

# The Crime of Sexual Harassment (Sexual Harassment Crime)

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## ABSTRACT

This term refers to acts of intimidation and bullying and coercion which is intended to achieve sexual ends for the perpetrator in the context of certain cases, these acts acquire a criminal character, and they vary. From simple unethical practices and disturbing acts to sexual abuse. In many countries, sexual harassment is a form of unlawful discrimination in the workplace, and a manifestation of abuse, intimidation or sexual and psychological intimidation. This has called on lawmakers in many countries to make the issue of protecting workers from these acts a primary goal they seek to achieve.

## Keywords

Crime, harassment, sexual harassment

## Introduction

Sexual harassment remains the largest and most common one in comparison to other attacks that women are exposed to. There are many acts of sexual harassment committed by heads of state and government, persons with high positions in the judiciary, executive and legislative authorities, executive directors in companies and banks, and employers, all of whom possess the power, influence and powers that are legally entrusted to them. And it was exploited by means of threat, pressure or coercion for the purpose of obtaining benefits of a sexual nature.

## Research difficulty

The lack of field studies and the adoption of external studies for other fields contributed to the lack of real solutions to this problem, as well as the absence of specialized organizations that have experience in dealing with victims and provide them with care and protection. Therefore, it was difficult to estimate the true size of sexual assault crimes in any society due to the absence of accurate statistics proven in the official records, and the size of the problem remains greater than these statistics, as all societies participate in the low rates of reporting these crimes by investigative bodies compared to the rest of the other crimes.

## Research importance

The phenomenon of sexual harassment is spread in the workplace in various societies in general, including the Arab community, and is characterized by not appearing in public due to its

occurrence in closed places (the work environment). It is also distinguished by its occurrence by a person who has some kind of authority over his subordinates. The victim of sexual harassment by her official, and the man may be subject to harassment as a woman alike, or from a man to a man, or from a woman to a woman, but most studies have shown that harassment is often by men towards women due to men assuming supervisory positions and higher administrative levels. In the workplace, while women assume levels and administrative positions lower than those occupied by men, and thus the percentage of women headed by men in the workplace increases and enjoys power and influence over them, especially since cases of sexual harassment in the workplace emanate from bosses and employers towards those who head them. Taking advantage of the power and influence they enjoy, and the corresponding cases of lack of oversight, accountability mechanisms, and the absence of a deterrent legislative and legal structure. This issue is not only important internally, but also on an international scale, as the International Labor Organization has dealt with sexual harassment at work as a form of corruption, violence, a violation of human rights, workers' rights and a threat to occupational safety and the work environment, which is confirmed by the International Labor Organization in its reports.

## Literature review

### The concept of sexual harassment

The first explicit and official use of this term (sexual harassment or sexual harassment) dates back to 1970, in a report by the President of the Massachusetts Institute of Technology (MIT). (MIT

About the various manifestations of discrimination on the basis of sex, but the credit for formulating this concept goes to a women's group active in Massachusetts in the early 1970s (Heba, 2003). (Although the institute is the first large institution to formally discuss this issue within the scope of the academic administration of that university and to formulate and develop policies and procedures related to this topic. It is also thanks to this academic institution that it has drawn attention to the evils of discrimination and harassment due to race (women of color in particular), which is a discrimination of a dual nature as it is based on both race and gender, as indicated by the President of the University MITD is crimination, harassment and unworthy preference is considered an immoral matter and incompatible with the mission of educational institutions to the same extent as it is for the individuals who practice it. The matter settled on using the term sexual harassment or sexual harassment after reviewing many other terms such as sexual intimidation. Or sexual coercion, or sexual exploitation, so this term came to include all the previous meanings (Paludi, 1991).

### **Definition of sexual harassment**

One of the main problems in dealing with the issue of sexual harassment is the lack of agreement on a specific and universally agreed definition of sexual harassment in the workplace due to the difference in cultures between societies, so what is considered sexual harassment in one society may not be the same in another society in addition to the nature of perception. Sensory )perceptual nature for this phenomenon, men and women differ in what can be considered sexual harassment as women have a broader definition of sexual harassment than men.

### **Defining sexual harassment**

Although there is no uniform definition of sexual harassment, there is an international consensus that sexual harassment is an act inconsistent with human rights principles such as the right to equality, non-discrimination and work, equal opportunities and above all the basic right to respect human dignity and freedom (Asyan, 1996). The Beijing Platform for Action issued by the Fourth World Conference on Women in 1995 considered sexual harassment as an act of physical, psychological and sexual violence that

occurs within societies and workplaces. It also considers a form of discrimination against women at work. Therefore, we will discuss the linguistic and idiomatic definition of this term, which many studies have touched upon both in terms of his competence.

**A - Defining harassment as a language** - Harassment is defined in language as - a harsh - a harassment - scratching it and the animal scratched its back with a stick or about to hasten, for it is for humans and animals he seduced him, and among the people he is corrupted, and it is said that he is harassed by him - he was exposed to irritate it, that is to provoke it. Human and Horsh them spoiled and enticed each other, and forestation between the beasts and is the temptation to stir up each other, said the son was raised and Ctrash in the original collection, gain and deception (Ibrahim, 2004).

**B - Defining harassment on the international scale** The International Labor Organization has developed a general definition of sexual harassment at work and defined it as (unwanted behavior of a sexual nature or behavior based on a sexual basis that affects the dignity of women and men in the workplace. As for the Committee on the Elimination of Discrimination against Women, at its eleventh session, 1992, it issued the general recommendation No. 19, entitled Violence against Women, issued by the United Nations regarding the implementation of the Convention on the Prohibition of All Forms of Discrimination Against Women. It defined sexual harassment )i.e., abhorrent and intentional behavior based on sex, Such as physical touches and physical displays, remarks of a sexual nature, display of pornography and sexual demands, whether verbally or by deed. This behavior can be humiliating and cause a health and safety problem; it is considered discrimination when a woman believes, for reasonable reasons, that her refusal of these behaviors harms the weakening of her career status. The work is or will be prevented from being hired or promoted, or when it creates a hostile work environment. "Sexual harassment" is also defined in the United Nations Secretariat in the document (ST / SGB/ 2008/5) that (all unwelcome sexual intuition, request to perform sexual service, verbal or physical behavior or gesture of a sexual nature, or any behavior of a

sexual nature that can be considered or reasonably expected as a reason for insulting or humiliating others. When this behavior interferes with work, makes it a condition of employment, or creates an appalling, hostile, or offensive work environment. (In a study of the European Parliament on sexual harassment in the workplace, sexual harassment was defined as (any form of unwanted verbal, non-verbal, or physical behavior of a sexual nature, for the purpose of violating a person's dignity, especially when creating a hostile and professional intimidating environment. And humiliating, (as defined by the Canadian Human Rights Commission as "what happens by a boss or a colleague in a way that constitutes an obstacle to equality by degrading his victims, and interfering with their abilities to work effectively, and in some cases pushing them to resign". (Paludi, 1991). As for the definition of the Equal Employment Opportunities Commission EEOC In the United States of America, sexual harassment is (unwelcome attempts at sexual advances - requesting sexual services, expressions and acts of a sexual nature when explicit or implicit consent for these requests or actions is a condition for accepting employment - using the employee's reaction to reject or accept what was requested from him). As a basis for issuing influential decisions in the employee's career - if the purpose of these actions is to affect the employee's performance at work or to create an insulting, intimidating or hostile work environment.

**C- Defining harassment in the scope of domestic laws** - defined by penal laws, including the new French Penal Code in Article 222-33. B) The act that occurs through abuse of power using orders, threats, or coercion for the purpose of obtaining benefits, privileges, or advantages of a sexual nature. If the terms of the crime:

1- Administrative relationship between the accused and the victim. Therefore, the crime does not apply to sexual harassment arising from one of the project's clients or an employee of a lower or equal rank.

2- Orders, threats or coercions that constitute harassment of others.

3- Obtaining advantages of a sexual nature are the object of this criminalization.

