice but to quit because the work environment has become uncomfortable," says Barbara Hadsell, attorney for the Long Beach police officers.

You mean there is no recourse in law for people subjected to sexual harassment?

Very little. There is no legal definition of sexual harassment in most countries. Sexist language, leering, pinching, and an abusive working environment are not grounds for legal

action. When they are, the penalty is so ridiculously small compared to the offense and the risks taken by the woman that the victims would rather keep mum. Only physical assault, a criminal offense, provides adequate cause for filing a legal suit and it is often difficult to prove in court.

Is anything being done to remedy this defect in the legal system?

Yes. Several initiatives have been started. Locally, there are bills that seek a more comprehensive definition and more realistic penalties for sexual harassment (*Please refer to pamphlet on "The Law and Sexual Harassment"*).

In the United States, the Equal Employment Opportunity Commission in 1980 published a set of guidelines identifying sexual harassment and hostile-environment harassment. Six years later, the US Supreme Court ruled that sexual harassment constituted a violation of the 1964 Civil Rights Act. Now U.S. courts can extend the definition of sexual harassment and penalize offending companies with punitive damages.

How have the US courts defined sexual harassment?

The guidelines used by US courts since 1980 declare that unwelcome sexual advances, requests for sexual favors and other conduct of a sexual nature—verbal or physical—are considered illegal harassment when:

(1) an employee's submission to such conduct is made either explicitly or implicitly a term or condition of employment.

(2) an employee's submission to or

rejection of such conduct by another is used as the basis for employment decisions affecting the worker's status, or

(3) the aggressor's conduct unreasonably interferes with a worker's job performance or creates an intimidating, hostile or offensive working environment.

It would seem that despite that initiative, more complaints have surfaced.

Exactly. With the legal system to back them up, more women have now found the courage to break their silence. Recent US surveys have found that roughly 40 percent of women report having been sexually harassed at work. More companies have finally begun to listen to the women, in addition to them organizing seminars on the issue and including sexual harassment as cause for disciplinary action in their office rules and regulations. The seminars have also made more women aware that what they've put up with can, and should, be stopped.

If sexual harassment has already been defined by law as a violation of civil rights, how come controversies surround almost every complaint? Isn't the law clear on what conduct may or may not be penalized?

There are a lot of gray areas on which law and public opinion are not clear: What if a co-worker repeatedly refuses dates with a male colleague but he won't give up? Is it harassment if a man tells off-color jokes or displays photos of nudes in the presence of women, and one of them is offended while the rest are not?

What if, as in the landmark Meritor case in the US, the bank teller initially agreed to have an affair with her boss, but later decides to terminate the relationship and is then fired? What if the woman complainant is really just getting back at her boss for the low performance rating he has given her? Will employers be liable for acts committed by non-employees while visiting the company? Is it sexual harassment if a person overhears an offensive joke or comment that is not directed at her?

In the U.S., the decision in the Meritor case in 1986 made "consent" no longer a viable defense for the accused. Rather, according to the decision, the line of inquiry should be whether the complainant had indicated by her conduct that the overtures or advances of a superior or colleague were "unwelcome," and therefore created a hostile working environment. Most universities and colleges in the U.S. which have already adopted policies on sexual harassment included both the "unwelcomeness" aspect and the professional conduct expected of faculty and administration. The policies also cited the liability of a faculty member having an affair with a student if his conduct is no longer welcomed by the student.

And how have these gray areas been dealt with?

Feminists in the US have argued that harassment charges should be judged from the viewpoint of a "reasonable woman," a concept already adopted by a few courts. However, no elaboration has been provided in defining just what a "reasonable woman" should be so that in practical terms, a lot still depends on the personal interpretation of events by the judge, the jury, the lawyers and others involved in the court system.

Perhaps the issue of motive should also come in? A lot of men say they never intended to offend the woman, it was just the way they've always acted in the workplace.

Now that would be self-serving. Even hardened criminals say they've never meant any harm when confronted with their crimes. And the reality is that in the world we live in, we judge everything by the outcome, very rarely on the intention. So why should sexual harassment abuses be an exception?