This text assumes a technical administrative subordination to the crime of sexual harassment, as sexual harassment is criminally sinful even if only one act occurred, and the distinctive feature of harassment is that it is an unwanted behavior on the part of those who are exposed to it, so it does not take place except within the framework of the authority that men often exercise. It is not required where the different sex of the perpetrator and the victim, the Akunan of single type is from a man who is a man and a woman a woman, with these cases raised by the difficulty of proof) (Kathleen, 1998). Some writers also claim that the French legislator in his text may require the act to take place more than once, and their evidence for that is his use of threats, orders, and so on, meaning that this one-time threat is not sufficient to achieve this crime. This is the direction of the French legislator in his recent amendment of the article. 222-33-1 If the condition of repetition of the behavior of harassment is required for the commencement of the crime, Y was not satisfied with the occurrence of the behavior only once, with the exception of harassment using pressure that was satisfied with its issuance only once. Either definition of sexual harassment in Australian law is (every behavior of a sexual nature unwelcome by the other party, committed in circumstances from which a common man in the same situation can conclude that his behavior will cause the victim to be insulted or fearful (and it is defined in Czech law. (Every behavior of a sexual nature in the workplace is not welcomed by the other party, or is considered inappropriate or offensive, or the victim believes based on reasonable reasons that his approval or rejection of the perpetrator's behavior will have an effect on the work relationship between the perpetrator and the victim. (Whereas Danish law states that sexual harassment (every verbal or non-verbal behavior or physical act aimed at affecting the victim's sexual freedom, leading to the victim's feeling of inferiority and diminishing his dignity. The act also applies to women and men without discrimination and in an equal manner, and it is not used. Sexual differences as a tool for influencing a person's will and position. Either Article 4 of the Law on Gender Equality in

Switzerland issued on 3/24/1995 known as the Law ) GEA. It has defined sexual harassment (every behavior with a sexual content or any other behavior related to the sex of the victim violates the human dignity of males and females in the workplace and this includes threats, promises of benefit, coercion, or any form of pressure to obtain sexual benefits. (The British Anti-Discrimination Act also referred to harassment as (unwelcome behavior towards another person based on his sex or any other behavior of a sexual nature intended to affect or violate a person's dignity or place the victim in a hostile, humiliating, and degrading work environment ( as well as This law is considered as harassment if the employee is treated unfairly due to his refusal to respond to what was requested from him or he filed a complaint due to his exposure to any of the above-mentioned behavior .In the Arab world, the Tunisian legislator defines sexual harassment in the Tunisian Penal Code, in Article 226 /Thirdly that (.... is considered sexual harassment, every assault on others by actions, signals or words that includes sexual suggestions that undermine his dignity or outrage his modesty, with the aim of inducing him to respond to the desires of the offender or the desires of others, or by exerting dangerous pressure on him that would weaken his ability to confront To those pressures . (The Tunisian legislator also doubled the reasoning when the perpetrator had power over the serpent or exploited the influence of his job. In Article 503 -1 of the Moroccan Penal Code, harassment is defined as: "... whoever uses against others orders, threats, means of coercion ,or any other means, taking advantage of the power conferred by his duties, for purposes of a sexual nature .That is, the Moroccan legislator does not consider the act to be harassment if the act is not repeated more than once. The Algerian legislator has dealt with the crime of sexual harassment for the first time in the new penal code, as it was mentioned in the text of Article 341 bis ) :He is considered to have committed the crime of sexual harassment and is punished with imprisonment for two months. to one year and a fine of 50,000 d c 100,000 d c, each person exploits the power function or profession by orders of non - threats or coercion issue or exert pressure on it in order to force him to respond to his sexual wishes , and in the case of recidivism , the penalty is doubled. (as stated definition of This crime in

the draft Palestinian Penal Code draft prepared in 2010 AD and in Article 405 of it, which came in the second paragraph of it refers to sexual harassment (all persistence in harassing others by repeating actions , words or signals that would undermine his dignity or outrage his modesty in order to compel him to respond Because of his desires or the desires of a non-sexuality, or by exerting pressure on him that would weaken his will to confront those desires.) As stated in the fourth paragraph, the penalty shall not be less than imprisonment for a period of two years if the perpetrator is an ancestor or offspring, or one of those who have been educated or observed, or whoever their functional or effective authority over the victim's Al j e. There is no definition in the Egyptian Penal Code for harassment, the Egyptian Center for Women's Rights. Sexual harassment is defined as "harm to a person at the psychological and sensory level through sexual relations and sexual words, and it is after the will or will of the person under pressure, as is the case between a student and her teacher or between The employee and her boss, when one party puts pressure on the other party, the other party agrees, but in reality it is forced to agree (Hashem, 2010). (As for the Iraqi Penal Code, it did not provide a definition of sexual harassment. However, the effective Iraqi Labor Law No. 37 of 2015 defined sexual harassment in Article 10/3 of it by saying: (Sexual harassment, according to the provisions of this law, means any physical or verbal behavior of a sexual nature or any behavior. Another that is based on sex, violates the dignity of women and men, is unwanted, unreasonable, and offensive to whoever receives it, and leads to anyone refusing or not submitting to this behavior, explicitly or implicitly, to make a decision that affects his job) .

#### **D - Defining harassment in jurisprudence**

Sexual harassment has been defined in jurisprudence as (undesirable or unacceptable behavior of a sexual nature, characterized by hostility, attack and embarrassment that affects the performance of workers in work, health, profession or livelihood) (Kathleen, 1998. It was also defined as (aggressive behavior of a sexual nature related to fear that derives its basis from the abuse of influence and its relationship to power and feeling helpless in front of the authority of the harasser) (Nabil, 2009), while Polish jurisprudence went to define it (harassment occurs

when the employee is subject to acts aimed at pushing him to Provide sexual services). Despite the multiplicity of definitions that dealt with the crime of sexual harassment, it can be seen that there is agreement between most of them that there is a set of behavioral definitions that constitute sexual harassment among them, and that it is an unwanted and unacceptable behavior, and it is also a form of imbalance in the work environment in terms of abuse of power That which the harasser possesses and the state of vulnerability that exists on the other side, which makes the matter closer, and as one writer goes to him, to sexual black mai (Françoise, 1995 ). We also find that the above definitions correspond to that sexual harassment does not focus only on the physical form of tangible but that based on the point of view of some researchers take three forms:

- 1- Verbal sexual harassment (disgraceful sexual notes and comments, sexual questions asked , sexual jokes, urgency to request an interview)
- 2- Non-verbal sexual harassment (suggestive looks, physical gestures and innuendo.
- 3- Sexual harassment with physical behavior (attempting to touch, touch the body of the other party, kiss or try to kiss the other party (Damon, 2004)

It can also be noted that most of the legislations and definitions stipulated the existence of an employment relationship or a work relationship between the perpetrator and the victim, even if there were those who considered the existence of such a relationship an aggravating circumstance for the crime. Don't we want to point out here that we have reservations about using the term sexual harassment that most Arab legal writers and researchers have used when defining this type of sexual violence, because the term that we see more appropriate and more precisely for this crime is the term sexual harassment instead of the term sexual harassment and that For the following reasons:

- 1- Most of the English language dictionaries, as well as international charters and declarations against violence against women, as well as human rights conferences on the topic of violence against women, refer to this act as sexual harassment and not sexual harassment. So we find that the California Supreme Court in the legal glossary

and their meanings (Superior Court of California County of Sacramento (Goes to the definition of sexual harassment) Sexual Harassment It is (causing significant inconvenience, horror, or emotional distress to a specific person, whether by using sexual speech or action or by acting, continuously, urgently and without any legitimate reason). As for sexual harassment (SEXUAL MOLESTATION) so it defines it as unlawful sexual acts against a minor by a parent, relative, guardian, or acquaintance). That is, the concept of the crime of harassment is broader than sexual harassment, which included mere actions without words or actions, and the court has restricted the singular of sexual harassment to acts that occur by one of the parents, relatives or guardians.

2. The linguistic meaning of the word , which refers to harassment from the content of the low and morally and religiously unacceptable in dealing between men and women have been used in the meanings of words and the temptation of corruption and etc. shower and harshness ( Michele, 1997). They are verbs that are usually practiced between animals. Whereas if we took the term sexual harassment instead and returned to the meaning of this word from the linguistic point of view in Arabic dictionaries, we would find that it refers to the following meaning:

### Tightness

Tightness: the opposite of capacity, a thing narrowed, narrowed, narrowed, annoyed and annoyed, and it was distressed, and Ibn Jinni narrated that it narrowed it, and it is a narrow matter. Abu Omar: The narrow is a narrow thing, and the source is narrow, and the man is fed up, i.e. miserly, and the position is restricted for you, and their saying: I gave him arms, that is, my arm is narrowed with him. And the people were annoyed if they did not expand into a person or a place. And in the Qur'an: Perhaps you forsook some of what was revealed to you, and your heart was distressed. And he is in distress from his command and in distress, meaning in a matter of narrow, and the adjective is narrow, and the name is narrow. It is said: In the heart of so-and-so is distress for us and distress. Tightness: Doubt is in the heart from the Almighty's saying: Do not be in trouble for what they think. And the fur said: Tightness is what your chest is tight for, and

tightness is what is in that which widens and narrows like a house and a garment. And if you see the distress fall into a place of distress, it is based on two things: One of them is to be a collection of distress, as Al-Asha said: So if your Lord, out of His mercy, uncovered the affliction from us, and He expelled and afflicted him, he is pressured by him. Tribulation: Like tribulation. The Straits: What is narrow in places and matters; He said: Who is willing to let the soul into a pit of your trouble, but who has the strait? That is, to leave the strait (Ibn Manzur, 2010). In the (ocean dictionary) the Fed tightens tight, opens, and narrow and harass: against widened, and narrow, it is tight and narrow: Doubt in the heart, breaks, and narrowed his chest, and fracture: be in a capacity and narrows dress or, either. And the strait: that which is narrow in places and matters, and narrow: it is stingy, and narrowed: his money is gone. And he bothered him: Assassin. (Muhammad, 2008) Thus, if we go to the term sexual harassment, we will have selected vocabulary in the Arabic and international languages and what is commensurate with the seriousness of this crime, in addition to the Arabic linguistic interpretation has given us an understanding of the meaning of harassment consistent with the psychological effects that occur On the victim (against him), whether what happened by the perpetrator is merely shameful words and phrases uttered by the perpetrator , or even gestures with sexual connotations, or actions that the perpetrator inflicts on himself, except that they cause distress and embarrassment from the psychological point of view to the victim (him).

### **Self-perpetuation of the crime of sexual harassment**

The crime of sexual harassment is characterized by several characteristics that can be summarized in several points. It is also distinguished by its suspicion of crimes against morality in the Iraqi Penal Code No. 111 of 1969, especially the two crimes of indecent assault and the crime of breach of modesty. Therefore, in the first paragraph we will discuss the characteristics of this crime and in the second it distinguish it from what It is suspected of moral crimes as follows:

#### **A - Characteristics of the crime of sexual harassment.**

We can briefly mention the most important characteristics that distinguish the crime of sexual harassment from the suspected moral crimes, and thus we can classify the act or behavior as being considered sexual harassment in the event that a number of main conditions are met:

1. The perpetrator can be male or female, and it is the same situation for the victim.
2. It is not necessary for the perpetrator to be of the opposite sex of the victim.
3. It can be done by words, deeds and signs.
4. The existence of a relationship of dependency (legal or actual) between the perpetrator and the victim(Mary, 2002 )
5. The harasser is not satisfied with this behavior, which in its simplest cases will create a hostile work environment.
6. Submitting and consent to harassment becomes a condition for continuing to work and obtaining promotions, privileges, incentives and training, which is what the International Labor Organization has called (quid pro quo).

### **B - Distinguishing the crime of sexual harassment from other moral crimes in the Iraqi Penal Code.**

#### **The crime of sexual harassment and indecent assault**

Article 396 of the Iraqi Penal Code stipulates this crime by stating: (1) any person who assaults by force, threat, or with deception, or any other form of dissatisfaction with the presentation of a male or female person, or an attempt to do so shall be punished by imprisonment for a period not exceeding seven years or by imprisonment. 2- If the person against whom the crime is committed has not reached the age of eighteen years, or if the perpetrator is among those referred to in Paragraph -2 of Article 393, the penalty shall be imprisonment for a period not exceeding ten years . This crime is intended to mean a deliberate and grave breach of the shyness of the victim by an act committed on his body that often touches the victim's private parts (Mahmoud, 1993). Every act contrary to public morals that occurs on the body of another person and often touches its own private parts is considered a violation of honor (Jamil, 1998). The material element of this crime is achieved by any act that violates modesty and exposure to the victim, extends to his body and

breaks the emotion of modesty, and does not require that it leave a trace. The crime of indecent assault does not take place unless the act touches the body of the victim. However, it is not required to directly touch the shame, as this crime is realized with every act that violates modesty, a serious breach, and accordingly if the act was not in breach of modesty or was not grossly outrageous, then this crime is not realized ( Jamal , 2009 ) The right that the law protects by punishment is sexual freedom, except that it is required to touch the body of the victim, but it does not reach the level of sexual intercourse (intercourse), and accordingly, the words, signs, writing, drawing, photography, display or even the actions that the perpetrator commits against himself do not. It falls within the meaning of this text because it is not directly related to the body of the victim (Muhammad, 1985) Accordingly, the crime of indecent assault is similar to the crime of sexual harassment in terms of the protected right, which is sexual freedom, as well as not requiring the victim to be a female or male, as well as in terms of the status of the perpetrator, meaning that it does not require that he be a male or female, but it differs from the crime of sexual harassment. In the sense that it does not count the words and signs or any kind of actions unless these actions extend to the body of the victim while he is unlike the sexual harassment that may occur by these means. Also, one of the pillars of this crime is not the existence of the actual or legal power that the perpetrator possesses over the victim, even if the second paragraph of the text considers it one of the aggravating circumstances of the crime, which raises the penalty to imprisonment for a maximum of ten years.

### **The crime of sexual harassment and the crime of dishonor**

This crime is represented by the perpetrator's committing an act other than modesty, and it is required that it be a material act. Thus Article 400 of the Iraqi Penal Code states: (Whoever commits an act with a male or female person in breach of modesty without her or her consent shall be punished with imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars. Or one of these two penalties. (This act takes place with everything that would disrupt the modesty, whether it is an act, movement, or signal that scratches the feeling

of others, i.e. the perpetrator must use one of his body parts to commit the crime, provided that it does not take the form of saying or writing, as the crime does not happen simply by making obscene statements. And if it was carried out by the crime of insulting or defamation. Actions that are breach of modesty may occur on the body of the perpetrator himself or on the body of others. As for the criterion by which it is evident that the act is considered an outrageous modesty, the court extracts it from the various circumstances and circumstances that surrounded the perpetrator when he committed his act and enters into the appreciation of that social milieu in which the act occurred and the customs and traditions in which that community believes and their judgment on actions that are considered a wound to modesty or a breach of emotion, embracing An employee, kissing her, holding her hand, or even patting her on the shoulder may be considered a permissible act in one society, but in another society it is considered a breach of public modesty. The acts may be committed on the perpetrator's body himself, but they violate the public decency of the people who see them, such as issuing a movement with a sexual connotation or contrary to public morals and morals, as if he pointed to his genitals or holding them, and all of this is governed by the values and traditions that people believe in in that place that The behavior fell into it. It is not required that the act violates the modesty of all people, rather it is sufficient for this crime to cause the act to hurt or scratch the emotion of modesty or the feeling of some people (Maher, 2007) (That is, this crime requires three pillars, which is the material pillar, or the second pillar is lack of consent, and the third pillar is the criminal intent, and the material element is achieved by committing an indecent act on a male or female body that does not reach in its gravity to the extent that it is considered an indecent assault, or that the perpetrator commits actions that Outrage the shame of the victim, male or female, but those acts are committed in the presence of the victim. As for the lack of consent of the victim, the legislator stipulates that the indecent act takes place in the presence of the victim and his dissatisfaction with this act, that is, he has not agreed to the perpetrator doing that act and the dissatisfaction is achieved with everything that would reveal the victim's non-acceptance of that act and the reason for that. That the legislator