But men do feel unjustly persecuted. They have been brought up to behave a certain way and suddenly, that behavior can get them hauled to court.

That is why seminars on sexual harassment should be organized, especially by companies in male-dominated fields. The assumption here is that men don't know how they are expected to behave with female co-workers because they've dealt mostly with other men in the workplace.

For a start, the men can be briefed on the sharp differences in attitudes and perceptions

between men and women when it comes to conduct with sexual overtones. While men tend to view propositions as some sort of compliment and therefore flattering, women find them threatening. The male approach to resolving a conflict is face to face confrontation and testimony, the test of credibility they believe in. Women however often want to remain anonymous for fear of ridicule. The women also speak of embarrassment, reprisals and a fear, all too often confirmed by experience, that their career and reputation will suffer even if they win.

To be fair to the men, shouldn't women voice out their objections right away instead of presuming that men should know better?

Ideally. But women have been brought up never to call attention to themselves, to fade into the background, and to defer to men, especially their superiors, which qualities make them more vulnerable to sexual harassment.

"Women still feel guilty and embarrassed about sexual harassment and feel that if they talk about it, that makes them more of a sexual object who will not be taken seriously professionally," said Judith Kurtz of Equal Rights Advocates in San Francisco.

Even the simple act of complaining is difficult for some victims whose feeling of outrage and humiliation are often compounded by feelings of self-doubt. She is often also paralyzed by fear that she was being overly sensitive, and that her complaint would be so trivialized that the right to work unmolested would seem diminished and unimportant.

In school, a female student also realizes that a faculty member has greater standing and credibility in the university community. In some cases, women who persist and file complaints against male harassers are referred to as "mentally ill" or "emotionally unstable."

But shouldn't women learn to blend with their environment, if only because it's so difficult to find jobs these days?

That is exactly the reason why most women find suffering in silence a far more appealing

alternative than speaking up. "Many strong successful professional women have made conscious decisions to ignore the sexual harassment in their offices because they know that as soon as they complain, there would be 50 others waiting to take their jobs," says feminist author Naomi Wolf.

But even with the difficulties of finding another job, women who are sexually harassed eventually quit because of stress. Or she is dismissed because her productivity has been affected adversely by the hostile working environment.

And then again, why should wrongdoing be allowed to flourish just because those who misbehave are in the majority and it is easier to crack down on the minority complainants? The world is changing fast, women are coming into the workplace because they need the job and are qualified for it, and the sooner that men—and corporations—realize this and adjust accordingly, the better for us all. (*Please see pamphlet on "What can be done" for more details on how corporations can change the workplace*).

Wouldn't imposing a code of conduct among male and female workers result in "a kind of Victorian period" where men will be reluctant to develop a relationship with women because they might be accused of sexual harassment later on?

We are not speaking of a Victorian code of conduct here, only the basic decency among workers, male or female, to consider their colleagues' feelings before resorting to offensive jokes, pictures or behavior. If smoking in public has been frowned upon, it is because such conduct interferes with what other people sharing

that same **public space,** consider as acceptable. Just because you can fart, burp, pick your nose or indulge in boorish behavior in your home doesn't mean you can do the same in public, including the workplace, without provoking any protest. The same is true of sexual harassment.

Is it possible for advocates of sexual harassment to detail exactly what behavior, what gestures or remarks are offensive to women so that men will not feel like they're walking on a tightrope and can get charged anytime?

It is not as simple as that. Sexual harassment isn't dependent on any single overt act but on the circumstances surrounding that act. A single request for a date may be alright, but repeated requests despite being turned down may be considered as harassment. The tone of voice, the other remarks relating to sex, even a compliment delivered with a leer become suspect, and may be the subject of a complaint if the woman felt that these add up to a poisoned work environment.

So what is the bottomline? What should men do to avoid being slapped with sexual harassment charges for conduct they didn't know was offensive in the first place?

The bottomline is for men and women bosses, workers and professors to treat both male and female workers and students with dignity and respect. Treat them professionally and avoid excessive familiarity which, to the other party, might actually be offensive, threatening and abusive. As one advocate puts it, "sexual harassment is a put-down, not a turn-on."