wanted in this text to protect the feeling of the victim, who the act is an assault on his feeling and a breach of his life. The lack of consent occurs by force, threat, ruse, or any means indicating dissatisfaction, whether by material or moral coercion, or by exploiting the status of the victim (Maher, 2007). The intent required for this crime is the general criminal intent that is based on knowledge and will, that is, in the direction of the perpetrator's will to come. An indecent act, while being aware of that, it is not possible to say that the crime was committed by an act that occurred accidentally or unintentionally (Srouf, 1991). (This crime is similar to the crime of sexual harassment in the act that constitutes a prejudice to the shyness of the victim, whether male or female, as this crime does not require that the victim be a female, but it can happen on a male, and it is also similar to the crime of sexual harassment, as it did not stipulate that it take place. Whoever is male against a female or vice versa, but it may fall between members of the same sex, as well as with the existence of an element of dissatisfaction from the victim and criminal intent.

A. What is the most prominent difference between the two crimes is that its material pillar is based on committing acts without words. This crime cannot be based simply by making statements or making jokes with sexual connotations. Rather, it requires performing an act that outrages the modesty of the opposite even if this act is on the perpetrator's body himself. . K what the crime of breach of modesty lacks the most important corner of the crime of sexual harassment, but it is supposed objective element relationship of dependency that must be a list between the victim and the perpetrator in the crime of harassment which is not important to remember the crime of committing a crowbar act indecent even if the existence of such The relationship is not considered an aggravating circumstance for this crime, although the Iraqi legislator had intensified the penalty in the presence of this circumstance in the crime of indecent assault that we have been subjected to in Article 396 Q.A.A.

### **The crime of sexual harassment, the crime of breach of morality, and exposure to a female**

Article 402, in its paragraphs A-B, referred to two crimes against morality, which is the crime of asking for things contrary to morality. The second

paragraph dealt with the crime of attacking a female in a public place with words, actions, or signs that would disrupt her modesty.. We find that as provided in paragraph a, (a crime request things contrary to morality male or female, meaning demand for the initiative involves the offender without abide by that response from the second party (Fakhri, 1996) demand is a formula of expression formulas for the direction will not j The law requires the request in a specific form, and it can take place by saying or writing or by any means of expressing the meaning, such as a gesture or a gesture if it understands the meaning of requesting such matters. This picture is one of the forms of crimes against morality even if it is similar to the crime of sexual harassment in terms of The protected right, which is sexual freedom, as well as in that it can occur by mere request, and also in the sense that it does not require a certain sex, neither on the perpetrator nor on the victim, but nevertheless it differs from the crime of harassment in that it has restricted the image of criminal behavior to demand only without the forms of defensible behavior. The other May, in which the crime of sexual harassment can occur, as she lacks the most important element that we have stipulated in the crime of sexual harassment, which is that it occurs within a working relationship that binds the perpetrator and the victim. Either what was mentioned in Paragraph (b) of Article 402, it refers to cases of sexual harassment with words, deeds and signs that offend the shyness of the female in a public place, and we have clarified the actions that violate the modesty previously when we talked about the crime of breach of modesty, but this picture is not limited to acts that are offensive. However, this text stipulates the occurrence of the crime against a female as well as its occurrence in a public place, which is called sexual harassment in public places. This crime, even if it is similar to the crime of sexual harassment, is the subject of research in the multiple forms of criminal behavior in terms of words, actions and indications. However, it differs in that it limits its occurrence to the female without the male, as well as its requirement that it be located in a public place, which is totally inconsistent with the occurrence of the crime of sexual harassment in question, which is usually committed if not always in secret. Likewise, the existence of a work relationship is not considered



a cornerstone of this crime, which is an assumed pillar in the crime of sexual harassment.

### **General provisions for the crime of sexual harassment**

Although the law has its own field that differs from the field of ethics, each of them has its own circle that does not extend to the other, they may agree on matters, but they differ in many matters, so the positive legislations made sure to guarantee personal freedom and not to interfere in the affairs of individuals or violate their secrets. It led to making the circle of law narrower than the circle of morals, as the law does not punish everything that the principles of morality despise, but rather selects some forms of moral crimes that are distinguished from others by their serious harm to social organization, whether directly or indirectly (Bakr, 1970). (Sexual harassment has become impossible because it is contrary to human dignity, and at the same time denies sexual freedom and the dignity of the worker, it is an affirmation of the principle of biological superiority as it is a form of social violence that severely disrupts the proper functioning and management of work, especially when the victim faces a difficult choice between sacrificing his career Or obedience to the desires of the perpetrator) Francoise, 1993). Therefore, one of the goals of criminalizing harassment is to prevent the creation of a bad and unproductive work environment, in addition to criminalizing sexual harassment, which represents the implementation of the principle of equality between the sexes, the protection of sexual freedom and the rejection of sexual discrimination. Harassment, even if it is an individual behavior, may often lead to the reluctance of women to work and create an atmosphere of fear and dread in the work environment, which is supposed to be dominated by a spirit of love, fellowship and fraternity. Therefore, it creates a social problem linked to unequal opportunities in the labor market between male and female workers. It would also threaten the psychological and mental health of the individual, expose him to nervous pressures and be a frequent reason for stopping work and thus lead to being a source of economic loss in the future. Sexual harassment is also a problem of social violence that disrupts work. It appears in

most cases in the workplace and takes a form of coercion or threat to force the victim to respond to the desires of the employer.

### **Elements of the crime of sexual harassment**

Cases of harassment take many forms, but often and not always, the perpetrator is in a position of power or authority towards the victim (because of age, social, educational, or work dependency relationship). The perpetrator can also be - any person such as a client or client - A co-worker - a relative, a legal guardian, a teacher, or a professor - a student, friend, or even any stranger with whom there is no link between him and the victim. The abuse of the power of the job may be in the context of exercising a public position in an institution or company affiliated with the public sector or a department or department or a public utility, as it may be practiced in institutions and facilities of the private sector by employers and employees, noting that most of the legislation has linked harassment. With the power relationship between the perpetrator and the victim concurrently established, cases of sexual harassment are not considered if they are related to behaviors that occurred outside the scope of the public office or work relationship. It should also be noted that some of the legislations went to envisage completely opposite cases related to the employee's harassment of his sexual official or the customer with the service provider, which is the case of French legislation and many Western legislations. The crime of sexual harassment, like other crimes, is based on elements, but these elements of this crime are of two types, general elements, which are common with other types of crimes, from a material and moral element and an assumed element represented by the relationship of dependency between the perpetrator and the victim.

### **The default corner (dependency relationship)**

This crime requires a preliminary condition for its occurrence, as the crime of sexual harassment cannot be conceived except in the context of a relationship of dependency or authority exercised by the perpetrator over the victim, regardless of the form of this authority, such as whether it is legal, functional, religious, or educational ... etc. BMR, between the perpetrator and the victim to be any offender who exploits his job or profession authority. What we require for this crime to take

place is that harassment takes place within the framework of a subordinate relationship, that is, the relationship of a superior with a subordinate, whether it is done during the exercise of a job or in connection with it. Recreation and volunteering. This is the presumed condition or element in the crime of sexual harassment, which is the presence of an actor who benefits from the power over the victim, and we mean by the functional authority (or authority within the scope of work) only and not the natural or realistic power as is the case in other sexual crimes. The perpetrator may be a teacher, a policeman, or a member of service agencies, a director of a center, and therefore it does not take place in the family or semi-family setting, where there is no functional authority. The act may also be issued by a servant to his servant, or by the owner of the factory or the shop on his workers. Determining whether or not the perpetrator has authority over the victim is one of the substantive issues that the trial court has jurisdiction over. As for the actual authority, it is that which is due to the reality of the matter and not on the basis of a legal capacity, for example, the authority of one of the relatives of the victim, if he was not responsible for her upbringing or her observations such as the uncle, cousin or the mother's husband, this crime cannot be described as a crime of harassment, but it can be considered a violation of honor or any A picture of other moral crimes (Ezzat, 1984) Regarding the authority of the boss, it is necessary to make sure that the authority of the job enables him to inflict harm on the victim, whether materially or mentally.. The sexual harassment of the working woman has dealt with it and its offense is a lot of legislation in the world, but to varying degrees, as many countries have not restricted this crime to the existence of a relationship of power between the harasser and the victim, but rather opened the way to all forms of harassment and its milieu, at work and in The street, from the subordinate to the boss, to even among the same family. It is worth noting that the occurrence of the crime of sexual harassment against a man is very few, and the rarity of this case explains the difficulty in conceiving cases of sexual harassment of the man outside the cases in which the exercise of the authority of the position is under the guardianship of the woman, for considerations related to the biological and physiological composition of the man - physical

strength -, and the virtue of stewardship. which singled out especially in conservative societies, and which should be noted that we have a reservation to the requirement of this dependency relationship that went most of the legislation in order to be the imam of its requirement a crime of harassment or sexual harassment, namely the following:

1-We believe that the crime of harassment or sexual harassment is not confined to the presidential or subordinate relationship, but the legislator must be satisfied with the existence of a functional relationship or collegiality in the framework of work in order to achieve this crime, just as the victim may be upset if the actions or practices of her employer fall on her, which drives her. To leave work. The matter is the same for her if it occurred from a colleague at work whose actions may lead her to make the same decision. The presence of a hostile work environment exists in both cases. Therefore, we ask the Iraqi legislator, if he wants to include this crime in his texts, to pay attention to this matter and not It makes this crime governed by a relationship of dependence, but rather includes co-workers whose presence is often more permanent with the victim than the employer in most cases, in addition to that the description of the hostile environment at work is achieved even if the act of harassment from a customer falls on the worker, and he is found lenient on the part of The employer, this is another form of harassment that may occur within the work environment, and we do not find it in most legislations a legal treatment, especially if most employers have a prevailing saying (the customer is always right.) The French legislator was alerted when amending the text of Article 222/33 of the French Penal Code on 6/8/2012, stating that (1) Sexual harassment is the repeated imposition of speech or behavior on a person that affects his honor because of its insulting or offensive character. Humiliating, or placing him in a position of fear, aggression, or insult (.I promised the existence of a relationship of dependency from the aggravating circumstances that raise the penalty to three years imprisonment and the fine of 45,000 euros, and in this case the French legislator has gone out not to stipulate the existence of an abuse of power, which expanded the scope of the occurrence of the

crime For those who are subjected to harassment by a co-worker, client, or client of the company.

2- Likewise, with regard to the functional or practical relationship, we find that limiting us to this type of relationship without the types of other authorities, such as the cognitive authority, the educational or scientific authority, and even the spiritual authority, it detracts from the correct and accurate understanding of the limits of this crime. Therefore, it should include, as another form of sexual harassment or harassment, the authority may be cognitive, and therefore the doctor exercises a kind of authority over the patient based on his cognitive superiority and his reference in the field of diagnosing the disease and prescribing medicine, so the patient feels a bit of submission to the doctor, which may compromise this relationship. For misuse and abuse, the patient may be exposed to certain medical practices such as suspicious and repeated touching of intimate areas of the patient's body without necessity, which makes the matter confused in the eyes of the patient and makes him unable to refuse these contacts despite his belief that they are not innocent and the doctor's bad faith, for fear that he will be exposed. Negligence and poor medical care, noting that the aforementioned is difficult to prove such practices despite their frequent occurrence. The educational authority may be educational, exercised by the teacher over the student and the professor over the student and the supervisor of the researcher - in university circles in particular -, as the idea of loyalty to the teacher or educator makes the latter exercise an intellectual power that imposes submission on the recipient to some extent, and university circles witness cases. There are many cases of sexual harassment in light of the student's fear of failure or expulsion, and it is not necessarily the professor who is the harasser, as the director of the educational institution, supervisors and observers may be involved in that, and I have recently witnessed many cases of harassment from teachers or school principals against students. In addition, there is a spiritual authority exercised by clerics over their followers and followers, and many countries have witnessed many cases of harassment that have begun to unfold, practiced by clerics and priests, and most of the victims were children, women, and even men.

#### A. The material element

The crime of sexual harassment requires that the perpetrator resort to the use of certain means, the most important of which are issuing orders, threats, coercion and exerting pressure in order to force the victim to respond to sexual desires. The material element consists of two basic elements in describing criminal behavior, namely, the use of a method of physical or moral violence, and then the purpose of using the method is to obtain a benefit of a sexual nature. The most prominent forms and methods of violence used by the harasser are as follows (for example)

**A- Issuing orders**, such as if the director of the institution summons an employee or employee to his office and orders her to close the door and take off her clothes.

**B - Threat** - It expands to include all forms of moral violence, and it is equal to whether the threat is verbal or through an editor, or just gestures or signals, such as if the manager asks his employer to accept contact with him sexually or to separate her from work.

**C- Coercion** - coercion may be material, and it is intended to use physical force or a material means such as weapons, such as forcing the manager to fulfill his request referred to in the above paragraph, using his physical strength, and in this case the act may turn into a crime of rape, and it may be coercion. Morally, such as threatening the employer or the user to divulge a secret that may cause harm if revealed or threatening to dismiss her from her work if she does not respond to it.

**D - Exercising pressure** - Exercising pressure has many forms, it may be direct or indirect, and here it should be noted that it is not required to use a specific method, and accordingly, the crime is committed even for soliciting or seeking a woman inside the workplace. In general, methods of sexual harassment can be divided into two methods, namely - :

**Verbal methods:** The wording here differs from the gentle and courtly words of flirtation, as it tends to be crude and offensive frankness, or tends to sayings that carry sexual connotations, and sometimes to words of implicit or explicit threat, and sometimes the harasser uses vulgar words

expressing his ambitions for the victim, and other times it takes meaning Courting, including the seduction, temptation and excitement it contains. Jokes of a sexual nature that are intended to embarrass, confuse, and shock the victim. Observations on the outward appearance of the body and the use of calling by emotional and intimate nicknames. Offer frequent intimate invitations of every kind, or present and show movie tickets. Promises of preference and compensation, as well as threats of retaliation and retaliation linked to the framework of authority or guardianship exercise (Mary, 2001) Harassment by telephone may be if it is related to urgency, harassment, and harassment.

**Physical methods:** Physical movements in this position include a close and focused look at some parts of the victim's body, a scandalous and hurtful gesture, displaying some parts of the body, especially sexual organs, taking certain positions with sexual connotations, touching, friction or pressure, or trying to grasp or embrace the victim and forcibly kiss her, or Intrusion into her intimacy. In general, the classification of the behaviors of the sexual harasser includes all the actions and movements that would be the basis for decisions affecting the harassed person, and which aim to weaken the will of the victim and reduce its personal impact, and everything that would create an atmosphere that is intimidating, fearful, hostile and offensive. And Kasha and we mention here, for example, but not limited to some of these practices of sexual harassment:

- Itching or seductive touching, as well as touching - from just a friendly patting on the shoulder to a sudden kiss and attack.-
- Satisfied cartoons, as well as posters and wall pictures of a sexual nature.
- The perpetual presence of the harasser near the victim, causing inconvenience and harassment.
- Forcing the vacant lot into an office or room with a user of the opposite sex without need or necessity.
- Looking directly and deliberately at the bathroom of the opposite sex, or deliberately looking at certain places on the victim's body.

It should also be noted that the perpetrator attains the intended criminal result of satisfying sexual desires or obtaining a favor of a sexual nature that has no effect on the occurrence of the crime, as the crime occurs even if the perpetrator did not reach his goal or aim.

#### **B. The moral element**

This crime does not happen except intentional, so it is not conceivable that it happened by mistake. The jurisprudence and the judiciary have agreed that the moral element in moral crimes in general is intentionality, i.e. the criminal intent (Ibrahim, 2003) and the criminal intent required here is the general intent as well as the presence of the private intent. Since it is not conceivable that this crime took place without a criminal intent, and until there is willfulness there must be two elements, namely knowledge and will, the perpetrator must know of his action in terms of being an assault on the modesty of the victim and he knows in his unlawful capacity, and that the victim is not satisfied with him, as well as The direction of the will must be proven to the previous elements. Accordingly, the intent is neglected if the offender is ignorant of the characteristic of disobedience in his act, such as one who accidentally moves his hand and falls on a part of the victim's body, which breaks his life, and the intention is negated if the accused believes the victim's consent (Morris, 2000) and the intention is also negated if the direction of the will is not established. The accused refers to the act on which the crime is based, as if he takes away her shirt from the victim, because of the fire that struck her clothes. The criminal intent in this crime is achieved by establishing the intention to assault the shyness of the victim, and the motive to commit the act is not cited, whether it is to satisfy lust or love for revenge or otherwise (Maher, 2007). Therefore, it can be said that the crime does not take place if there is no criminal intent, for example, It was decided in France that the crime did not happen against the director of an institution who showed affection for an employer who had sent her several letters and poems that did not include immorality and immorality, as well as the right of a person touching the hand of an employee during a coffee break and expressed his love for her and gave She has a gift upon his return from a trip, and he admitted to her that he misses her whenever she is absent from his office.

Accordingly, the jurists in France agreed to say that such a crime does not apply to sincere love initiatives. If the criminal intent was absent in the previous two examples, then the perpetrator did not resort to the methods of threat, pressure, coercion, or ordering in either of them. Nevertheless, it was decided that the crime should not take place even if the perpetrator took a rudimentary behavior as long as the abuse of power, threat, pressure and coercion is not proven. Likewise, this crime does not occur if the perpetrator was unintentionally attached to the female, but rather as a result of the lack of space, then the will must deviate to the act with the perpetrator's knowledge that it is an act that violates modesty, as well as if the act occurred accidentally and unintentionally or as a result of an unconscious movement, that is, spontaneously. The crime is not realized and the responsibility is not established as if the perpetrator put his hand on his genitals in the presence of a woman without intending to scratch her modesty or as a result of an unintended spontaneous movement. However, there is a jurisprudential and judicial trend in the French judiciary that goes to require the existence of the private intent in this crime, and thus the existence of this crime is neglected if this intent does not exist and which it has expressed (intending to obtain sexual desires), it is not sufficient for the general criminal intent of knowledge and will only to establish a crime Sexual harassment, but rather the condition of the existence of the criminal intent, the uncle and the special criminal intent, in which the accused's intention is to act towards a specific goal of obtaining sexual desires, which is subject in his assessment to the matter. Accordingly, if the private intent was denied according to this trend, the crime of sexual harassment will accordingly cease, and proof of the private intent is to read the elements of the incident, and this is subject to the discretion of the judge of the matter (Nathalie, 2005)

#### 1. Legislative treatment of the crime of sexual harassment

We will In this paragraph, we deal with the legislative treatment of the crime of sexual harassment at the international and domestic levels, that is, at the level of international law and domestic penal laws.

#### A. Legislative treatment at the international level

The numerous international conventions and treaties concluded in the field of combating violence and discrimination against women have dealt with in many of their texts the crime of sexual harassment, and among these documents is the Universal Declaration on the Elimination of Violence against Women, which defined in Article 2 of it what is meant by violence against women as follow:

Violence against women is understood to include, but is not limited to, the following:

a. Physical, sexual and psychological violence that occurs within the family, including beating, sexual abuse of female children in the family, dowry-related violence, wife rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

B. Physical, sexual and psychological violence that occurs within the general community, including rape, sexual assault, sexual harassment and intimidation in the workplace, in educational institutions and anywhere else, trafficking in women and forcing them into prostitution;

C. Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs. As for the Committee on the Elimination of Discrimination against Women, at its eleventh session, 1992, it issued the general recommendation No. 19 entitled Violence against Women issued by the United Nations regarding the application of the Convention on the Prohibition of All Forms of Discrimination against Women. It defined sexual harassment) i.e., abhorrent and deliberate behavior based on sex. Such as physical touches and physical presentations, remarks of a sexual nature, viewing pornography and sexual demands, whether verbally or by deed. This behavior can be humiliating and cause a health and safety problem; it is discrimination when a woman believes, for reasonable reasons, that her refusal of these behaviors harms the weakening of her career status. Work or that it will be prevented from being hired or promoted, or when it creates a hostile work environment. In addition, the International Conference on Human Rights held in Vienna during the period from 14 to 25 June 1993 issued what is known as the Vienna Declaration

and Program of Action (1993) between violence and discrimination against women. 38) However, manifestations of violence include sexual harassment, sexual exploitation, gender-based discrimination, intolerance, extremism and forced pregnancy. The following paragraph states " :The World Conference on Human Rights stresses in particular the importance of working for the elimination of violence against women in life. public and private , and the elimination of all forms of sexual harassment, exploitation and trafficking in women, and the elimination of gender bias in the administration of justice and the removal of any conflicts which may arise between the rights of women and the harmful effects of certain traditional practices or related to customs , cultural prejudices and religious extremism, " Paragraphs 117-118 of the Beijing Platform for Action that was held during the period 4-15 / September 1995 on implementing the CEDAW Convention and working to eliminate violence against women or threatening to use it, whether in the home or in the community, especially sexual harassment, is a hindrance to the ability of women. To move and limit their access to resources and to engage in basic activities. Paragraph 118 of it indicates that these manifestations of violence prevent the full advancement of women and the harmful consequences that perpetuate the low status accorded to women in the family, the workplace, the community and society as a whole .Likewise, Paragraph 120 of the curriculum criticized the lack of real data and statistics showing the extent of violence against women, especially sexual harassment, which made the problem more difficult .The subsequent paragraphs of this curriculum also emphasized the obligation of states to issue laws that criminalize sexual harassment, as well as to facilitate procedures for cases brought by women to demand justice. The European Commission for Human Rights in 1991 recommended, with regard to human dignity at work, that sexual harassment is "undesirable behavior of a sexual nature or any other behavior based on sex that affects the dignity of women and men in the workplace, including the behavior of superiors." Or cow, which is unacceptable behavior. " . As for the Protocol on the Rights of Women in Africa attached to the African Charter on Human and Peoples' Rights, which was adopted by the General Assembly of Heads of

State and Government of the African Union, during its second regular summit in the Mozambican capital, Maputo, on July 11, 2003. Article 13: of the Protocol affirms rights. The economic and social welfare rights of women and that State Parties take and implement legislative and other measures to ensure equal opportunities for women at work, career advancement, and other economic opportunities. In this regard, paragraphs C-D state the following:

(C) Ensure transparency in the recruitment, promotion and dismissal of women, and combat and punish sexual harassment in the workplace.

(D) Ensuring the freedom to choose a profession for women, and protecting them from exploitation by the employer in a way that constitutes a violation and exploitation of their basic rights recognized and guaranteed under the agreements, laws and regulations in force. Finally, the Convention on the Elimination of Violence and Harassment at Work No. 190 of 2019 was issued, which stipulated in Article 1 / A thereof that (- The term violence and harassment in the world of work refers to a set of unacceptable behaviors and practices or threats associated with them, whether they occurred once or Repeated, intended, lead, or is likely to lead to physical, psychological, sexual, or economic harm, and includes violence and harassment on the basis of gender)

#### B. **Legislative treatment at the internal level**

If what was previously exposed to in the international conventions confirms that the crime of sexual harassment is the woman who is her victim, then many laws around the world have stipulated the crime of sexual harassment, regardless of the gender of the victim .Just as a woman can be a victim of sexual harassment, so is a man .This is despite most of the sexual harassment allegations, they are initiated by women. The phenomenon of sexual harassment during work is a phenomenon that cannot be tolerated or ignored. Therefore, the legislator must criminalize it within the laws in force, as it is related to the dignity and rights of a person, regardless of his gender, belief or color .Why is this subject matter? We will deal with the legislative treatment in paragraphs, in the first of which we will address the position of Arab legislation, in the second the position of Western

legislation, and thirdly the position of the American legislator and judiciary, and finally we will address the position of the Iraqi legislator.

**Arab legislation** - On the Arab level ,Tunisia and Morocco issued laws and articles dealing with sexual harassment, so Tunisia issued a special law for this (the law on good morals and the revocation of sexual harassment) as stated in the law amending the criminal code of Law 73 of 2004 that sexual harassment ( It is all persistence in harassing others by repeating actions , words, or signals that undermine his dignity or outrage his life, in order to induce him to respond to his desires or the sexual desire of someone else, and set a penalty of imprisonment for a year and an amount (a fine) of 3000 dinars) . While Straighten Moroccan legislator material within the Penal Code which criminalized harassment Table forgotten When amending some provisions of the Criminal Code in 2003, it emphasized the protection of women and children from any verbal attacks, and in 2004 the sexual harassment penalty for threats or abuse of power or influence related to job duties came with imprisonment for a period of one or two years or a fine of between 5,000 Dhs to 50,000 dirhams .The new labor law in Morocco of 2003 also enshrines the principle of non-discrimination with regard to jobs, salary and all aspects of equal opportunities. This law also prohibits sexual harassment in the workplace and prohibits the employment of girls and boys before the age of 15 years It also included the amendments in the Algerian Penal Code (Article 341) criminalizing sexual harassment and granting the victim the possibility to resort to the judiciary. The new Algerian labor law may include an article providing protection for victims of sexual harassment in the professional environment. Sexual harassment that appears in most cases in the workplace takes a form of coercion or threat to force the victim to respond to the desires of the power holder, and methods and examples confirm this, such as:

- Working extra hours when it is not necessary.
- Forcing the worker to respond to desires in exchange for a job position or an increase in pay.
- Threatening and dismissal from work.

Jordan also introduced an amendment to the Labor Law that gives the minister powers to close establishments when the employer commits a sexual or physical assault on a worker, or allows this to happen .In Egypt, the amendment to be made to the Egyptian Penal Code to add the crime of sexual harassment has been discussed ,and the proposed amendment stipulates the following: Article 269 bis (b) ((A penalty of imprisonment for a period not exceeding one year and a fine not exceeding two thousand pounds or one of these two penalties shall be imposed on whoever harasses He is sexually dependent on another of the opposite sex by using the power not legally conferred on him((. Accordingly, we see that most Arab criminal legislation has restricted sexual harassment to the scope of work relations, and the possible consequences of refusing this act in terms of issuing a dismissal or non-promotion decision based on the victim's rejection of these actions. This text presumes a technical administrative subordination to a crime. Sexual harassment, as we have found that sexual harassment is criminally sinful in most of the legislations except for a few of them even if only one act occurred. The distinguishing feature of harassment is that it is an undesirable behavior on the part of those who are exposed to it, so it does not take place except within the framework of the authority exercised by men frequently .It is not required that the sex of the perpetrator and the victim be different, they may be of the same type, as it occurs from a man to a man and from a woman to a woman, even if it raises some kind of difficulty of proof.

**Western legislations** As for the western countries, the legislations that dealt with and dealt with the issue of sexual harassment in different countries within their texts differed , some countries stipulated this in the penal code (such as Australia, Germany, Spain, Russia ( and others dealt with it in laws related to discrimination against Women such as (Australia , Denmark ,Malta, the United Kingdom ,Ireland, Switzerland ( and there are other countries that have included it in labor laws, such as Sweden and Canada. The Canadian labor law has included, for example, an act of sexual harassment in Section 1/15, Part Three of the law on the "right of the worker." In obtaining a job free from sexual harassment ,and requiring the employer to take



positive measures to prevent sexual harassment in the workplace. As for sexual harassment in Turkish law, this law considered sexual harassment as a crime against the individual woman and her body in 2004 when the Turkish Penal Code was amended due to political conditions related to the European Union, after it was a crime against society, the family and honor, and it was also criminalized in other places. The work And his punishment is either imprisonment between 3 months and two years, or a court fine , and this is where the complaint is submitted by the victim .In an amendment completing the law in 2005 with regard to harassment in the workplace, and in the case of threat, power, or an intertwined family relationship, the previous penalty increases by one and a half times .In addition, there are countries that issued laws bearing the title of the Law on Prohibition of Sexual Harassment from these countries, the Philippines, as in 1995 the Anti-Sexual Harassment Law was issued in order to ensure the respect and dignity of workers and employees, and the law applies to students also in educational institutions and training centers. As for China, it added. New provisions to the Law on the Protection of Women's Rights to include sexual harassment with criminalization, and the Shanghai Annex was added to it in 2006 in order to more accurately define the concept of sexual harassment. There are laws that dealt with the crime under the two laws, the Penal Code and the Labor Law, as the French legislator did, as it punished the crime of sexual harassment in Article 222-33 of the new French Penal Code b) imposing a general penalty and a fine of 520000 francs or either of these two penalties with imprisonment for a year and a fine of 100 thousand francs Likewise, it is punishable by the Labor Law, which is called misdemeanor discrimination in employment in Article 152-1-1 , and sexual harassment is specific to the scope of work relations, and the decision to dismiss or not to promote is based on the fact that the person refused or allowed these actions to take place ,and Article 122-46 of The French Labor Law, which restricted sexual harassment within the framework of the exploitation of influence and direct employment, does not form sexual harassment except in the compulsory bond associated with the exercise of employment. The European Union has issued a new law to combat sexual harassment , which was issued in the city of Brussels, where

this new law, which began to work in the framework of the European Union in 2005, ensures the protection of workers and all possible measures against sexual harassment, and this new law grants compensation to workers who have been subjected to any form of harassment of a sexual.

**The position of American law** The United States of America, which is considered one of the most strict in cases of sexual harassment, is the Civil Rights Act No .VII The year 1964 was one of the most famous laws that dealt with this issue, and in 1975 federal courts agreed to consider sexual harassment at work as a crime and job exploitation that leads to an unhealthy work environment (creating a hostile work environment) that negatively affects the health and psychology of individuals and affects the productivity of work. Also .According to the definition of US laws, sexual harassment is defined (it is all unwanted behavior ,unwelcome from the other party and has a sexual character or suggestion, and it may be written in written notes, lewd speeches, verbal or verbal, such as jokes, comments, vulgar words, friction, physical touching, or It is by using cartoon pictures, sexually indicative devices, unnecessary gazing, gestures, etc .(.We can refer in several lines to the development of sexual harassment laws in the United States of America, because we mentioned previously that it is one of the most stringent countries in dealing with this crime and is the first in history. As these laws return in their origins to laws preventing discrimination, especially related to civil rights. The matter began with the American Civil Rights Act of 1964, which prohibited employers from discriminating between their employees on the basis of gender, race, nationality, or religion. Although the aim of this law in the beginning was to protect women in the first place, its application included men also when sex is considered a condition. Conditions of employment It is considered an issue ) Barnes V. Train (In 1974, the first case dealt with the judiciary in which the subject of sexual harassment, although the term itself was not used .Until 1976 and the issue of Williams V. Sax be in which sexual harassment was recognized as a form of discrimination on the basis of sex when a male manager practiced it against one of his female employees and considered that an

additional obstacle facing one sex without another in the field of work or promotion in it. . As for the US Supreme Court ,it approved this concept for the first time in 1986 in the case of )*Meritor Savings Bank V. Vinson* considered it a violation of the seventh section of the Civil Rights Law, as it mentioned the criteria for distinguishing between unwelcome and unwelcome behavior, determinants of employer responsibility, and words or actions that make the work environment meet the hostile nature (hostile work environment(. The Civil Rights Act of 1991 added other provisions to Section Seven that allow expanding the scope of protection and recognizing the right of women to compensation for discrimination on the basis of sex or sexual harassment to which they may be exposed , as well as an important development in the judicial handling of cases of sexual harassment in the case of) *Ellison V. Brady* (When the man was replaced by a standard normal standard of ordinary women , who were allowed to address issues from the point of view of the complainant rather than the accused .Also in 1991 it became an issue of )*Jenson V. Evleth Taconite co* .The first collective case filed by a group of women, which paved the way for other cases .Seven years later, in 1998, this case helped establish a new judicial principle or a judicial precedent when courts recognized the right of victims of sexual harassment to compensate for the psychological damage they suffered, and in the same year the courts concluded in two cases: *Fargher V. city of Boca - Raton, Florida* (And the ) *Burlington V. Ellerth* The responsibility of the (dependent) employer for the actions of his subordinates in cases of sexual harassment, and more than that, in the case of) *Services Oncale V. Sundowner* A new principle has been adopted which is that both the perpetrator and the victim in sexual harassment may be of the same sex, as stated in this decision. The year 2006 also witnessed the verdict in the case of ) *Burlington Northern and San Take Railway co. V. White* (Which was re - examined the concept of acts of reprisal that might be exposed to those who demand their right to justice of victims of sexual harassment , as it has been expanded in the interpretation of retaliatory actions to include every action may take the employer regular employee fearful of legal recourse in cases of discrimination against him on the basis of sex . During 2007, the Fair

Employment Opportunities Committee and the relevant state agencies reviewed 12,510 accusations of sexual harassment in the workplace. Despite this unanimity of most of the jurists in America on the importance of this crime and the serious negative effects it entails, there are some professors of American criminal law, such as the professor. Alan Dersho wits saw in the criminalization of these patterns of behavior something that is inconsistent with the right to freedom of expression. Indeed, it has come to the point that some activists in the field of women's rights have objected to these laws because, in their opinion, it perpetuates the stereotypical view of women as a (thin sexual creature) that must be dealt with in a special way. And to provide additional protection for him. One of these activists says Camilla Paglia Which goes on to say that treating a woman in this way will ultimately lead to her becoming a target of sexual harassment and encouraging others to persist Kathleen, 1998 ).( As the doctor goes Viki Shuits A law professor at Yale University notes that many of the practices of sexual harassment are aimed at keeping men in positions and tasks that are most empowering and profitable .As for the female activist Jane Gallop She believes that the laws of sexual harassment should relate to discrimination in employment on the basis of sex and not focus on the issue of sex only Gallop, 1997 ). In sum, according to the statistics of the United Nations Development Organization for Women for the year 2003, only 16 countries in the world have independent legislation on sexual harassment, 128 countries have texts dealing with the crime of sexual harassment, and 44 countries do not have any legislation dealing with this crime, especially in Africa and the Middle East.

**Sexual harassment in Iraqi law** The Iraqi constitution of 2005 referred in the section on rights and freedoms to a set of rights and freedoms, including the human right to non-discrimination, as well as laying down basic guarantees for these rights and freedoms and considering them binding and enforceable. However, it is noticed that there is no special law dealing with The issue of sexual harassment in Iraq, it can be said that this crime was not given the necessary privacy for it, but rather included in the Iraqi Penal Code No. 111 of 1969 by referring to this subject among separate articles, such as

Article 400 of the Penal Code, which stipulates (Whoever commits an act with a person, male or female, is an act that violates modesty Without his or her consent, he shall be punished with imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars, or one of these two penalties .( Article 402 (1) shall be punished with imprisonment for a period not exceeding three months and a fine not exceeding thirty dinars, or by one of these two penalties: A- Whoever requests matters contrary to morality from another male or female. B- Whoever deals with a female in a public place with words or deeds or signals on the face of raking her modest? it is clear to us from the above that these limited provisions do not give offense importance as the punishment imposed is not commensurate with the severity of this and the seriousness of the crime and its negative effects on health, psychological, social and economic victim level or at the institutional level. also it cannot be considered as provisions dealing with The crime of sexual harassment or harassment, which exposes us to its pillars in the previous pages, and what we have requested from the work relationship that binds the perpetrator and the victim, as this element is what constitutes the specificity of this crime as stipulated in the comparative legislation, announcements and international conferences concerned with the elimination of this crime. The Iraqi work in force indicated in Article 11 of it that the worker has the right to resort to the Labor Court to file a complaint when he is exposed to any form of forced labor, discrimination or harassment, as stated in the second paragraph of the same article to punishment The imposed penalty ,which is a period of no more than six months imprisonment and a fine not exceeding one million dinars, which, in our opinion, are modest penalties that are not commensurate with the seriousness of the criminal behavior and the dangerous consequences that result from it .Which exempted from the provisions of this law public employees appointed in accordance with the Civil Service Law, as well as members of the armed forces and employees of the police and internal security ?Therefore, we call on the Iraqi legislator to amend the penal code and stipulate this crime in a way that gives it its specificity and importance on the legal, social and institutional levels, similar to what the comparative Arab legislations have

done, including the Algerian, Jordanian, Moroccan and Tunisian legislators.

## Results

1. It is inferred from the foregoing that the phenomenon of sexual harassment in the workplace is widespread in all developed and developing societies alike, including the Iraqi society, in light of a clear variation in the prevalence of this phenomenon.
2. Despite the lack of specialized statistical surveys and the scarcity of surveys that dealt with this phenomenon in the workplace, whether in the private, mixed or cooperative sector, or even for workers in the public sector, with the awareness of the potential for the phenomenon to spread in the private sector more broadly than other sectors. This is due to the wide powers granted to the employer in this sector more than it is in the public sector and other sectors.
3. either at the level of laws Ala upscale force is observed the absence of laws punitive explicit this crime dealt with and as we have shown previously in articles 400 and 402 sexual while working harassment, except in force labor law either the remaining service laws were free of that force the Civil Service Law No. ( 24) for the year 196 0 and other service laws whose texts do not contain any reference to the phenomenon of sexual harassment at work, with the exception of Labor Law No. 37 of 2015 in force.
4. The absence of official attention, community awareness, and a deterrent legal framework against the phenomenon of sexual harassment in the workplace has led most victims to avoid submitting complaints and reports about their exposure to such attacks, which would exacerbate the phenomenon and the extent of its spread and its negative repercussions on society.

## Conclusion and Recommendations

1. To bring this phenomenon to the surface, we have to deal with its reality and the extent of its spread on women, work and society and ways to confront it while breaking out of the stereotypes of dealing with it on the basis that it is a social taboo that may not be addressed or talked about by working on collecting statistics to show the true extent of this phenomenon.
2. Include legal articles that work to reduce the phenomenon of sexual harassment, and it

includes a clear definition of harassment that is socially agreed upon, and a deterrent punishment for the perpetrator, and that the philosophy of law starts from eliminating this phenomenon

3. Work to prepare a special complaints system to deal with the phenomenon of sexual harassment in the workplace that clarifies for the victim of harassment the mechanisms for submitting complaints and litigation, whether in the workplace) investigation committees) or through the police, the public prosecution and the judiciary.

4. Ensuring the confidentiality of the investigation committee's work with setting a time limit for its work, ensuring appropriate representation of women in its membership, and making decisions of the investigation committee mandatory and ensuring union representation of non-governmental organizations such as workers' and employers' organizations in its membership, allowing the victim of harassment to resort to the judicial authorities if they feel Inequity in the course of her work.

5. Ensure that victims and / or witnesses are not subjected to coercion or discrimination during the investigation and prosecution of sexual harassment crimes.

6. Ratification of the Elimination of Violence and harassment at work No. 190 for the year 2019, ILO.

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